

**U.S. Office of Special Counsel**  
**2017 Chief FOIA Officer's Report**

**February 3, 2017**

In accordance with U.S. Department of Justice (DOJ) guidelines, the Chief FOIA Officer for the U.S. Office of Special Counsel (OSC) hereby submits the 2017 Chief FOIA Officer's Report. Ken Hendricks, Clerk of the U.S. Office of Special Counsel, is the Chief FOIA Officer.

**Section I: Steps Taken to Apply the Presumption of Openness**

**A. FOIA TRAINING**

1. *Did your FOIA professionals or the personnel at your Agency who have FOIA responsibilities attend any FOIA training or conference during the reporting period, such as that provided by DOJ?*

Yes.

2. *If yes, please provide a brief description of the type of training attended and the topics covered.*

Specific examples include DOJ/OIP's "Training for FOIA Public Liaisons and Requester Service Center Staff"; DOJ/OIP and American Society of Access Professionals (ASAP) seminars relating to the FOIA Improvement Act of 2016; and several in-house one-on-one and small-group training sessions.

3. *Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.*

One-hundred percent of OSC's staff whose responsibilities include handling FOIA matters received substantive FOIA training during the reporting period.

4. *OIP has directed Agencies to "take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year." If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.*

N/A.

**B. OTHER INITIATIVES**

5. *Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA.*

OSC included a FOIA training component in its September 2016 agency-wide conference.

6. *If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.*

In recent years, OSC's FOIA staff has implemented procedures to coordinate with non-FOIA staff in order to apply the foreseeable harm standard.

## **Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests**

### **A. PROCESSING PROCEDURES**

1. *For Fiscal Year 2016, what was the average number of days your agency reported for adjudicating requests for expedited processing?*

9.69 days.

2. *If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten days or less.*

N/A.

3. *Please provide an estimate of how many requests your agency processed in Fiscal Year 2016 that were from commercial use requesters. If your agency is decentralized, please identify any components within your agency that received a majority of their requests from commercial use requesters.*

OSC processed two commercial requests in Fiscal Year 2016. OSC has one central FOIA office.

### **B. REQUESTER SERVICES**

4. *The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of how often requesters sought assistance from your agency's FOIA Public Liaison.*

OSC estimates that requesters sought assistance from the FOIA Public Liaison in 10 percent of the requests received and processed.

5. *The FOIA Improvement Act of 2016 requires agencies to make their reference material or guide for requesting records or information from the agency electronically available to the public. Please provide a link to your agency's reference guide.*

<https://osc.gov/Pages/FOIA-Handbook.aspx>

## C. OTHER INITIATIVES

6. *If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as improving search processes, eliminating redundancy, etc., please describe them here.*

In 2016, OSC updated its FOIA regulations to more specifically identify records subject to expedited processing under one of the provisions for granting such status. This procedure will enhance OSC's ability to respond to certain requests on an expedited basis. The revised regulations also update OSC's internet, fax and physical address information, and account for additional electronic ways by which requesters may file requests and appeals.

### **Section III: Steps Taken to Increase Proactive Disclosures**

#### A. POSTING MATERIAL

1. *Describe your agency's process or system for identifying "frequently requested" records that should be posted online.*

When OSC receives a request that appears similar to one we have already received, the FOIA Team searches our electronic tracking system for similar requests to discuss at weekly meetings.

2. *Does your agency have a distinct process or system in place to identify other records for proactive disclosure? If so, please describe your agency's process or system.*

Yes. While processing requests, FOIA Team members routinely consider whether records are appropriate for possible proactive disclosure. Additionally, OSC leadership regularly considers whether agency material is suitable for proactive disclosure.

3. *Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?*

Yes.

4. *If so, briefly explain those challenges and how your agency is working to overcome them.*

Privacy concerns present legal barriers to publicly posting material. Approximately eighty percent of OSC's requests are from first-party requesters, and are not eligible for the "release to all" presumption.

5. *Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.*

FOIA logs for Fiscal Years 2015 and 2016.

<https://osc.gov/Resources/FY2016%20FOIA%20Log.pdf>

[https://osc.gov/Resources/FOIA%20Log%20FY2015%20\(October%201%202014-September%2030%202015\).pdf](https://osc.gov/Resources/FOIA%20Log%20FY2015%20(October%201%202014-September%2030%202015).pdf)

6. *Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe these efforts.*

OSC has indexed publicly posted materials on its website, and has announced proactive disclosures via Twitter.

## **B. OTHER INITIATIVES**

7. *If there are any other steps your agency has taken to improve proactive disclosures, please describe them here.*

OSC will continue to review and post its FOIA Logs and other releasable materials in 2017.

## **Section IV: Steps Taken to Greater Utilize Technology**

### **A. MAKING MATERIAL POSTED ONLINE MORE USEFUL**

1. *Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website?*

Yes.

2. *If yes, please provide examples of such improvements.*

OSC will continue to index its publicly-posted materials.

### **B. OTHER INITIATIVES**

3. *Did your agency successfully post all four quarterly reports for Fiscal Year 2016?*

Yes.

4. *If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2017.*

N/A.

## **Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs**

### **A. SIMPLE TRACK**

1. *Does your agency utilize a separate track for simple requests?*

Yes.

2. *If so, for your agency overall in Fiscal Year 2016, was the average number of days to process simple requests twenty working days or fewer?*

No.

3. *Please provide the percentage of requests processed by your agency in Fiscal Year 2016 that were placed in your simple track.*

31.5%.

4. *If your agency does not track simple requests separately, was the average number of days to process all non-expedited requests twenty working days or fewer?*

N/A.

### **B. BACKLOGS**

#### **BACKLOGGED REQUESTS**

5. *If your agency had a backlog of requests at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015?*

Yes.

6. *If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:*

- *An increase in the number of incoming requests*
- *A loss of staff*
- *An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase*
- *Any other reasons – please briefly describe or provide examples when possible*

N/A.

7. *If you had a request backlog, please report the percentage of requests that make up the backlog out of the total number of requests **received** by your agency in Fiscal Year 2016.*

123.8%.

## **BACKLOGGED APPEALS**

8. *If your agency had a backlog of appeals at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015?*

Yes.

9. *If not, explain any and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:*

- *An increase in the number of incoming appeals*
- *A loss of staff*
- *An increase in the complexity of the requests (appeals) received. If possible, please provide examples or briefly describe the types of complex requests (appeals) contributing to your backlog increase.*
- *Any other reasons – please briefly describe or provide examples when possible*

N/A.

10. *If you had an appeal backlog, please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2016. If your agency did not receive any appeals in Fiscal Year 2016 and/or has no appeal backlog, please answer with “N/A”.*

Forty-five percent.

## **C. STATUS OF TEN OLDEST REQUESTS, APPEALS, AND CONSULTATIONS**

### **TEN OLDEST REQUESTS**

11. *In Fiscal Year 2016, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2015 Annual FOIA Report?*

No.

12. *If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2015 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.*

OSC closed three of the ten oldest requests.

13. *Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?*

One was withdrawn prior to any interim responses.

## **TEN OLDEST APPEALS**

14. *In Fiscal Year 2016, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2015 Annual FOIA Report?*

OSC had only seven pending appeals at the end of FY 2015.

15. *If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2015 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.*

OSC closed four of the seven appeals mentioned in Item #14, above.

## **TEN OLDEST CONSULTATIONS**

16. *In Fiscal Year 2016, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2015 Annual FOIA Report?*

OSC had only three pending consultations at the end of Fiscal Year 2015. We closed two of them.

17. *If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2015 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.*

Please see item 16, above.

## **D. ADDITIONAL INFORMATION ON TEN OLDEST REQUESTS, APPEALS, AND CONSULTATIONS & PLANS**

18. *Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals and consultations from Fiscal Year 2015.*

Challenges to closing the oldest matters included the need for FOIA staff to address litigation-related issues, and the need for our IT department to focus efforts on an enterprise IT development initiative.

19. *If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.*

N/A.

20. *If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those "ten oldest" requests, appeals and consultations during Fiscal Year 2017.*

This fiscal year, OSC began an intensive focus on our oldest requests, appeals, and consultations. We will make closing the ten oldest requests, appeals and consultations a priority. We will track progress using production reports, and we will discuss our efforts in unit meetings.