

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

**From: Christopher Byrnes
Acting Chief FOIA Officer
U.S. Commission on Civil Rights**

Date: January 31, 2011

Re: 2011 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 2010, for example, the Commission received 40 total FOIA requests and received no administrative appeals. Due to its limited resources and low volume of requests, the Commission has one employee tasked with processing its FOIA requests, and he/she spends approximately 25% of his/her time doing so.

I. Steps Taken to Apply the Presumption of Openness

1. Steps the Commission has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

a. Describe how the President’s FOIA Memorandum and the Attorney General’s FOIA Guidelines have been publicized throughout the Commission.

On May 18, 2009, the Commission’s staff director circulated a memorandum to agency staff addressing the President’s Memorandum and the Attorney General’s Guidelines. It directed division heads and employees to review records with an eye toward disclosure.

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

The Commission’s FOIA officer attended the FOIA training coordinated by the Department of Justice Office of Information Policy on November 30-December 1, 2010.

c. How has the Commission created or modified its internal guidance to reflect the presumption of openness?

As discussed above in I.1.a, the Commission’s staff director circulated a memorandum instructing agency staff to review documents with an eye toward disclosure.

d. To what extent has the Commission made discretionary releases of otherwise exempt information?

Although the Commission does not track its discretionary releases, its FOIA officer follows the Commission's policy of reviewing records with an eye toward disclosure. In fact, the only exemption that the Commission has invoked in the last year has been Exemption 6, which is non-discretionary and protects against invasion of personal privacy.

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

The Commission does not track this data. Indeed, due to its low volume of FOIA requests, the Commission rarely receives requests for exempt information. Within the last year, the only exemption invoked by the Commission has been Exemption 6.

f. How does the Commission review records to determine whether discretionary releases are 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.

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

N/A.

2. *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 the Commission's previous year's Annual Report.*

In its FY 2009 Annual Report, the Commission reported that it had issued full grants to fourteen FOIA requests and had issued a partial grant to one FOIA request. In its FY 2010 Annual Report, the Commission reported similar data – that it had issued full grants to sixteen FOIA requests and had issued a partial grant to one FOIA request. Since October 1, 2010, however, the Commission has issued full grants to five FOIA requests, and has issued three partial grants under Exemption 6 and four partial grants to requests for records that are only partly in the Commission's files. While there has been an increase in partial grants since October 1, the sample size of the Commission's pool of FOIA requests is likely too small to indicate a meaningful trend.

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

1. *Steps the Commission has taken to ensure that its system for responding to requests is effective and efficient.*

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

Yes. The FOIA officer has sufficient IT support.

b. Describe how the Commission's FOIA professionals interact with its Open Government Team.

The Commission's previous officer served on the Open Government Team, though the newly appointed FOIA officer has not yet had substantive contact with the Open Government Team.

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

The Commission's low volume of FOIA requests has not necessitated any 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.

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

The Commission has completely overhauled its FOIA system within the last year to improve its operations.

First, the Commission has changed its method of receiving FOIA requests electronically. Previously, the Commission published the individual email address of its one FOIA officer and directed the public to email her directly. Today the Commission uses its new FOIA-specific email address, foia@usccr.gov. This address automatically forwards FOIA requests to multiple employees at the Commission so that a given FOIA request can be processed upon receipt, even if the Commission's FOIA officer is away from the office or otherwise busy.

In addition, the Commission has instituted a new electronic tracking system that creates a snapshot of all FOIA requests in the Commission's queue at any given time, and that prevents the Commission from losing track of FOIA requests or otherwise creating unnecessary delays. The tracking system keeps note of the following information: whether a FOIA request is open or closed; when it was received; the deadline for its response; the date its response was sent; the number of days taken to issue the response; whether the response constituted a full grant, a partial grant or a full denial; and the reasoning behind any partial grant or full denial.

Finally, the Commission has adopted a new internal filing system for its FOIA requests and responses. The Commission now assigns a FOIA tracking number to each FOIA request, as required by 5 U.S.C. § 552(a)(7)(A). Upon receipt, FOIA requests are immediately assigned folders and filed in hard copy, by tracking number. All FOIA responses are now filed electronically, as well as in hard copy with the initial FOIA request.

All of these changes have been instituted with an eye toward making the Commission's FOIA system more organized, and in turn more efficient and effective.

III. Steps Taken to Increase Proactive Disclosures

1. Steps the Commission has taken to increase the amount of material that is available on its website.

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

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

b. What types of records have been posted?

The Commission posts reports, public notices, meeting and hearing transcripts, and official correspondence on its website's main page. The Commission has also posted deposition transcripts, witness statements, correspondence, hearing transcripts and videos, and litigation pleadings related to a recent investigation conducted for its 2010 statutorily mandated annual enforcement report ("2010 Annual Enforcement Report").

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.

This year the Commission posted all public documents within its possession that it cited in its 2010 Annual Enforcement Report. Previous reports cite records and research that are only available by FOIA request.

d. What system do you have in place 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, as it conducted its recent investigation for its 2010 Annual Enforcement Report, the Commission regularly posted all public documents that were part of the investigation's record and could be of interest to the public.

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

The Commission has used YouTube to post videos on its website that the public may be interested in viewing. For example, the Commission posted YouTube videos of the hearings related to its 2010 Annual Enforcement Report, and it posted YouTube video footage that it cited in that report.

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

N/A.

IV. Steps Taken to Greater Utilize Technology

1. Electronic receipt of FOIA requests:

- a. What proportion of the components within the Commission which receive FOIA requests have the capability to receive such requests?**

There is only one component of the Commission that receives FOIA requests, and this component is capable of receiving FOIA requests electronically.

- b. To what extent has the Commission increased the number of components doing so since the filing of its last Chief FOIA Officer Report?**

The Commission has been capable of electronic receipt of FOIA requests for some time. The number of components capable of electronic receipt has not increased within the last year.

- c. What methods does the Commission use to receive requests electronically?**

The Commission has created an e-mail account, foia@usccr.gov, which enables the electronic receipt of FOIA requests.

2. Electronic tracking of FOIA requests:

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

There is only one component of the Commission that receives FOIA requests, and this component is capable of tracking FOIA requests electronically.

- b. To what extent has the Commission increased the number of components doing so since the filing of its last Chief FOIA Officer Report?**

The Commission has initiated electronic tracking of FOIA requests within the last year. Previously, the Commission did not track its FOIA requests electronically.

- c. What methods does the Commission use to track requests electronically?**

The Commission uses an off-the-shelf spreadsheet program to electronically track its FOIA requests. Due to the low volume of FOIA requests received by the Commission, more advanced software is not necessary.

3. Electronic processing of FOIA requests:

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

There is only one component of the Commission that receives FOIA requests, and this component is capable of processing FOIA requests electronically.

b. To what extent has the Commission increased the number of components doing so since the filing of its last Chief FOIA Officer Report?

The Commission has been capable of electronically processing FOIA requests for some time. The number of components capable of electronic processing has not increased within the last year.

c. What methods does the Commission use to process requests electronically?

The Commission uses email to facilitate internal communications regarding FOIA processing. A given request will be circulated to appropriate offices via email, and responsive documents are generally sent to the FOIA officer via email. Due to the low volume of FOIA requests received by the Commission, more advanced tools are not necessary for FOIA processing.

4. Electronic preparation of the Commission's Annual FOIA Report:

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

The Commission uses an off-the-shelf spreadsheet program to make calculations required for its Annual FOIA Report, and it otherwise completes the report by hand. Due to the low volume of FOIA requests received by the Commission, more advanced software (FOIA-specific or otherwise) is not necessary.

b. If the Commission is not satisfied with its existing system to prepare its Annual FOIA Report, describe the steps it has taken to increase its use of technology for next year.

N/A.

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

1. Is the Commission's backlog decreasing?

The number of backlogged requests at the Commission increased between the end of FY 2009 and the end of FY 2010. The Commission reported zero backlogged requests at the end of FY 2009, and nine backlogged requests at the end of FY 2010, resulting in an increase of nine

backlogged requests. Since that time, however, the Commission's backlog has been eliminated entirely.

The Commission has had no administrative appeals in either FY 2009 or FY 2010.

2. *If there has not been a reduction in the backlog, why has that occurred?*

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

No. The backlog increase was not a result of an increase in the number of incoming requests. Indeed, the Commission received approximately the same number of requests in FY 2009 and FY 2010 (42 and 40, respectively).

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

Yes. The Commission's only FOIA officer retired at the end of June 2010. The Commission did not hire and train a replacement until October 2010, at which point the fiscal year had ended with a backlog. Since that time, the backlog has been eliminated.

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

No. The requests received in FY 2010 were no more or less complex than those received in FY 2009.

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

N/A.

3. *What steps is the Commission taking to reduce any backlogs and to improve timeliness in responding to requests and administrative appeals?*

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

Yes. At the beginning of FY 2011, the Commission set the goal to eliminate its backlog by December 31, 2010. To achieve these ends, the Commission created a more efficient FOIA system and focused resources on responding to FOIA requests. As a result, the Commission eliminated its backlog within the allotted three months.

b. Has the Commission increased its FOIA staffing?

No. The Commission has not increased its FOIA staffing, though it has replaced its previous FOIA officer.

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

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

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

No. The Commission's Chief FOIA Officer has not been involved in overseeing the agency's FOIA-processing capabilities.

VI. Spotlight on Success

- 1. Describe here one success story that the Commission would like to highlight as emblematic of its efforts.*

The Commission has overhauled its FOIA system in the last year, instituting a new method of receiving requests electronically, a new electronic tracking system, and a new internal filing system. These changes have greatly improved the organization of the Commission's FOIA system, and it has increased the Commission's efficiency and effectiveness in receiving, processing and responding to FOIA requests. For further details, please see II.1.d above.