

U.S. Office of Special Counsel
2011 Chief FOIA Officer Report

In accordance with Department of Justice guidelines, the Chief FOIA Officer for the U.S. Office of Special Counsel (OSC) hereby submits the 2011 Chief FOIA Officer Report. After review by the Office of Information Policy at the Department of Justice, this report will be posted to OSC's website.

I. Steps Taken to Apply the Presumption of Openness

1. Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.
 - a. Describe how the President's FOIA Memorandum and the Attorney General's FOIA Guidelines have been publicized throughout your agency.

OSC's Legal Counsel and Policy Division (LC&P) manages the agency FOIA program, with search and consultation support from OSC's program divisions as necessary. After the issuance of the President's FOIA Memorandum and the Attorney General's FOIA Guidelines, OSC distributed copies of those documents to the Acting Special Counsel, the Director of Administrative Services/Chief Financial Officer, and to LC&P staff engaged in FOIA processing and litigation responsibilities. LC&P also distributed a copy of the March 16, 2010 White House memorandum on FOIA to the same individuals. Pursuant to each distribution, LC&P discussed internally, and with members of OSC's senior staff (consisting of the heads of agency program and administrative units), the expectation that measures be implemented to enable transparency to the fullest possible extent.

- b. What training has been attended and/or conducted on the new FOIA Guidelines?

The Department of Justice issued guidance on April 17, 2009 entitled, "*President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines, Creating a New Era of Open Government.*" OSC's FOIA Officer reviewed that guidance and attended DOJ training on implementing the Guidelines.

- c. How has your agency created or modified your internal guidance to reflect the presumption of openness?

As previously reported in the 2009 Chief FOIA Officer Report, OSC in summer 2009 distributed a revised agency-wide directive, modified to advise that all employees are required to support the implementation of OSC's FOIA responsibilities. This directive is consistent with the call for agency-wide support issued in the Attorney General's FOIA Guidelines.

- d. To what extent has your agency made discretionary releases of otherwise exempt information?

OSC has made discretionary releases in several instances, but did not specifically track such instances. OSC has now implemented a method for tracking such instances in the future.

- e. What exemptions would have covered the information that was released as a matter of discretion?

See response to item d, above.

- f. How does your agency review records to determine whether discretionary releases are possible?

If the FOIA Officer identifies information that could be considered for discretionary release, he discusses the potential for release with the appropriate program employees. On appeal, withheld records are reviewed for potential discretionary release.

- g. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

See response to item f, above.

2. Report the extent to which the numbers of requests where records have been released in full and the numbers of requests where records have been released in part has changed from those numbers as reported in your previous year's Annual FOIA Report.

In FY 2010, OSC released in full records in response to 32 requests as compared to 30 in FY 2009. In FY 2010, OSC responded to 32 requests by releasing records in part as compared to 43 in FY 2009. OSC issued 23 exemption-based full denials in FY 2010 as compared to 26 in FY 2009.

II. Steps Taken to Ensure that Your Agency has an Effective System In Place for Responding to Requests

Describe here the steps your agency has taken to ensure that your system for responding to requests is effective and efficient. This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

- a. Do FOIA professionals within your agency have sufficient IT support?

Yes.

- b. Describe how your agency's FOIA professionals interact with your Open Government Team.

OSC's open government efforts are implemented largely through the publication of appropriate program information on OSC's website. As noted above, OSC's FOIA program is administered through the LC&P. OSC program managers consult with LC&P as needed when making determinations on information posting.

- c. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to responding to FOIA requests.

The Chief FOIA Officer monitors OSC's FOIA administration, including backlog size and age, to ensure that appropriate staffing resources are utilized.

- d. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.

During FY 2010, two attorneys with key FOIA-related duties departed LC&P. OSC completed its recruitment process and hired two new attorneys in late 2010.

III. Steps Taken To Increase Proactive Disclosures

Describe here the steps your agency has taken to increase the amount of material that is available on your agency website, including providing examples of proactive disclosures that have been made since issuance of the new FOIA Guidelines. In doing so, answer the questions listed below and describe any additional steps taken by your agency to make proactive disclosures of information.

- a. Has your agency added new material to your agency website since last year?

Yes.

- b. What types of records have been posted?

OSC posted several records, including two new Public Disclosures files; a Training Log List; a spreadsheet of OSC Expenditures for GPO Products and Services; two Workforce Data Reports; a Hatch Act Advisory Opinion; and a Hatch Act Report of Investigation.

- c. Give examples of the types of records your agency now posts that used to be available only by making a FOIA request for them.

Examples include the Training Log List, the spreadsheet of OSC Expenditures for GPO Products and Services, and the Workforce Data Reports.

- d. What system do you have in place to routinely identify records that are appropriate for posting?

OSC's program managers identify records within their units that are appropriate for posting.

- e. How do you utilize social media in disseminating information?

OSC presently publishes information on its website, but does not post to social media services.

- f. Describe any other steps taken to increase proactive disclosures at your agency.

See responses to items d and e, above.

IV. Steps Taken To Greater Utilize Technology

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. In 2010 agencies reported widespread use of technology in handling FOIA requests. For this section of your Chief FOIA Officer Report for 2011, please answer the following more targeted questions:

1. Electronic receipt of FOIA requests:

- a. What proportion of the components within your agency which receive FOIA requests have the capability to receive such requests electronically?

OSC has one unit that receives FOIA requests, and it has the capability to receive requests electronically.

- b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

Not Applicable

- c. What methods does your agency use to receive requests electronically?

In terms of electronic receipt, OSC presently receives requests by facsimile.

2. Electronic tracking of FOIA requests:

- a. What proportion of components within your agency which receive FOIA requests have the capability to track such requests electronically?

OSC has one unit that receives FOIA requests, and it tracks requests electronically.

- b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

Not Applicable

- c. What methods does your agency use to track requests electronically?

OSC tracks FOIA requests through an agency-created, relational database.

3. Electronic processing of FOIA requests:

- a. What proportion of components within your agency which receive FOIA requests have the capability to process such requests electronically?

OSC has one unit that receives FOIA requests, and it has the capability to process requests electronically.

- b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

Not applicable.

- c. What methods does your agency use to process requests electronically?

OSC conducts electronic searches and in some instances processes redactions electronically.

4. Electronic preparation of your Annual FOIA Report:

- a. What type of technology does your agency use to prepare your agency Annual FOIA Report, i.e., specify whether the technology is FOIA-specific or a generic data-processing system.

OSC's agency-created, relational database provides agency-wide data tracking. This database also assists in the preparation of the Annual FOIA Report.

- b. If you are not satisfied with your existing system to prepare your Annual FOIA Report, describe the steps you have taken to increase your use of technology for next year.

OSC will continue its consideration of technology improvements that can assist with preparation of the Annual FOIA Report and other agency needs.

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

Improvements to timeliness in responding to pending FOIA requests and reductions in backlogs are both ongoing agency efforts. The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. Section XII of your Annual FOIA Report includes figures that show your agency's backlog of pending requests and administrative appeals for the past two fiscal years. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In this section you should address the following elements.

1. If your agency has a backlog, report here whether that backlog is decreasing. That reduction should be measured in two ways. First, report whether the number of backlogged requests and backlogged administrative appeals that remain pending at the end of the fiscal year decreased or increased, and by how many, when compared with last fiscal year. Second, report whether your agency closed in Fiscal Year 2010 the ten oldest of those pending requests and appeals from Fiscal Year 2009, and if not, report how many of them your agency did close.

OSC reduced the number of backlogged requests pending from six at the end of FY 2009 to five pending at the end of FY 2010. OSC also reduced the number of backlogged appeals from ten pending at the end of FY 2009 to five pending at the end of FY 2010.

OSC closed the ten oldest requests that were pending at the end of FY 2009, and five of the ten oldest appeals that were pending at the end of FY 2009. The appeals closures included one appeal received in 2008, one received in 2007, and one received in 2006.

2. If there has not been a reduction in the backlog as measured by either of these metrics, describe why that has occurred. In doing so, answer the following questions and then include any other additional explanation:

- a. Is the backlog increase a result of an increase in the number of incoming requests or appeals?

Yes, in part. The number of appeals that OSC received nearly doubled (from eight to fourteen). The number of appeals that OSC processed also nearly doubled (from eleven to nineteen). At the close of FY 2010, five of the seven pending appeals were ones that were pending at the end of FY 2009.

- b. Is the backlog increase caused by a loss of staff?

Yes, in part. As noted previously, two attorneys with key FOIA-related duties departed OSC in FY 2010. The resulting vacancies affected OSC's ability to close the remaining five of the oldest appeals that were pending at the end of FY 2009.

- c. Is the backlog increase caused by an increase in the complexity of the requests received?

No.

- d. What other causes, if any, contributed to the increase in backlog?

While the remaining pendency of five of the oldest appeals that were pending at the end of FY 2009 is not attributable to an increase in the number of complex requests/appeals received, the oldest pending appeals are generally complex matters.

3. Describe the steps your agency is taking to reduce any backlogs and to improve timeliness in responding to requests and administrative appeals. In doing so answer the following questions and then also include any other steps being taken to improve timeliness.

- a. Does your agency routinely set goals and monitor the progress of your FOIA caseload?

OSC sets timelines and monitors the progress for work on FOIA responses, administrative appeals, and FOIA reporting obligations.

- b. Has your agency increased its FOIA staffing?

OSC has not increased FOIA staffing levels since the creation of a disclosure counsel position in 2009, but the agency recently filled an attorney vacancy for a position that has significant FOIA duties.

- c. Has your agency made IT improvements to increase timeliness?

While OSC did not make IT improvements last year, the agency has contemplated such improvements and will continue to explore fiscally appropriate options.

- d. Has your agency Chief FOIA Officer been involved in overseeing your agency's capacity to process requests?

OSC's Chief FOIA Officer is engaged in the agency's FOIA administration such that staff re-allocation and priority designations can be made when necessary to support the FOIA process.

Spotlight on Success

Out of all the activities undertaken by your agency in this last year to increase transparency, describe here one success story that you would like to highlight as emblematic of your efforts.

Backlog reduction is important to OSC. The agency was able to reduce the number of backlogged FOIA requests and appeals, including closing several of the oldest pending appeals, despite experiencing staffing vacancies in key FOIA-related positions.