

To: Office of Information Policy
U.S. Department of Justice

From: Kimberly Tolhurst
Acting Chief FOIA Officer
U.S. Commission on Civil Rights

Date: January 31, 2012

Re: 2012 Chief FOIA Officer Report

The U.S. Commission on Civil Rights (“Commission”) is a small federal agency with approximately thirty employees and no sub-components. The Commission receives few requests under the Freedom of Information Act (“FOIA”); in FY 2011, for example, the Commission received 50 total FOIA requests and received no administrative appeals. Due to its limited resources and low volume of requests, the Commission has one primary employee tasked with processing its FOIA requests, and he/she spends approximately 25% of his/her time doing so.

Section I: Steps Taken to Apply the Presumption of Openness

1. Did the Commission hold an agency FOIA conference, or otherwise conduct training during this reporting period?

No. The Commission did not hold an agency FOIA conference or otherwise conduct training during this time period.

2. Did the Commission’s FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?

One or two of the Commission’s employees are scheduled to attend the FOIA training coordinated by the Department of Justice Office of Information Policy on February 28-29, 2012.

3. Did the Commission make any discretionary releases of otherwise exempt information?

The Commission issued one discretionary releases during the reporting period.

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

The discretionary release would have been covered by Exemption 2, which relates solely to internal personnel policies of the Commission.

5. Describe the Commission's process to review records to determine whether discretionary release is possible.

The Commission has one employee that reviews all records prior to release under the FOIA. Whenever a record contains information that could be withheld, the employee considers whether the Commission is legally required to withhold the information, and if not, whether the agency should issue a discretionary release. The employee receives approval for release from the Commission's General Counsel prior to issuing the FOIA response.

6. Describe any other initiatives undertaken by the Commission to ensure that the presumption of openness is being applied.

N/A.

7. Did the Commission have an increase in the number of responses where records were released in full?

Between FY 2010 and FY 2011 the Commission had an increase in the number of responses where records were released in full. In its FY 2010 Annual Report, the Commission reported that it had issued full grants to sixteen FOIA requests. In its FY 2011 Annual Report, the Commission reported that it had issued full grants to seventeen FOIA requests.

8. Did the Commission have any increase in the number of responses where records were released in part?

Between FY 2010 and FY 2011 the Commission had a significant increase in the number of responses where records were released in part. In its FY 2010 Annual Report, the Commission reported that it had issued a partial grant to one FOIA request. In its FY 2011 Annual Report, however, the Commission reported that it had issued fourteen partial grants. Of those partial grants issued in FY 2011, nine were subject to Exemption 6, which protects against clearly unwarranted invasion of personal privacy; six were classified as partial grants because the requester, in part, sought records that do not exist or that the Commission does not possess.¹

Section II: Steps Taken to Ensure that the Commission Has an Effective System in Place for Responding to Requests

1. Do FOIA professionals within the Commission have sufficient IT support?

Yes. The FOIA officer has sufficient IT support.

¹ One partial grant was subject to Exemption 6 and, in part, sought records that do not exist or that the Commission does not possess.

2. Is there regular interaction between the agency FOIA professionals and the Chief FOIA Officer?

Yes. The Chief FOIA Officer and the Commission's FOIA officer interact on a daily basis.

3. Do the Commission's FOIA professionals work with the Commission's Open Government Team?

No. The Commission's FOIA officer does not have substantive contact with the Open Government Team.

4. Describe the steps the Commission has taken to assess whether adequate staffing is being devoted to FOIA administration.

The Commission's low volume of FOIA requests has not necessitated additional FOIA staffing. However, were the volume to increase, the Commission's FOIA officer and the General Counsel/Chief FOIA Officer would work together to address such a staffing need.

5. Describe any other steps the Commission has undertaken to ensure that its FOIA system operates efficiently and effectively.

As discussed in the Commission's 2011 Chief FOIA Officer Report, the Commission completely overhauled its FOIA system in Fall 2010, including revising the Commission's methods for receiving, tracking, and filing FOIA requests. The Commission has spent the reporting period implementing and monitoring the revised program.

Section III: Steps Taken to Increase Proactive Disclosures

1. Has the Commission added new material to its website since last year?

Yes. The Commission regularly adds new material to its website.

2. Provide examples of the records, datasets, videos, etc., that have been posted this past year.

The Commission posts all reports, public notices, meeting and hearing transcripts, and official correspondence on its website. For example, with respect to the Commission's 2011 annual report on federal civil rights enforcement in the United States, *Peer-to-Peer Violence and Bullying: Examining the Federal Response*, the Commission posted on its website the final report, the transcript of its briefing on the issue, a link to video of its

briefing, briefing panelists' statements, and public comments that were entered into the Commission's record and cited in the report.

3. Describe the system the Commission uses to routinely identify records that are appropriate for posting?

The Commission routinely posts all of its reports, public notices, transcripts and official public statements on its website. In addition, upon drafting its 2011 report *Peer-to-Peer Violence and Bullying: Examining the Federal Response*, the Commission posted briefing panelist statements and public comments that were entered into the Commission's record and cited in the report.

4. Beyond new material, is the Commission taking steps to make the information more useful to the public, especially to the community of individuals who regularly access the Commission's website, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities, providing explanatory material, etc.?

The Commission launched a new website in Fall 2011. The new website is better organized and more user-friendly than the previous website, and as such it ensures that the public will be better equipped to use and access the information that the Commission makes available.

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

N/A.

Section IV: Steps Taken to Greater Utilize Technology

Electronic receipt of FOIA requests:

1. Can FOIA requests be made electronically to the Commission?

Yes. The Commission can receive FOIA requests via e-mail at foia@usccr.gov.

2. If the Commission processes requests on a decentralized basis, do all components of your agency receive requests electronically?

N/A. The Commission does not process requests on a decentralized basis.

Electronic tracking of FOIA requests:

3. Can a FOIA requester track the status of his/her request electronically?

No. The Commission does not provide an electronic-tracking service for FOIA requesters. If a requester wishes to track a FOIA request, he or she may seek information about the request's status via email at foia@usccr.gov, via telephone at (202) 376-8351, or via fax at (202) 376-1163.

4. If not, is the Commission taking steps to establish this capability?

No. The Commission has taken no steps to create an electronic-tracking service for FOIA requesters.

Use of Technology to facilitate processing of requests:

5. Beyond using technology to redact documents, is the Commission taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

Yes.

6. If so, describe the technological improvements being made.

In January 2012 the Commission began to transition to the use of collaboration software by most agency employees. The Commission expects to complete the transition by October 2012. This software will facilitate electronic searches of certain agency records.

Section IV: Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

1. Response Time for All Processed Requests

a. Does the Commission utilize a separate track for simple requests?

The Commission did not utilize a separate track for simple requests in FY 2011. The Commission began distinguishing between simple and complex requests in FY 2012.

b. If so, for the Commission overall, for Fiscal Year 2011, was the average number of days to process simple requests twenty working days or fewer?

N/A.

c. If the Commission does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?

No. The average number of days to process non-expedited requests was forty working days.

2. Backlogged Requests/Appeals

a. If the Commission had a backlog of requests at the close of Fiscal Year 2011, did that backlog decrease as compared with fiscal year 2010?

N/A. The Commission completely eliminated its backlog in FY 2011. The Commission had eleven backlogged requests at the close of FY 2010. By the close of FY 2011 the Commission had zero backlogged requests.

b. If the Commission had a backlog of administrative appeals in Fiscal Year 2011, did that backlog decrease as compared to Fiscal Year 2010?

N/A. The Commission had no pending appeals at the close of either FY 2010 or FY 2011.

c. In Fiscal Year 2011, did the Commission close the ten oldest requests that were pending as of the end of Fiscal Year 2010?

Yes. In FY 2011, the Commission closed all requests that were pending at the end of FY 2010.

d. In Fiscal Year 2011, did the Commission close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2010?

N/A. There were no pending appeals at the close of FY 2010.

3. If the Commission answered “no” to any of the above questions, describe why that has occurred. In doing so, answer the following questions, and then include any additional information:

Request Backlog:

a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?

N/A. The Commission eliminated its request backlog in FY 2011.

b. Was the lack of a reduction in the request backlog caused by loss of staff?

N/A. The Commission eliminated its request backlog in FY 2011.

c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?

N/A. The Commission eliminated its request backlog in FY 2011.

d. What other causes, if any, contributed to the lack of a decrease in the request backlog?

N/A. The Commission eliminated its request backlog in FY 2011.

Administrative Appeal Backlog:

a. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?

N/A. The Commission had no pending appeals at the close of either FY 2010 or FY 2011.

b. Was the lack of a reduction in the appeal backlog caused by loss of staff?

N/A. The Commission had no pending appeals at the close of either FY 2010 or FY 2011.

c. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received?

N/A. The Commission had no pending appeals at the close of either FY 2010 or FY 2011.

d. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?

N/A. The Commission had no pending appeals at the close of either FY 2010 or FY 2011.

All agencies should strive to both reduce any existing backlogs or requests and appeals and to improve their timeliness in responding to requests and appeals. Describe the steps the Commission is taking to make improvements in those areas. In doing so, answer the following questions and then also include any other steps being taken to reduce backlogs and to improve timeliness.

1. Does the Commission routinely set goals and monitor the progress of its FOIA caseload?

Yes. The Commission sets the goal of processing every FOIA request within twenty working days, as required by law. Because the Commission receives few FOIA requests per year, and rarely has more than four open requests at any given time, further goal-setting and monitoring is not necessary.

2. Has the Commission increased its FOIA staffing?

Partly. Historically, due to its low volume of FOIA requests, the Commission has only tasked one employee with processing its FOIA requests. This year, however, the Commission began to train an additional employee to assist with FOIA processing.

3. Has the Commission made IT improvements to increase timeliness?

No. The Commission has not made any IT improvements that affect timeliness.

4. If the Commission receives consultations from other agencies, has the Commission taken steps to improve the efficiency of the handling of such consultations, such as utilizing IT to share the documents, or establishing guidelines or agreements with other agencies on the handling of particular information to speed up or eliminate the need for consultations?

N/A. The Commission received no consultations from other agencies.

Use of FOIA's Law Enforcement "Exclusions"

1. Did the Commission invoke a statutory exclusion during Fiscal Year 2011?

No. The Commission did not invoke a statutory law enforcement exclusion during FY 2011.

2. If so, what is the total number of times exclusions were invoked?

N/A.

Spotlight on Success

Out of all the activities undertaken by the Commission since March 2011 to increase transparency and improve FOIA administration, describe here one success story that the Commission would like to highlight as emblematic of its efforts.

The Commission launched a new website in Fall 2011 that is better organized and more user-friendly than its previous website. The new and improved website facilitates the public use of and access to the large quantities of information that the Commission makes available through proactive disclosure.