

2011 Chief FOIA Officer Report
Office of Science and Technology Policy

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.

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.

Every employee of the Office of Science and Technology Policy (OSTP) is notified of their responsibilities under the Federal Records Act (FRA) and the Freedom of Information Act (FOIA) as part of their "entrance training" upon coming to OSTP. Every OSTP employee receives a basic overview of their FOIA responsibilities during their annual ethics and FRA training. These issues are also addressed at staff meetings.

OSTP has two full-time employees who work directly on FOIA issues, as well as one temporary employee and four student volunteers. All of these individuals have reviewed the President's FOIA Memorandum and the Attorney General's FOIA Guidelines, and have actively implemented the presumption of openness in response to FOIA requests and administrative appeals.

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

OSTP FOIA reviewers have attended the Department of Justice, Office of Information Policy's FOIA for Attorneys and Access Professionals Training, which emphasizes the new FOIA Guidelines, and the Annual Agency FOIA Report and Annual Chief FOIA Officer Report sessions, which also emphasize the new FOIA Guidelines and the presumption of openness. In addition, the new FOIA Guidelines are discussed with new OSTP employees during all entrance training, as well as during annual ethics and FRA training.

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

OSTP has posted on its website the President's FOIA Memorandum, the Attorney General's FOIA Guidelines, the Chief of Staff's FOIA Memorandum, and a link to Department of Justice, Office of Information Policy's guidelines for the staff and the

public to see. In addition, the Chief FOIA Officer discusses the presumption of openness with those individuals working on FOIA requests to encourage the release of documents that might otherwise have been withheld. Responsive documents are often reviewed several times, keeping in mind potential discretionary releases. When several requests have been made for the same information, OSTP has made this information available on its website.

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

Since January 21, 2009, OSTP has typically made discretionary releases of material that would otherwise be withheld under exemption 5 U.S.C. 552(b)(5). In one appeal, an employee responded to each of the items appealed and then went through the entire portfolio of responsive documents to determine whether there were any documents where OSTP could make discretionary disclosures of information; OSTP chose to make these discretionary disclosures on 10 pages of these documents.

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

OSTP has released material as a matter of discretion that would otherwise have been withheld under exemption 5 U.S.C. 552(b)(5). This exemption protects inter- or intra-agency memoranda through either the deliberative process or the attorney work-product privileges.

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

All individuals reviewing FOIA requests are tasked with the responsibility to review the responsive documents with an eye to making a discretionary release whenever possible.

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

OSTP uses its website to offer the public a variety of information that might otherwise be requested through FOIA. The agency has placed various documents, testimony, and R&D budgets on its website for the public to view at its convenience, as well as its Open Government Plan. In addition, OSTP has provided links to many of the reports issued by the various committees and subgroups of the National Science and Technology Council (NSTC), an interagency committee, and also to the reports issued by the President's Council of Advisors on Science and Technology (PCAST).

2. Report the extent to which the numbers of requests where records have been released in full and the number 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 FY2010, OSTP responded to 15 requests by releasing the records in full and to 4 requests by releasing partial records. In FY2009, OSTP responded to 11 requests by releasing the records in full and to 7 requests by releasing partial records.

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.”

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, OSTP's FOIA professionals are supported by both an internal IT specialist, as well as by the Office of Administration, Executive Office of the President. These individuals have been instrumental in providing administrative support, such as assisting OSTP in acquiring software that aids the processing of FOIA requests.

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

OSTP's Chief FOIA Officer has worked closely with the Open Government team to provide the public with easy access to information on the OSTP website.

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

OSTP makes the determination as to whether it has adequate staff devoted to responding to FOIA requests on a case by case basis. Depending upon the scope of the request, the Chief FOIA Officer is able to tap the necessary people resources to produce the responses as timely as possible.

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

Every FOIA request is logged in when received and reviewed for (1) a request for expedited treatment and (2) substance. The relevant employees who may have records are contacted within 1-2 business days of receipt and notified when they must provide the records. The records are sorted, copied, and reviewed for relevant exceptions. The records are then provided to the requestor.

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 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?

OSTP posts new material such as documents, reports, and testimony as they become available, usually soon after they are issued. Additionally, OSTP has chosen to voluntarily release certain information when OSTP has received repeated requests for the same material or there seems to be significant public interest in an issue. Finally, OSTP hosts the Open Government Office and regularly issues blog postings, “tweets” on Twitter, and posts press releases so that more information is readily available to the public.

- b. What types of records have been posted?

As mentioned earlier, OSTP has posted its R&D budgets, its Open Government Plan, reports issued by NSTC and PCAST, and documents and testimony.

- 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.

Under the current Administration, OSTP maintains a blog, tweets, and a virtual Press Room, each of which offer the public a window into the different initiatives and activities spearheaded by the agency. The blog posts and tweets provide information that was once only obtainable through a FOIA request, and then only the individual requester received the information. Through these new media outlets, OSTP can reach a larger audience than is possible through a FOIA request. The virtual Press Room maintains a collection of OSTP’s press releases for the public to view. By hosting a Press Room, OSTP ensures the public has ready access to the same

information OSTP provides directly to the Press, without having to file a FOIA request.

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

As new documents, reports, and testimony become available, the materials undergo a standard clearance process, which includes a review by OSTP Leadership for potential posting on OSTP's website. Openness, transparency, newsworthiness, enhancing public understanding and participation, timeliness, protection of the deliberative process, and frequency of requests for a particular document under FOIA are some of the factors that go into these posting determinations.

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

OSTP sends out information via blog postings and "tweets."

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

N/A.

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 reports widespread use of technology in handling OFIA 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?

OSTP does not have any component agencies. However, the agency has the ability to received FOIA 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?

N/A

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

OSTP receives FOIA requests by email and by fax.

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?

OSTP does not have any components. The agency tracks its FOIA 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?

N/A

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

OSTP uses a spreadsheet to track FOIA requests.

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?

N/A.

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

N/A

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

OSTP receives FOIA requests by email and by fax. The Chief FOIA Officer reaches out by email to those personnel likely to have responsive documents, and tracks the requests on a spreadsheet. Recently, OSTP has begun using a computer program to produce the response for the requestor.

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.

OSTP uses a generic data-processing system to prepare its 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.

At this time, OSTP is satisfied with its existing system used to prepare its Annual FOIA Report.

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 you 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.

OSTP saw an increase in the number of requests made in FY2010 from FY2009, to 44 up from 31, and this is also reflected in an increase in the its backlog of requests. OSTP ended FY2009 with only one pending request, having cleared its backlog from the prior years. In FY2010, OSTP ended the year with eight pending requests, three of which had not yet been perfected. OSTP did not have any backlogged appeals in either FY2009 or FY2010.

OSTP had only one pending request from FY2009, which it closed out in FY2010. OSTP did not have any pending appeals from FY2009.

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 as a result of an increase in the number of incoming requests or appeals?

Yes. OSTP saw the number of incoming requests increase by one-third in FY2010.

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

No.

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

Yes. A number of the pending requests have had a very broad scope that has resulted in a large number of documents being produced. It is more time consuming to review and produce these broad requests. Other requests have had multiple parts that require several reviews of potentially responsive records before the final set of responsive records can be determined. Again, this adds to the time needed to process the requests.

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

Several of the requests OSTP is processing involve other agencies having equities in the responsive documents, including the White House. At times, several agencies have equities in the same record, and OSTP is coordinating the consultation process with the necessary agencies to produce the records all at once.

3. Describe the steps your agency is taking to reduce any backlogs and to improve the timelines 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?

The Chief FOIA Officer frequently reviews the status of FOIA requests and will assign personnel as appropriate to process the requests as quickly as possible. The Chief FOIA Officer also contacts FOIA requestors to discuss the possibility of narrowing the FOIA request, as well as of making periodic releases rather than holding all responsive documents until the end.

- b. Has your agency increased its FOIA staffing?

OSTP has not increased its permanent FOIA staffing.

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

Yes, OSTP, with the assistance of its IT specialist and the Office of Administration, has recently provided access to a production program that allows electronic processing of responsive FOIA documents.

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

OSTP's Chief FOIA Officer oversees its capacity to process requests.

Spotlight on Success

Consistent with the President's FOIA Memorandum's and the Open Government Initiative's policy of greater government transparency, OSTP uses Web 2.0 technologies to notify the public about OSTP's mission-critical work. Rather than wait for a FOIA request to release information, OSTP provides the public with information on a daily basis through the use of blog postings and "tweets." Working with other agencies, OSTP develops "Dashboards" that provide information to the public on a wide variety of topics, such as the research and development budgets of the National Institutes of Health and the National Science Foundation or the progress of the Open Government Initiative at the various agencies. The use of these technologies not only allows OSTP to provide more information to the public but, in many instances, the public can interact with OSTP via these new technologies to provide the public feedback on OSTP's policies and programs. The Dashboard technology allows the public to "mash" or combine the data in different ways that provides new information to others. The use of FOIA is a one-way street in promoting transparency. By using Web 2.0 technologies, OSTP is not only promoting government transparency, it is also making the government more accountable to the people.