



UNITED STATES COMMISSION ON CIVIL RIGHTS

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## Chief FOIA Officer Report 2014

United States Commission on Civil Rights (USCCR)

Chief FOIA Officer: Rorey Smith, General Counsel

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

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.

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.

#### *FOIA Training:*

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

**Answer: No.**

2. If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.

**Answer: N/A.**

3. Did your FOIA professionals attend any FOIA training during the reporting period such as that provided by the Department of Justice?

**Answer: Yes.**

4. Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period.

**Answer: 67%. During the reporting period, there were two employees that attended substantive FOIA training. The third employee, the Chief FOIA Officer, did not come on board until late December 2013.**

5. OIP has issued guidance that every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year. Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year.

**Answer: Currently, all USCCR FOIA professionals are registered for the *Advanced Freedom of Information Act Seminar*, March 26, 2014 (Washington, DC) or on the waitlist for the *Freedom of Information Act Administrative Forum*, June 11, 2014 (Washington, DC). The Department of Justice is sponsoring both trainings.**

*Outreach:*

6. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement.

**Answer: No. The USCCR receives fewer than 100 FOIA requests annually, so there is no need for outreach to the requester community.**

*Discretionary Disclosures:*

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

7. Does your agency have a formal process in place to review records for discretionary release? If so, please briefly describe this process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases.

**Answer: Yes, records are reviewed for mandatory and discretionary release simultaneously.**

8. During the reporting period did your agency make any discretionary releases of otherwise exempt information?

**Answer: No. The USCCR released all information allowable and only withheld information on one request under exemption 6, which is not discretionary.**

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

**Answer: N/A.**

10. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.

**Answer: N/A.**

11. If your agency was not able to make any discretionary releases of information, please explain why.

**Answer: N/A - The USCCR released all information allowable and only withheld information on one request under exemption 6, which is not discretionary.**

*Other Initiatives:*

12. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014.

**Answer: Yes.**

13. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please provide links in your description.

**Answer: During the past year, the USCCR proactively posted more information and reports online, such as the annual statutory enforcement report, recent State Advisory Committee reports, letters from the Commission, and press releases. (Please see the response to Section III #3 for links to these items.)**

**Also, the USCCR is scanning and digitizing older reports for posting online.**

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

As the Attorney General emphasized in his FOIA Guidelines, "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." It is essential that agencies effectively manage their FOIA program.

Describe here the steps your agency has taken to ensure that your management of your FOIA program is effective and efficient. 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.

*Personnel:*

During Sunshine Week 2012 OPM announced the creation of a new job series entitled the Government Information Series, to address the work performed by FOIA and Privacy Act professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

1. Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series?

**Answer: No. Due to the low number of FOIA requests received and the small size of the agency, there are no fulltime FOIA professionals. All FOIA requests are processed by Office of General Counsel attorneys (GS-905 positions).**

2. If not, what proportion of personnel has been converted to the new job series?

**Answer: N/A.**

3. If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted?

**Answer: N/A.**

*Processing Procedures:*

4. For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

**Answer: Yes.**

5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.

**Answer: No. Typically, the USCCR receives or makes very few referrals, so there is no need to establish agreements at this time. For example, during FY 2013, the USCCR only received one referral from another agency (Department of Justice) and did not refer any FOIA requests to another agency. Likewise, there were no consultations in FY 2013.**

*Requester Services:*

6. Do you use e-mail or other electronic means to communicate with requesters when feasible?

**Answer: Yes.**

7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?

**Answer: No. The USCCR did not have any FOIA complaints or appeals during 2013, so there was no need for mediation services.**

8. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc.

**Answer: The FOIA staff instituted a more efficient record keeping system and saved all FOIA responses electronically.**

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

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Describe here the steps your agency has taken both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2013 to March 2014). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

#### *Posting Material:*

1. Do your FOIA professionals have a system in place to identify records for proactive disclosures?

**Answer: Yes.**

2. If so, describe the system that is in place.

**Answer: The USCCR's FOIA log includes a brief description of requested records, so FOIA staff can see which records are repeatedly requested and should be proactively disclosed. Additionally, FOIA Staff in the Office of General Counsel work closely with the agency's Staff Director (Presidentially-appointed administrator) to proactively post information online. Also, it is anticipated that during 2014, the USCCR will establish internal procedures regarding website posting which will address proactive disclosure.**

3. Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.

**Answer:**

#### **Recent Press Releases and Advisories**

<http://www.usccr.gov/press/press.php>

#### Annual Statutory Enforcement Reports

<http://www.usccr.gov/pubs/annualstatutoryenforce.php>

#### Recent State Advisory Committee Reports

<http://www.usccr.gov/pubs/recentstatecommittee.php>

#### Request for Congressional Appropriation for Fiscal Year 2014 and Performance and Accountability Report FY 2013

<http://www.usccr.gov/about/congress.php>

#### *Making Posted Material More Useful:*

4. 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, such as soliciting feedback on the content and presentation of posted material, improving search capabilities on the site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.?

**Answer:** Due to the small size of the USCCR, the website is not operated by the agency, but maintained by another Federal entity. Therefore, the USCCR has not been soliciting feedback on the agency's website.

5. If so, provide examples of such improvements.

**Answer:** See response to #4 above.

6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized?

**Answer:** See response to #4 above.

7. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.

**Answer:** See response to #4 above. Since the website is not operated by the USCCR, this makes posting of records more difficult.

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

**Answer:** See response to #2 above.

## Section 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. Over the past several years agencies have reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2014, as we have done over the past years, the questions have been further refined and now also address different, more innovative aspects of technology use.

### *Online tracking of FOIA requests:*

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

**Answer: No.**

If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?

**Answer: N/A.**

2. Describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.

**Answer: N/A.**

3. In particular, does your agency tracking system provide the requester with an estimated date of completion for his/her request?

**Answer: N/A.**

4. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability? If not, please explain why.

**Answer: No. Due to the small number of FOIA requests received and current efficient processing, there is no need for an electronic tracking system. Requesters can contact the USCCR by email or telephone for information about their FOIA request.**

### *Use of technology to facilitate processing of requests:*

5. Beyond using technology to redact documents, is your agency 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?

**Answer: No, the small volume of requests received does not merit the investment.**

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

**Answer: N/A.**

7. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program?

**Answer: N/A.**

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

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations. *For the figures required in this Section, please use those contained in the specified sections of your agency's 2013 Annual FOIA Report and, when applicable, your agency's 2012 Annual FOIA Report.*

#### *Simple Track Requests:*

1. Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

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

**Answer: Yes.**

- b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?

**Answer: Yes.**

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

**Answer: N/A.**

#### *Backlogs and "Ten Oldest" Requests, Appeals and Consultations:*

2. Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests –Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.

#### Backlogs

- a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012?

**Answer: N/A - no backlog requests in FY 2013.**

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?

**Answer: N/A.**

#### Ten Oldest Requests

- c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?

**Answer: N/A - no pending requests.**

- d. 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 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed two of them, you should note that you closed two out of seven "oldest" requests.

**Answer: N/A.**

#### Ten Oldest Appeals

- e. In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?

**Answer: N/A – no pending administrative appeals.**

- f. If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C.(5) of your Fiscal Year 2012 Annual FOIA Report.

**Answer: N/A.**

### Ten Oldest Consultations

- g. In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012?

**Answer: N/A– no pending consultations.**

- h. If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report.

**Answer: N/A.**

### *Reasons for Any Backlogs:*

3. If you answered “no” to any of the questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:

#### Request and/or Appeal Backlog

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals?

**Answer: N/A – no backlogs.**

- b. Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff?

**Answer: N/A.**

- c. Was the lack of a reduction in the request and/or appeal backlog caused by an increase in the complexity of the requests received?

**Answer: N/A.**

- d. What other causes, if any, contributed to the lack of a decrease in the request and/or appeal backlog?

**Answer: N/A.**

#### “Ten oldest” Not Closed

- e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012.

**Answer: N/A- no ten oldest requests, appeals, and consultations.**

- f. If your agency was unable to close any of its ten oldest requests or appeals 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.

**Answer: N/A.**

*Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:*

Given the importance of these milestones, it is critical that Chief FOIA Officers assess the causes for not achieving success and create plans to address them.

4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2014.

**Answer: N/A.**

5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency’s plan for achieving backlog reduction in the year ahead.

**Answer: N/A.**

*Interim Responses:*

OIP has issued guidance encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information.

6. Does your agency have a system in place to provide interim responses to requesters when appropriate?

**Answer: Yes.**

7. If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

**Answer: N/A – no backlog.**

**Use of FOIA’s Law Enforcement “Exclusions”**

In order to increase transparency regarding the use of the FOIA’s statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to “treat the records as not subject to the requirements of [the FOIA],” 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. Did your agency invoke a statutory exclusion during Fiscal Year 2013?

**Answer: No.**

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

**Answer: N/A.**

### **Spotlight on Success**

Out of all the activities undertaken by your agency since March 2013 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas. As noted above, these agency success stories will be highlighted during Sunshine Week by OIP. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

**Answer:**

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

**During the reporting period, the USCCR:**

- **Processed over 95% of FOIA requests within the 20 statutory period**
- **Did not have any requests backlog**
- **Did not have any FOIA appeals**
- **Proactively posted annual statutory enforcement report, Special Advisory Committee reports, and letters from the Commission**

**This reflects the FOIA staff's commitment to process each request as expediently and completely as possible.**