

Chief FOIA Officer Report to the Attorney General

Office of Science and Technology Policy

Rachael Leonard
Chief FOIA Officer
February 15, 2013



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The Honorable Eric Holder
Attorney General
United States Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

Dear Attorney General Holder:

The Office of Science and Technology Policy (OSTP) is pleased to provide its 2012 Chief FOIA Officer Report. The 2012 Fiscal Year was OSTP's most successful year yet for FOIA requests. Although OSTP is a relatively small agency, in Fiscal Year 2012, we received eighty-four requests for documents under FOIA, a significant increase from the approximately fifty-two requests received in the previous year. In addition, at the end of the 2012 Fiscal Year, only three requests were pending.

Our report details and discusses: (1) the steps taken to apply the presumption of openness; (2) the steps taken to ensure that OSTP has an efficient and effective system in place for responding to requests; (3) the steps taken to increase proactive disclosures; (4) the steps taken to improve use of technology; and (5) the steps taken to reduce any backlogs of pending FOIA requests and to improve timeliness in responding to requests.

President Obama said in his Second Inaugural: "America's possibilities are limitless, for we possess all the qualities that this world without boundaries demands: youth and drive; diversity and openness; an endless capacity for risk and a gift for reinvention." OSTP recognizes that innovation blossoms in an open environment where ideas can be shared freely and ingenuity from a wide array of contributors is encouraged. As the home of the White House Open Government Initiative, OSTP takes seriously its responsibilities under the Freedom of Information Act (FOIA) and celebrates the principles of open government that it serves.

Sincerely,

Rachael Leonard

Rachael Leonard
Chief FOIA Officer
Office of Science and Technology Policy

I. Steps Taken to Apply 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.

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period? Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?

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 relevant FOIA responsibilities during annual ethics and FRA training. These issues are also addressed at staff meetings and during individual counseling, as appropriate.

OSTP has two full-time employees who work part-time on FOIA issues. 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.

At OSTP, we recognize that the significant burdens of compliance with FOIA can easily lead to a combative and adversarial attitude. To counteract this trend, the Chief FOIA Officer circulates the President’s FOIA Memorandum and the Attorney General’s FOIA Guidelines to all employees. Additionally, briefings on the President’s FOIA Memorandum and the Attorney General’s FOIA Guidelines have been provided to employees.

OSTP FOIA reviewers have attended the Department of Justice, Office of Information Policy’s FOIA for Attorneys and Access Professionals Training. FOIA Guidelines are discussed with new OSTP employees during all entrance training, as well as during annual ethics and FRA training.

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.

2. Did your agency make any discretionary releases of otherwise exempt information? Yes, in Fiscal Year 2012, OSTP frequently made discretionary releases of material

that could otherwise have been withheld under applicable FOIA exemptions. OSTP conducts a line-by-line review of material proposed for redaction and makes these discretionary releases in the spirit of openness. OSTP has also alerted requestors when the scope of the requests were quite broad, and assisted requestors in tailoring the scope of their requests to material that is releasable in full and to avoid material that would otherwise be subject to exemption.

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

OSTP rarely relies on exemptions other than 5 U.S.C. § 552(b)(5) and (b)(6). In Fiscal Year 2012, OSTP released information in response to some requests that could have otherwise been withheld under 5 U.S.C. § (b)(2), (b)(4), and (b)(5). Most frequently, OSTP releases material otherwise subject to withholding under FOIA Exemption 5, the exemption that protects privileged inter- or intra-agency memoranda.

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

Information was released as a matter of discretion concerning LightSquared, Intergovernmental Panel on Climate Change, the ET Petition, the SunSpot Initiative, the Oil Discharge Prevention and Contingency Plan, and Open Range Communications. As described above, most frequently, OSTP releases material otherwise subject to withholding under FOIA Exemption 5.

All individuals reviewing FOIA requests are tasked with the responsibility to review the responsive documents with an eye to making a discretionary release whenever appropriate. OSTP's policy on discretionary releases is that material should be made available to the public except where the agency would reasonably expect disclosure to harm an interest protected by a statutory exemption, or release is prohibited by law. .

5. 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, memoranda, testimony, federal charters, 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), a federal advisory committee.

OSTP has posted on its website a FOIA Reference Guide (http://www.whitehouse.gov/sites/default/files/microsites/ostp/foia_handbook_november_2012.pdf), which includes pertinent information including the President's FOIA Memorandum, the Attorney General's FOIA Guidelines, the Chief of Staff's FOIA Memorandum, and a link to the Department of Justice, Office of Information Policy's guidelines. These documents aid the staff

and the public and provide additional information on Federal activities and FOIA policies. 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 subject to an exemption are often reviewed several times and considered for potential discretionary releases.

II. Steps Taken to Ensure that OSTP has an Efficient and 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."

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.

Describe here the steps your agency has taken to ensure that its system for responding to requests 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.

1. 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.

2. Do your FOIA professionals work with your agency's Open Government Team?

Yes, OSTP's FOIA professionals have worked closely and collaboratively with OSTP's Open Government team to provide the public with easy access to information on the OSTP website, and to brainstorm innovative ways to provide information to the public.

3. Has your agency assessed whether adequate staffing is being devoted to FOIA administration?

OSTP makes the determination as to whether it has adequate staff devoted to responding to FOIA requests on a case-by-case basis. In FY2012, the number of FOIA requests increased more than 60% from 52 requests in 2011 to 84 requests. Despite this significant increase in volume, the number of FOIA professionals remained consistent with prior fiscal years.

4. 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, streamlining consultations, eliminating redundancy, etc.

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 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 2012 to March 2013). 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.

1. Provide examples of material that your agency has posted this past year.

OSTP posts new material such as documents, reports, and testimony as they become available, usually soon after they are issued. OSTP has posted its R&D budgets, its Open Government Plan, reports issued by NSTC and PCAST, and documents and testimony. Additionally, OSTP has chosen to voluntarily release certain information when there seems to be significant media interest in an issue. OSTP has posted helpful documents for the public related to its FOIA process, including a handbook that compiled existing FOIA information into a single, handy document. Finally, OSTP hosts the Open Government Office and regularly issues blog postings, “tweets” on Twitter, and press releases to provide more information to the public.

2. Beyond posting new material, is your agency taking steps to make the 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 the posted material, improving search capabilities, creating mobile applications, providing explanatory material, etc.?

Yes.

3. If so, provide examples of such improvements.

OSTP maintains a blog, tweets, and a virtual Press Room, each of which offers 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.

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

OSTP has expanded its efforts to proactively provide the public with information about Administration initiatives through robust use of the OSTP website. OSTP's website now includes descriptions and links for much of OSTP's current work, such as information on the Presidential Innovation Fellows program.

As new documents, reports, and testimony become available, the materials undergo a standard clearance process, which includes a review by OSTP staff for potential posting on OSTP's website. Openness, transparency, enhancing public understanding and participation, timeliness, and protection of the deliberative process are some of the factors considered in these posting determinations.

IV. Steps Taken to Improve Use of 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 and 2011, agencies reported widespread use of technology in handling FOIA requests. For 2013, as we did in 2012, the questions have been further refined and now also address different, more innovative aspects of technology use.

Electronic receipt of FOIA requests:

1. Can FOIA requests be made electronically to your agency?

Yes, OSTP has the ability to received FOIA requests electronically by email, as well as by facsimile transmission.

2. If your agency processes requests on a decentralized basis, can FOIA requests be made electronically to *all* components of your agency?

OSTP does not have any component agencies, and thus does not process requests on a decentralized basis.

Online tracking of FOIA requests:

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

Though OSTP does not have an online tracking tool for the public to track their requests electronically, FOIA requesters are able to telephone OSTP's FOIA public liaison or submit a request for a status update electronically by email or fax.

4. If so, 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 through 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.

N/A

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

N/A

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

OSTP offers FOIA requesters the option to receive an update on the status of their requests in response to inquiries submitted by email, fax, phone, or mail. However, given its limited staffing, OSTP does not have an online tracking option.

Use of technology to facilitate processing of requests:

7. 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?

Yes.

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

OSTP has employed software solutions to help expedite processing of FOIA requests and to improve overall FOIA efficiency. OSTP has processed requests using these systems and strives to optimize its FOIA processing through a hybrid approach that uses multiple platforms and thus takes advantage of the benefits of multiple technology tools.

V. Steps Taken to Improve Timeliness in Responding to Requests and Reduce 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 and appeals. *For the figures required in this Section, please use those contained in the specified sections of your agency's 2012 Annual FOIA Report.*

- 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. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.**

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

Yes, OSTP uses a separate track for simple requests. Requests in this track are processed in chronological order based on the date on which the request was received by the agency.

- b. If so, for your agency overall, for Fiscal Year 2012, was the average number of days to process simple requests twenty working days or fewer?**

Yes, the average number of days to process simple requests in FY2012 was 12.3days.

- 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?**

N/A.

- 2. Sections XII.D.(2) and XII.E.(2) of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report – Backlogged Requests/Appeals," show the numbers of any backlog of pending requests or pending appeals from Fiscal Year 2012 as compared to Fiscal Year 2011. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition, Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," and Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," from both Fiscal Year 2011 and Fiscal Year 2012 should be used for this section.**

- a. If your agency had a backlog of requests at the close of Fiscal Year 2012, did that backlog decrease as compared with Fiscal Year 2011?**

In FY2012, OSTP did not have a backlog of FOIA requests. This was a decrease from the backlog pending at the end of FY2011, which was four. OSTP did not have any backlogged appeals in FY2012 or FY2011.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011?**

OSTP did not have any pending administrative appeals from FY2012.

- c. In Fiscal Year 2012, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2011?**

Yes, OSTP closed all requests that were pending as of the end of FY2011.

- d. In Fiscal Year 2012, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2011?**

OSTP had no administrative appeals pending at the end of FY2011.

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

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.

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

N/A.

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

N/A.

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

N/A.

Administrative Appeal Backlog:

- e. **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.

- f. **Was the lack of a reduction in the appeal backlog caused by a loss of staff?**

N/A.

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

N/A.

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

N/A.

4. **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. If your agency had a backlog in Fiscal Year 2012, please provide an estimate of the number of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.**

OSTP did not have a backlog in Fiscal Year 2012.

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 2012?**

No, OSTP did not invoke a FOIA statutory law enforcement exclusion during Fiscal Year 2012.

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 your agency since March 2012 to increase transparency and improve FOIA administration, describe here 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, OSTP has received a 60% increase in the amount of FOIA requests it received in the last fiscal year. Even with this massive increase, OSTP managed to respond to "simple" requests within 12 days. This is attributed to our unwavering commitment to ensuring greater access to government records, and a laser focus determination on the part of our FOIA professionals.