

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Chief of Freedom of Information Act (FOIA) Officer's Report

2023



Kellie Cosgrove Riley
Chief Privacy Officer

Table of Contents

Section I: FOIA Leadership and Applying the Presumption of Openness	1
A. Leadership Support for FOIA	1
B. Presumption of Openness	2
Section II: Ensuring Fair and Effective FOIA Administration	4
A. FOIA Training	4
B. Outreach.....	6
C. Other Initiatives	7
Section III: Proactive Disclosures	8
Section IV: Steps Take to Greater Utilize Technology	10
Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness in Responding to Requests, and Reduce Backlogs.....	12
A. Remove Barriers to Access	12
B. Timeliness	12
C. Backlogs	13
Backlogged Requests	13
Backlogged Appeals.....	15
D. Backlog Reduction Plans.....	16
E. Reducing the Age of Requests, Appeals, and Consultations	17
Ten Oldest Requests	17
Ten Oldest Appeals.....	17
Ten Oldest Consultations	18
Additional Information Regarding Ten Oldest.....	18
F. Additional Information about FOIA Processing	18

Section I: FOIA Leadership and Applying the Presumption of Openness

The guiding principle underlying the Attorney General's FOIA Guidelines is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

A. Leadership Support for FOIA

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. See 5 U.S.C. § 552(j)(1) (2018). Is your agency's Chief FOIA Officer at or above this level?

Yes.

2. Please provide the name and title of your agency's Chief FOIA Officer.

Kellie Cosgrove Riley, Executive Director, Office of the Executive Secretariat and Privacy and Information Management (OESPIM).

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

At OPM, the Associate Directors and Office Heads have delegated authority from OPM's Director to make final determinations on initial requests concerning materials under the custody or control of their programs. In this manner, FOIA is incorporated into the mission of each OPM program. Additionally, following the Attorney General's New FOIA Guidelines for Federal Agencies, OPM's Chief of Staff issued a memorandum to all Associate Directors and Office Heads reaffirming OPM's commitment to transparency and the proper disclosure of records under the FOIA.

B. Presumption of Openness

4. The Attorney General's 2022 FOIA Guidelines provides that "agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions." Does your agency provide such confirmation in its response letters?

Yes.

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interested protected by a FOIA exemption. This is commonly referred to as a Glomar response. With respect to these responses, please answer the below questions:

In addition to tracking the asserted exemption, does your agency specifically track whether a request involved a Glomar response?

OPM does not currently have a method for specifically tracking whether a request involved a Glomar response.

If yes, please provide:

- the number of times your agency issued a full or partial Glomar response (separate full and partial if possible);

Not applicable.

- the number of times a Glomar response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).

Not applicable.

- If your agency does not track the use of Glomar responses, what would your agency need to do to track in the future? If possible, please describe the resources and time involved.

OPM is consulting with its FOIA case management system's vendor to determine whether the system has the capability to track whether a request involved a Glomar response and whether doing so would be cost-effective given that OPM

OPM 2023 Chief FOIA Officer's Report

does not issue a significant number of Glomar responses. In the meantime, and to be continued as a permanent alternative if automated tracking is not possible, OPM began tracking any Glomar responses outside of the automated case management system.

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

Section II: Ensuring Fair and Effective FOIA Administration

The Attorney General's FOIA Guidelines provide that "[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of FOIA obligations by the entire agency workforce." The Guidelines reinforce longstanding guidance to "work with FOIA requesters in a spirit of cooperation." The Attorney General also "urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency's FOIA administration" as part of ensuring fair and effective FOIA administration.

A. FOIA Training

1. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

The FOIA Manager provided FOIA training to OPM senior leaders that consisted of an overview of FOIA, the FOIA structure at OPM, agency records subject to the FOIA, and best practices. OPM's FOIA program professionals provided ad hoc training to the FOIA points of contact at several program offices on the FOIA's procedural overview, the Department of Justice's guidance on final responses, and specific FOIA/PA exemptions.

In an effort to encourage participation in FOIA training, the FOIA Manager encourages OPM's FOIA professionals to attend training and regularly shares with OPM's FOIA professionals training opportunities offered by the Department of Justice, the American Society for Access Professionals, and other organizations.

2. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend substantive FOIA training during the reporting period such as that provided by the Department of Justice?

Yes.

3. If yes, please provide a brief description of the type of training attended or conducted and the topics covered.

The FOIA Manager attended the American Society of Access Professionals' FOIA/Privacy Act Training Workshop, which provided training on a variety of FOIA and Privacy Act processing topics for all levels of FOIA/PA professionals. OPM's FOIA program professionals attended a variety of virtual training events provided by the Department of Justice; specifically: Privacy Considerations, the FOIA Summit, and Continuing FOIA Education.

4. Please 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 OPM's FOIA program's professionals have attended substantive FOIA training.

5. OIP has directed agencies to "take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year." If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

Not applicable.

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and if senior leaders at your agency received a briefing on your agency's FOIA resources, obligations and expectations during the FOIA process?

The FOIA Manager provided FOIA training to OPM senior leaders that consisted of an overview of FOIA, the FOIA structure at OPM, agency records subject to the FOIA, and best practices. Additionally, the FOIA program is developing FOIA training to potentially be included and presented as part of the onboarding training for new agency employees.

B. Outreach

7. Did your FOIA professionals engage in any outreach or dialogue, outside of the standard request process, with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

OPM's FOIA program professionals have not engaged in outreach or dialogue, outside of the standard request process, with the requester community or open government groups regarding OPM's administration of the FOIA.

8. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue, and, if applicable, any specific examples.

Yes. OPM's FOIA program professionals proactively reach out to requesters from the time a request is received and in an ongoing manner, as necessary. This includes outreach at the time a request is received when it is not reasonably described or requires clarification or additional information to be perfected, as well as when the results of a search require further narrowing of the scope. When a request is not reasonably described or is unclear, OPM's FOIA program professionals specifically identify those parts or aspects of the request that are deficient or unclear. They often consult with the relevant subject matter experts and record custodians to determine whether and to what extent OPM maintains the records sought in order to help the requester tailor the request or receive the most useful responses.

9. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during Fiscal Year 2022 (please provide a total number or an estimate of the number).

OPM's FOIA Public Liaison has been contacted by requesters seeking assistance an estimated twenty-five times during the reporting period.

C. Other Initiatives

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

Yes. During the reporting period, OPM's FOIA program determined the need to backfill a FOIA intake specialist position that became vacant in May 2021. To this end, OPM hired a new Government Information Specialist for this position to start in January 2023. From March to September 2022 and again in December 2022, OPM's FOIA program was able to staff a detail position to carry out essential tasks of the FOIA intake specialist role.

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

During Fiscal Year 2022, OPM used data about the average number of FOIA requests pending and received to determine both the number of closures required to remain at the current level of pending requests and to determine the additional number of closures needed to achieve a specific backlog reduction goal. OPM continues to track requests received and closed on a weekly basis to maintain the backlog reduction achieved in FY 2022 and seeks to reduce the backlog further in Fiscal year 2023.

12. Optional -- If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.

Section III: Proactive Disclosures

The Attorney General's FOIA Guidelines emphasize that "proactive disclosure of information is fundamental to the faithful application of the FOIA." The Guidelines direct agencies to post "records online quickly and systematically in advance of any public request" and reiterate that agencies should post records "in the most useful, searchable, and open formats possible."

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

OPM is currently developing a standardized procedure for identifying, tracking, and posting (a)(2) proactive disclosures.

2. Provide examples of any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

In Fiscal Year 2022, OPM posted 501 electronic documents on its website, OPM.gov. Links to the posted material is available through OPM's ["Document Count" tool](#). OPM has not posted records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D).

3. 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?

Not at this time.

4. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

Not applicable.

OPM 2023 Chief FOIA Officer's Report

5. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

The proactive disclosure procedure that OPM is currently developing will include collaboration with agency staff outside of the FOIA office for purposes of making material accessible and where possible offer diverse formats for certain records to be publicly posted.

6. Optional -- Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.

Section IV: Steps Take to Greater Utilize Technology

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's FOIA Guidelines emphasize the importance of making FOIA websites easily navigable and complying with the FOIA.gov interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

Yes. The FOIA Manager and the Executive Director of OESPIM reviewed OPM's FOIA-related technological capabilities. With the rollout of the new automated FOIA case management system in July 2022, the major technological need for the FOIA program that was identified in last year's Report has been fulfilled.

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program.

In July 2022, OPM began using FOIAXpress as its new case management system to replace an outdated legacy system that had limited capabilities. OPM has not begun using any new types of technology in addition to the case management system to support its FOIA program.

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.

No. OPM does not currently use any technology to automate record processing.

4. OIP issued guidance in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and

OPM 2023 Chief FOIA Officer's Report

user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

OPM is reviewing its FOIA website to confirm that it addresses the elements noted in the OIP's guidance and to determine whether there are improvements that can be made to increase its helpfulness to the public.

5. Did all four of your agency's quarterly reports for Fiscal Year 2022 appear on FOIA.gov?

Yes.

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2023.

Not applicable.

7. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2021 Annual FOIA Report and, if available, for your agency's Fiscal Year 2022 Annual FOIA Report.

OPM has not posted the raw statistical data used to compile its Annual FOIA Reports dating through Fiscal Year 2021 to its FOIA website because the legacy FOIA case management system that had been in place during that time did not provide the ability to generate such raw data. OPM will begin posting its raw data starting with the Fiscal Year 2022 Annual FOIA Report.

8. In February 2019, DOJ and OMB issued joint Guidance establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

Yes.

9. Optional -- Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness in Responding to Requests, and Reduce Backlogs

The Attorney General's FOIA Guidelines instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

A. Remove Barriers to Access

1. Has your agency established alternative means of access to first-party requested records outside of the FOIA process?

During the reporting period OPM has not established alternative means of access to first-party requested records beyond those that are already in place for personnel records and retirement records concerning survivor benefits.

2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.

Not applicable.

B. Timeliness

3. For Fiscal Year 2022, 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 2022 Annual FOIA Report.

OPM began tracking requests for expedited processing and adjudication of such requests in July 2022 with the rollout of the new FOIA case management system, which replaced a legacy system that lacked this tracking capability. The average number of days OPM reported for adjudicating requests for expedited processing since it began tracking this information is two days.

4. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2022 Annual FOIA Report, please describe the steps your

agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Not applicable.

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

Yes.

6. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2022?

No, it was 84 days.

7. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?

Yes.

8. Please provide the percentage of requests processed by your agency in Fiscal Year 2022 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100.

Seventy-seven percent.

9. 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?

Not applicable.

C. Backlogs

Backlogged Requests

10. If your agency had a backlog of requests at the close of Fiscal Year 2022, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

Yes.

11. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2022 than it did during Fiscal Year 2021?

Not applicable.

12. If your agency's request backlog increased during Fiscal Year 2022, please explain why and describe the causes that contributed to your agency not being able to 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

Not applicable.

- A loss of staff

Not applicable.

- An increase in the complexity of the requests received (if possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase)

Not applicable.

- Impact of COVID-19 and workplace and safety precautions

Not applicable.

- Any other reasons – please briefly describe or provide examples when possible

Not applicable.

13. 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 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A."

Twenty-eight percent.

Backlogged Appeals

14. If your agency had a backlog of appeals at the close of Fiscal Year 2022, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

No.

15. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2022 than it did during Fiscal Year 2021?

No. The same number of appeals were processed during Fiscal Years 2021 and 2022.

16. If your agency's appeal backlog increased during Fiscal Year 2022, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming appeals

Not applicable.

- A loss of staff

Not applicable.

- An increase in the complexity of the requests received (if possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase)

Not applicable.

- Impact of COVID-19 and workplace and safety precautions

Not applicable.

- Any other reasons – please briefly describe or provide examples when possible.

There was not a significant number of backlogged appeals in fiscal years 2021 and 2022. The increase was nominal, from one backlogged appeal in Fiscal Year 2021 to two in Fiscal Year 2022. OPM, therefore, does not deem the nominal

increase to signify that a systemic problem exists in its appeals process nor can it identify any unusual cause for the small increase in the appeal backlog.

17. 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 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2022 and/or has no appeal backlog, please answer with "N/A."

Seventeen percent.

D. Backlog Reduction Plans

18. In the 2022 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2021 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2022?

OPM did not have a backlog of over 1000 requests in Fiscal Year 2021. OPM, nonetheless, implemented a backlog reduction plan in Fiscal Year 2022. A goal of a ten percent reduction in the backlog from Fiscal Year 2021 was established; ultimately, a thirty percent reduction was achieved. Using metrics about the number of requests pending and the average number of requests received on a weekly basis, an average weekly closure goal was established for each FOIA specialist. OPM prioritized closing the oldest requests and simple requests. The FOIA specialists engaged closely with agency record custodians to ensure the scope of requests was reasonably described and to support search and review efforts. They also conducted requester outreach to determine continued interest and to assist requesters in narrowing the scope of requests in an effort to expedite processing.

19. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2022, please explain your agency's plan to reduce this backlog during Fiscal Year 2023.

Not applicable.

E. Reducing the Age of Requests, Appeals, and Consultations

Ten Oldest Requests

20. In Fiscal Year 2022, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2021 Annual FOIA Report?

No.

21. 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 2021 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

OPM was able to close nine of out the ten oldest pending perfected requests reported in Fiscal year 2021.

22. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

Beyond work on the ten oldest requests, OPM prioritized closing simple requests. The FOIA specialists engaged closely with agency record custodians to ensure the scope of requests was reasonably described and to support search and review efforts. They also conducted requester outreach to determine continued interest and to assist requesters in narrowing the scope of requests in an effort to expedite processing.

Ten Oldest Appeals

23. In Fiscal Year 2022, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2021 Annual FOIA Report?

Yes.

24. 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 2021 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

Not applicable.

25. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

During the reporting period, OPM's Office of the General Counsel (OGC), which receives and processes FOIA appeals, has been understaffed. OGC has hired four new attorneys to help address workloads, including handling FOIA appeals.

Ten Oldest Consultations

26. In Fiscal Year 2022, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2021 Annual FOIA Report?

Yes.

27. 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 2021 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Not applicable.

Additional Information Regarding Ten Oldest

28. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2023.

FOIA professionals will proactively communicate with the requesters and program offices to coordinate any necessary clarification or narrowing; help facilitate, to the extent possible, the search and review efforts; and understand particular challenges and how those may be addressed.

F. Additional Information about FOIA Processing

29. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency's overall FOIA request processing and backlog. If possible, please indicate the number and nature of requests subject to litigation, common causes leading to litigation, and any other information to illustrate the impact of litigation on your overall FOIA administration.

OPM 2023 Chief FOIA Officer's Report

There were not any requests at OPM that were the subject of FOIA litigation during the reporting period.

30. How many requests during Fiscal Year 2022 involved unusual circumstances as defined by the FOIA? (This information is available in your agency's FY22 raw data).

OPM does not currently track requests that involved unusual circumstances.

