

Chief FOIA Officer Report to the Attorney General

Office of Science and Technology Policy

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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 present its annual Chief FOIA Officer Report. The 2014 Fiscal Year was another successful year for OSTP in processing FOIA requests. Although OSTP is a relatively small agency, in Fiscal Year 2014, we received 93 requests for documents under FOIA, a small decrease from the approximately 128 requests received in the previous year and an increase from the 84 requests received the year before.

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.

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 effective system in place for responding to requests; (3) the steps taken to increase proactive disclosures; (4) the steps taken to greater utilize technology; and (5) the steps taken to improve timeliness in responding to requests and reducing backlogs.

Sincerely,

Rachael Leonard
Chief FOIA Officer
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.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

FOIA Training:

- 1. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any FOIA training or conference during the reporting period such as that provided by the Department of Justice?**

Yes. All employees of the Office of Science and Technology Policy (OSTP) are notified of their responsibilities under the Federal Records Act (FRA) and the Freedom of Information Act (FOIA) as part of their “entrance training” upon beginning official duty with 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. Also, OSTP FOIA professionals attended training offered by the Department of Justice, Office of Information Policy’s.

- 2. Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.**

One hundred percent of our FOIA professionals attended substantive FOIA training during the reporting period.

- 3. In the 2014 Chief FOIA Officer Report Guidelines, OIP asked agencies to provide a plan for ensuring that core, substantive FOIA training is offered to all agency FOIA professionals at least once each year. Please provide the status of your agency’s implementation of this plan.**

One hundred percent of our FOIA professionals implemented OSTP’s 2014 plan to ensure that core, substantive FOIA training is offered to all of our FOIA professionals at least once each year. OSTP’s FOIA professionals subscribe to the Department of Justice, Office of Information Policy email list, which provides notice of substantive FOIA training. OSTP FOIA professionals attend trainings relevant to their work.

Discretionary Releases:

4. Does your agency have a distinct process or system in place to review records for discretionary release?

Yes. OSTP staff review all records proposed for withholding to ascertain whether it could make a discretionary release. When possible, OSTP makes discretionary releases to the requesters. OSTP FOIA professionals are reminded through training and agency practice to look for opportunities to make discretionary releases.

5. During the reporting period, did your agency make any discretionary releases of information?

Yes, in Fiscal Year 2014, OSTP 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.

6. What exemption(s) would have covered the material released as a matter of discretion?

OSTP rarely relies on exemptions other than Exemptions 5 and 6. FOIA Exemption 5 protects privileged inter- or intra-agency memoranda. OSTP often makes discretionary releases of material otherwise subject to withholding under FOIA Exemption 5.

7. Provide a narrative description, as well as some specific examples, of the types of information that your agency released as a matter of discretion during the reporting year.

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. OSTP's policy on discretionary releases is that material should be made available to the public except where release would hinder the agency's ability to perform its statutory obligations to the President and to the American public. For example, in response to a FOIA request, OSTP opted to discretionarily release communications between OSTP staff seeking feedback on proposed edits to a draft background memo that could have been withheld under FOIA Exemption 5. In another instance of discretionary release to a FOIA requester, OSTP voluntarily released communications that represented draft recommendations for a working group's future topics of discussion.

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

N/A.

Other Initiatives:

9. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

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 agency personnel 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." It is essential that agencies effectively manage their FOIA program.

Please answer the following questions to describe the steps your agency has taken to ensure that your management of your FOIA program is effective and efficient. You should also include any additional information that that describes your agency's efforts in this area.

Processing Procedures:

- 1. For Fiscal Year 2014, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2014 Annual FOIA Report.**

In Fiscal Year 2014, the average number of days for adjudicating requests for expedited processing was two days.

- 2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.**

N/A.

Requester Services:

- 3. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at the National Archives and Records Administration?**

Yes.

- 4. When assessing fees, does your agency provide a breakdown of how FOIA fees were calculated and assessed to the FOIA requester?**

Yes. OSTP provides a fee assessment breakdown that includes the hours attributed to search, review, and duplication to the extent possible.

5. If estimated fees estimates are particularly high, does your agency provide an explanation for the estimate to the requester?

Yes. The explanation is in addition to the breakdown referenced in Question 4, Section II.

Other Initiatives:

6. If there are 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., please describe them here.

Every FOIA request is logged in when received and reviewed for requests for expedited processing. The relevant employees who may have records are contacted within 1-2 business days 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.

In Fiscal Year 2014, OSTP updated and improved its FOIA log to improve the collection of information necessary to process FOIA requests, coordinate responsibilities among FOIA professionals in OSTP, and monitor the progress of every FOIA request.

Additionally, in Fiscal Year 2014, there was greater outreach and communications with FOIA requesters at the beginning of the process. This allowed requesters to target the scope of their search and enabled OSTP to locate the records sought in an efficient and expeditious manner. Lastly, if OSTP identified requests on similar topics, OSTP notified the later requesters of the related former requests and offered to quickly send any previously released, responsive records to them.

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.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

Posting Material:

1. Does your agency have a distinct process or system in place to identify records for proactive disclosure? If so, please describe your agency's process or system.

Yes. 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.

OSTP posts new material such as documents, reports, and testimony to our website 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. 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. Does your process or system involve any collaboration with agency staff outside the FOIA office? If so, describe this interaction.

Yes. OSTP's FOIA professionals work with OSTP's legislative affairs director to identify testimony and other communications to Congress that could be proactively disclosed. Additionally, OSTP FOIA professionals and communications staff review fact sheets, press releases, and other documents that can be posted online at this address: <http://www.whitehouse.gov/administration/eop/ostp/pressroom>.

3. Describe your agency's process or system for identifying "frequently requested" records that should be posted online.

OSTP is a small agency that rarely receives FOIA requests on the same topic. However, OSTP evaluates whether records that would be of public interest can be proactively disclosed.

- 4. Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.**

OSTP proactively disclosed the following testimony, press releases, and other material at this webpage: <http://www.whitehouse.gov/administration/eop/ostp/pressroom>.

Other Initiatives:

- 5. If there are any other steps your agency has taken to increase proactive disclosures, please describe them here.**

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, including timely information about current initiatives.

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.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that describes your agency's efforts in this area.

Making Material Posted Online More Useful:

- 1. 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?**

Yes.

- 2. If yes, please 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.

3. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?

Yes.

4. If so, please briefly explain what those challenges are.

Staff resources limit the frequency with which OSTP is able to post new content to the website.

Other Initiatives:

5. Did your agency successfully post all four quarterly reports for Fiscal Year 2014?

Yes. OSTP posted all four quarterly reports for Fiscal Year 2014.

6. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2015.

N/A.

7. Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? If yes, what are the different types of electronic means are utilized by your agency to communicate with requesters?

Yes. OSTP frequently communicates with requesters through e-mail if it is a preferred means by the requester.

8. If your agency does not communicate electronically with requesters as a default, are there any limitations or restrictions for the use of such means? If yes, does your agency inform requesters about such limitations?

N/A.

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 your Chief FOIA Officer Report 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 the numbers contained in the specified sections of your agency's 2014 Annual FOIA Report and, when applicable, your agency's 2013 Annual FOIA Report.*

Simple Track: 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.

1. 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.

2. If so, for your agency overall in Fiscal Year 2014, 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 FY2013 was 14.4 days.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2014 that were placed in your simple track.

90.3% of requests were placed in OSTP's simple track.

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

N/A.

Backlogs: 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. You should refer to these numbers from your Annual FOIA Reports for

both Fiscal Year 2013 and Fiscal Year 2014 when completing this section of your Chief FOIA Officer Report.

Backlogged Requests:

- 5. If your agency had a backlog of requests at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013? If not, explain why and describe the causes that contributed to your agency not being able reduce its backlog. When doing so, please also indicate if any of the following were contributing factors: an increase in the number of incoming requests; a loss of staff; an increase in the complexity of the requests received**

OSTP had two backlogged requests at the close of Fiscal Year 2014. This reflects only a very minor increase in the overall number of backlogged requests, from a total of one backlogged request at the close of Fiscal Year 2013 to a total of two backlogged requests at the close of Fiscal Year 2014. OSTP made every effort to respond to the requesters and process complex requests in a timely manner.

- 6. If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2014. If your agency did not receive any requests in Fiscal Year 2014 and/or has no request backlog, please answer with "N/A."**

2.15% of requests were backlogged at the close of Fiscal Year 2014.

Backlogged Appeals:

- 7. If your agency had a backlog of appeals at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013? If not, explain why and describe the causes that contributed to your agency not being able reduce backlog. When doing so, please also indicate if any of the following were contributing factors:**

OSTP had no administrative appeals pending at the end of FY2014.

- 8. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2014. If your agency did not receive any appeals in Fiscal Year 2014 and/or has no appeal backlog, please answer with "N/A."**

N/A.

Status of Ten Oldest Requests, Appeals, and Consultations: 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 2013 and Fiscal Year 2014 when completing this section of your Chief FOIA Officer Report.

Ten Oldest Requests:

9. In Fiscal Year 2014, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

Yes, OSTP closed all requests that were pending per Section VII.E in the Fiscal Year 2013 Annual FOIA Report by the end of Fiscal Year 2014.

10. 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 2013 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

N/A.

11. Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?

OSTP did not close any such requests due to the request being withdrawn by the requester.

Ten Oldest Appeals:

12. In Fiscal Year 2014, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

OSTP had no administrative appeals pending at the close of Fiscal Year 2013.

13. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2013 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A.

Ten Oldest Consultations:

14. In Fiscal Year 2014, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

N/A. OSTP had no pending consultations at the close of Fiscal Year 2013.

15. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2013 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

N/A.

Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans:

16. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2013.

OSTP only had one request pending at the end of Fiscal Year 2013. OSTP was unable to close the request prior to the end of the Fiscal Year 2013 because the request was received towards the end of the Fiscal Year 2013 and limited staff resources prevented the request from being completely processed prior to September 30, 2013.

17. If your agency was unable to close any of its ten oldest requests 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.

N/A.

18. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2015.

N/A.

Use of the FOIA's Law Enforcement Exclusions

- 1. Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2014?**

No, OSTP did not invoke a FOIA statutory law enforcement exclusion during Fiscal Year 2014.

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

N/A.