



A New Day for the Civil Service

Chief FOIA Officer Report - 2013

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Office of Personnel Management

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**U.S. Office of Personnel Management
Chief FOIA Officer Report March, 2013**

Section 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.

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?

OPM has developed a training program and a chartered Freedom of Information Act Council designed to provide a greater comprehension of the FOIA/PA to program office staff within OPM many who have limited knowledge of the FOIA/PA statutes, policies and procedures. The development of the FOIA training module provides a valuable resource tool for OPM staff who have limited exposure in the processing of FOIA requests. The first training session was given successfully, on December 6, 2012. There were fifty or more employees who attended this session. Additional training requests from other OPM program offices have subsequently followed. The training and subsequent Questions & Answers period are designed to provide consistency in the comprehension and application of the FOIA statute, exemptions and OPM internal policies and FOIA processes.

The OPM FOIA Council, chartered on November 5, 2011, was formed. The Council is a standing committee whose membership is composed of Government Information Specialists, designated program office personnel who have oversight on the processing of FOIA requests within their respective program offices, Office of General Council representatives and the Chief FOIA Officer. The Council holds monthly meetings, the first of which was held on December 19, 2011. The Council program provides a mechanism for the dissemination of OPM FOIA policies and procedures, policies, procedures regarding the Freedom of Information Act, Privacy Act, FOIA-related Presidential memoranda and guidance from the Department of Justice, Office of Information and Policy. Open government and the presumption of disclosure are also emphasized during the training sessions and FOIA Council meetings. The Council promotes collaboration, consistency, cooperation and communication throughout OPM on the implementation of the FOIA/PA policies and procedures

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Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?

Yes. OPM staff attended various FOIA training and update seminars given by U.S. Department of Justice, ADR training given by OGIS, and the FOIA training program given by the EPA. The Chief FOIA Officer also attends the quarterly Chief FOIA Officer meetings given by DOJ.

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. The nature of the majority of data that OPM collects does not allow for a high-level of discretionary release due to the Personal Identifiable Information (PII) content of the data. Disclosure of such information would cause foreseeable harm in the invasion of the personal privacy of federal employees. However, in the Human Resource area, there has been an increase in discretionary releases of information that formerly, by policy and in accord with FOIA exemptions (b)(2) were deemed non-disclosable. HR now releases the interview questions although the responses are withheld. They release the final total evaluation ranking number of the requester as well as the release of the incumbent who accepted the position. HR is doing more to segregate and release the headers of documents that were formally withheld in full. HR has also increased the discretionary release of some records regarding deliberative and predecisional emails discussing the overall strategy for the evaluation process and discussions pertaining to draft memorandums of notice.

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

FOIA exemptions (b)(2) and (b)(5) would have been used to withhold information that is now discretionarily being disclosed.

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

Response provided and incorporated in response to Question 1.

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

The advent of new technology has allowed OPM to post snapshot data of Federal employment on a monthly basis instead of quarterly. This provides data to the public

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more frequently and more timely. OPM posts de-identified individual level record data behind FedScope (de-identified) in raw data files located at <http://www.opm.gov/data/>. If an individual needs assistance in maneuvering FedScope, staff from either Records Management or Data Analysis is available to assist. The public can also request (through a FOIA request) special data runs if they cannot get what they need from OPM's online tool.

Section 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.”

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.

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

Yes,

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

OPM completed the hiring of a Chief FOIA Officer and two FOIA Government Information Specialists, one solely dedicated to data entry. The OPM FOIA Processing Center is now a fully staffed service center comprised of five fully dedicated staff. The OPM FOIA Processing Center is located under the Office of the Chief Information Officer. As a separate directorate, the mission of this team is to function as the central body to provide agency-wide support on the receiving, disseminating, processing and closing out of FOIA requests. The FOIA team also provides FOIA policy and guidance on FOIA/Privacy Act regulations, statutes, Executive Orders, OMB and DOJ policies and procedures. The OPM FOIA Team also leads the FOIA Council, provide internal training and writing samples.

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It is also the duty and function of the OPM FOIA Processing team to work in conjunction with the direction and guidance of the Office of the General Counsel, Records Management and Planning & Policy Analysis on the handling of legal issues, collection and disposition of records in accordance with OPM's record retention schedule and the policies on the handling and dissemination of data sets and similar types of data.

Our stakeholders/customers are internal and external entities within the Federal Government, private citizens, businesses, media, public interest groups, researchers, current and former Federal employees, military services and educational institutions.

The OPM FOIA Processing Team works in keeping with the following OPM Strategic Objectives:

- ✓ Help the program offices to become consistent, timely and fully compliant in the processing of FOIA requests
 - ✓ Provide leadership and direction agency-wide regarding the application of FOIA/PA regulations, statutes, OMB and DOJ policies and procedures, internal OPM policies on the processing of FOIA requests
 - ✓ Serve as a central focal point for the intake and dissemination of FOIA requests to the appropriate program office(s)
 - ✓ Serve as the central office to review final FOIA responses and responsive records to make sure that the application of FOIA exemptions and privileges have been consistently and appropriately used in accordance with the Open Government Act of 2009 with a "presumption of openness"
 - ✓ OPM FOIA Processing team leads by example to implement FOIA policies and procedures
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.

The Chief FOIA Officer in conjunction with the OPM FOIA Processing team has revised its Standard Operating Processes for a more effective flow in processing FOIA requests. The revised process has been implemented throughout OPM and there is a reduction in delays attributed to the actual process and dissemination of requests. Self-assessments will continue to be conducted to make sure that any delays or issues that arise are resolved and the process will be revised to improve the operating FOIA process throughout OPM.

Quarterly, we work with our IT staff to revise and update our tracking system to better reflect processes implemented to increase openness and timeliness.

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We have developed a more streamlined process to assure consistency in the format and review process of responsive records throughout OPM. This streamlined process is further characterized by a flowchart, Standard Operating Procedures, team function checklist and designating members of the team to act as POCs for each program office within OPM.

In addition, with the hiring of a Chief FOIA Officer, internal policies have been established and conflicts which often delayed the process for long periods of time are now being resolved without major delays.

Section 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.

Under www.opm.gov under the subcategory of “About”, some of the most recent types of information that OPM has posted are as follows:

- [Open Government Plans](#)
- [April 2010 Self-Assessment](#)
- [Declassification of Government Information](#)
- [Records, Reports & Documents](#)
- [Data](#)
- [Digital Government Strategy](#)
- [2012 Customer Service Plan](#)

2. 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, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities on the site, creating mobile applications, providing explanatory material, etc.?

OPM has been in the process of implementing its new website. The website has been designed to be more user friendly and the “Frequently Asked Questions” section of the website has been designed to provide the public with an opportunity to provide comments on the usefulness of the information that is put out on the web. OPM has received an

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increase in 2011 from 28% to an increase of 48% in the public's positive reflection on the usefulness of data that is put out on the web.

3. If so, provide examples of such improvements.

The look of the OPM website is more enhanced and the search capabilities are more structured by subject matter topics making the web more user friendly.

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

Proactive disclosure in keeping with the President and the Attorney General's open government and transparency policy has been strongly encouraged at each monthly FOIA Council meeting. The OPM FOIA training module has provided another opportunity to encourage proactive disclosure whenever possible. The nature of our records, human resource policies along with the need to protect federal employees and former federal employees personal data from an unwarranted invasion of personal privacy does not always provide for proactive disclosures.

Section 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 and 2011, agencies reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. 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. OPM has an electronic mailbox at foia@opm.gov . We receive at least 95% of all FOIA requests via the electronic mailbox.

2. If your agency is decentralized, can FOIA requests be made electronically to *all* components of your agency?

Not applicable.

Online tracking of FOIA requests:

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

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No. Presently, we do not have an electronic FOIA tracking system which allows for public access to track the status of their request. For the past year, we have been assessing a variety of electronic systems and platforms to make a determination as to what will meet our agency-wide needs. In the interim, we have maintained two telephonic hotline numbers (202) 606-3642 and (202) 606-1153 which allows the requester to obtain status updates on their FOIA requests as well as seek answers to a variety of questions ranging from OPM FOIA processing, FOIA procedures or policy questions.

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

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

OPM has been looking into a variety of FOIA tracking systems, software applications and platforms for purchase, to develop internally or have a system developed under contract. The system will need to allow for electronic FOIA requests, FOIA status updates, records management capabilities, re-duplicating records, redaction capabilities and the ability to draw data for reports.

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?

This past year, OPM has been looking into a variety of FOIA tracking systems, software applications, platforms to purchase, develop internally or have a system developed under contract. The system will need to allow for electronic FOIA requests, FOIA status updates, records management capabilities, re-duplicating records, redaction capabilities and the ability to draw data for reports.

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

In the interim, improvements to the present tracking system have been made to allow for better reporting capabilities and data compilation.

Section 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?
No. We do not have a separate tracking system for simple requests. The FOIA tracking system works by default due to the very nature of the request. Simple requests will be responded to faster than complex, multi-tracked FOIA requests which will take longer to process.
 - 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?
Not applicable.
 - 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?
The average number of days to process simple requests is 16 days. The average number of days was determined by the averaging of days required for processing simple FOIA requests. The quantitative figure was obtained by a simply counting the requests that were responded to within a 20 day time period and determining an average. The FOIA tracking system also allows us to obtain an accounting of the time it takes to process simple FOIA requests.
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.

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- 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?
Yes. In 2011 our backlog was 166 requests pending from the previous year. In 2012, the backlog was reduced down to 42.
 - b. b. If your agency had a backlog of administrative appeals in Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011?
Yes. The appeal backlog in 2011 was 8 and the number of backlogged appeals for 2012 was 4.
 - c. 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.
 - d. 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?
Yes. We had only 4 pending appeals from the end of Fiscal Year 2011.
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?
- b. Was the lack of a reduction in the request backlog caused by a loss of staff?
- c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?
- d. What other causes, if any, contributed to the lack of a decrease in the request backlog?

Administrative Appeal Backlog:

- a. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?
- b. Was the lack of a reduction in the appeal backlog caused by a loss of staff?
- c. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received?
- d. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?

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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.

In FY 2012, OPM had a backlog of 42 requests. We have provided interim responses approximately 30% of the time.

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.
2. If so, what was the total number of times exclusions were invoked?

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.

The hiring of the Chief FOIA Officer and two additional Government Information Specialists completing the OPM FOIA Processing team has greatly enhanced the way in which FOIA requests are being processed and handled throughout OPM. The establishment of the FOIA Council, led by the Chief FOIA Officer and FOIA team has done the following:

- ✓ Help the program offices to become consistent, timely and fully compliant in the processing of FOIA requests
- ✓ Provide leadership and direction agency-wide regarding the application of FOIA/PA regulations, statutes, OMB and DOJ policies and procedures, internal OPM policies on the processing of FOIA requests
- ✓ Serve as a central focal point for the intake and dissemination of FOIA requests to the appropriate program office(s)
- ✓ Serve as the central office to review final FOIA responses and responsive records to make sure that the application of FOIA exemptions and privileges have been consistently

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and appropriately used in accordance with the Open Government Act of 2009 with a “presumption of openness”

- ✓ Formalized the roles and duties of the program office FOIA POCs and provided one-on-one training and education opportunities within OPM.
- ✓ Reduced the amount of pending FOIA backlog from 166 to 42
- ✓ Completed the pending ten oldest FOIA requests down to “zero”
- ✓ Revised the FOIA process throughout OPM reducing delays attributed to the actual process and dissemination of requests.
- ✓ Provided first time FOIA training throughout OPM to all FOIA POCs
- ✓ Established program office dedicated FOIA POCs for the processing of FOIA requests throughout OPM
- ✓ Dedicated OPM FOIA Processing team staff to assigned program offices providing policy and procedural advice to program office staff and POCs on FOIA/PA statutes, DOJ and OPM policies and procedures.
- ✓ OPM FOIA Processing team leads by example to implement FOIA policies and procedures