

2014 Chief FOIA Officer Reports

Content of 2014 Chief FOIA Officer Reports

Time frame for Report

Unless otherwise noted, your 2014 Chief FOIA Officer Report should address agency activities that have occurred since the filing of last year's Report, which was March 11, 2013, up until the filing of the 2014 Report, which will be March 10, 2014. Thus, the general reporting period for the Chief FOIA Officer Reports is March 2013 to March 2014.

*Name and Title of Agency Chief FOIA Officer:
Ruth Ann Abrams, Assistant Secretary*

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.

FOIA Training:

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

Answer: Yes.

2. If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.

Answer: The Office of General Counsel provided training to the five Commissioners and to three agency staff with FOIA responsibilities.

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

Answer: Yes. One of the Commission's attorneys who reviews FOIA responses attended the Basics of Filing in Litigation for FOIA Requests course offered on December 6, 2012. Our Chief FOIA Officer attended in-house training offered by the Office of the General Counsel. Another employee who works on FOIA matters attended the Refresher Training Session: Fiscal Year 2013 Agency Annual FOIA Reports and 2013 Chief FOIA Officer Reports offered on October 7, 2013.

4. Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period?

Answer: One hundred percent of the Commission's FOIA professionals attended substantive FOIA training during this reporting period.

5. OIP has issued guidance that every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year. Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year.

Answer: The Commission will continue to require annual training for all FOIA professionals on staff, and will track the training completed to include in the 2015 Report. We recognize the importance of having the FOIA professionals attend substantive training to keep abreast of best practices and changes in the FOIA law and/or regulations.

Outreach:

6. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement.

Answer: Commission staff (including staff responsible for FOIA administration) have made conscientious efforts to inform the requester community (including stakeholders and docket participants, interested members of the public, journalists, bloggers, etc.) about the records made available on the Commission's website and in electronic dockets, to assist them in finding records more easily.

Discretionary Disclosures:

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.

7. Does your agency have a formal process in place to review records for discretionary release? If so, please briefly describe this process.

Answer: Yes. The Commission reviews all records for discretionary release with the Office of the General Counsel. Once approved by the Office of the General Counsel, the FOIA professionals then provides discretionary documents for review by the Chairman and Commissioners prior to the release of these records.

8. Did your agency make any discretionary releases of otherwise exempt information?

Answer: Yes.

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

Answer: The documents would have been covered under Exemption 5 as pre-decisional inter-agency records.

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

Answer: The Commission released views that it provided to the State Department concerning a proposal to amend the Acts of the Universal Postal Union.

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

Answer: Not applicable. The Commission did make discretionary releases of information.

Other Initiatives:

12. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013?

Answer: Yes, the Commission provided all required quarterly FOIA reports for Fiscal Year 2013 to the Department of Justice.

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

Answer: The Commission holds bi-monthly public meetings. The meetings are publicly broadcast and the audio recordings of these meetings are archived on the Commission's website. The contents of all dockets, apart from certain items designated as nonpublic by submitters, are available on the Commission's website. The nonpublic records are identified on the public website and are usually posted in redacted form. The Postal Service and other filers must provide specific justification for nonpublic treatment of the items to be designated as nonpublic. Also posted on the Commission website are listings of inquiries from the public, news media, and legislators.

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

Describe here the steps your agency has taken to ensure that your management of your FOIA program 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.

Personnel:

During Sunshine Week 2012 OPM announced the creation of a new job series entitled the Government Information Series, to address the work performed by FOIA and Privacy Act professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

1. Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series?

Answer: No. The Commission's FOIA responsibilities are ancillary duties for three staff members (Assistant Secretary [Chief FOIA Officer], Attorney Advisor and Administrative Support Specialist). As a result, it is not necessary to convert the staff to the Government Information Job Series. However, when appropriate, the duties will be reflected in their current position description.

2. If not, what proportion of personnel has been converted to the new job series?

Answer: No. The Commission's FOIA responsibilities are ancillary duties for several staff members.

3. If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted?

Answer: The Commission plans to update positions and position descriptions this year. When appropriate, the duties will be reflected in their updated position description.

Processing Procedures:

4. For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Answer: Yes. The Commission adjudicated its one request for expedited processing within ten calendar days.

5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.

Answer: No. The Commission rarely handles consultations and referrals. We do have an internal process to ensure that we track any consultations and referrals to ensure they are completed.

Requester Services:

6. Do you use e-mail or other electronic means to communicate with requesters when feasible?

Answer: Yes. The Commission primarily communicates with requesters via email.

7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?

Answer: Yes. The Commission's denial, partial denial and referral response letters notify requesters of the mediation services provided by OGIS. .

8. 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, eliminating redundancy, etc..

Answer: The Commission's FOIA professionals have a weekly meeting calendared to assess workload and response time. During these weekly self-assessments, process improvements are discussed to ensure that response time is kept to a minimum, with the target of being within statutory time for all requests. Effective communication among departments at the Commission and timely response by Commission employees to requests for records ensure that the Commission responds to all requests in an expeditious manner.

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.

Posting Material:

1. Do your FOIA professionals have a system in place to identify records for proactive disclosures?

Answer: Yes. Two of the Commission's operating principles are openness and transparency. Due to these principles, the entire staff works to identify proactive disclosures. Any identified records are reviewed and approved by the General Counsel and the FOIA professionals. Once approved, they are posted or released where appropriate.

2. If so, describe the system that is in place.

Answer: Yes. Two of the Commission's operating principles are openness and transparency. Due to these principles, the entire staff works to identify proactive disclosures. Any identified records are reviewed and approved by the General Counsel and the FOIA professionals. Once approved, they are posted or released as appropriate.

3. Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.

Answer: The Commission hosts a series of bi-monthly public meetings and publicly broadcasts and archives audio recordings of these meetings, hearings and technical conferences on the Commission's website. These are updated on a continual basis. Additionally, an archive of Public Inquiry Logs showing all contacts from the public (rate and service inquiries, complaints, media inquiries, legislative inquiries) is available on the Commission's website at www.prc.gov.

Making Posted Material More Useful:

4. 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 posted material, improving search capabilities on the site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.?

Answer: Yes. The Commission provides an online customer service form for members of the public to submit comments. In addition, in response to requests from the public, the Commission implemented an improved search function for its website. This easier-to-use search engine supplements the more complex search system used by frequent users of the site. The Commission also requires that all correspondence and legal documents filed with

the Commission be processed with Optical Character Recognition (OCR), and thus are both electronically searchable and more compliant with section 508 of the Rehabilitation Act.

5. If so, provide examples of such improvements.

Answer: In response to requests from the public, the Commission implemented an improved search function for its website. This easier to use search engine supplements the more complex search system used by frequent users of the site. The Commission has also taken steps to ensure that most document filings are processed with OCR, and thus are both electronically searchable and more compliant with section 508 of the Rehabilitation Act.

6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized?

Answer: No.

7. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.

Answer: No.

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

Answer: The Commission has found that by proactively posting more of its records online, and accurately describing the records for which the Commission has custody and control, the Commission has significantly reduced the overall volume of FOIA requests and specifically reduced requests for which the Commission has no records. We have also significantly improved online search capability for older archived documents to allow for easier access and have thus effectively increased the number of documents proactively posted on the Commission website.

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. Over the past several years agencies have reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2014, as we have done over the past years, the questions have been further refined and now also address different, more innovative aspects of technology use.

Online tracking of FOIA requests:

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

Answer: Yes.

2. If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?

Answer: Yes. The Commission maintains a FOIA log on our website which is updated regularly (for example: as soon as a FOIA request has been received or processed.) By accessing the Commission's website, requesters can view the status of their request on the FOIA request log.

3. 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?

Answer: The FOIA log posted on the Commission's website provides the requester with the following information: the nature of the request, the date the request was received, the anticipated response date, the date the response was sent out, the number of days it took for the Commission to process the request and whether the requester asked for a fee waiver or expedited processing. The Commission also keeps requesters apprised of their requests informally, by telephone, where appropriate.

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

Answer: Yes, the Commission provides an anticipated date of completion on the log. In most cases, the Commission provides a response before the anticipated date.

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

Answer: N/A.

The Commission implemented online tracking during Fiscal Year 2013.

Use of technology to facilitate processing of requests:

6. 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?

Answer: Yes, the Commission is currently in the process of virtualizing our workstations. The new workstations will improve search functionality as well as records management.

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

Answer: The Commission has digitized many documents, and incorporates OCR on documents whenever possible, to allow for increased ease, accuracy and speed in record search capability. In response to requests from the public, the Commission implemented an improved search engine for the website to supplement the more complex search system used by frequent visitors to the site. To comply with the NARA/OMB Managing Government Records Directive (M-12-18), the Commission is strengthening its Records Management Program to ensure that all records are in electronic format. In addition, the Commission is currently in the process of virtualizing our workstations. The new workstations will improve search functionality as well as records management.

8. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program?

Answer: The Commission has not identified any additional technological tools that would help in achieving further efficiencies for our FOIA program.

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, appeals, and consultations. *For the figures required in this Section, please use those contained in the specified sections of your agency's 2013 Annual FOIA Report and, when applicable, your agency's 2012 Annual FOIA Report.*

Simple Track Requests:

1. Refer to Section VII.A of your agency's Annual FOIA Report for figures on FOIA Requests – Response Time for All Processed Requests.

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

Answer: The Commission receives relatively few FOIA requests, and most are simple. However, we do track the occasional complex requests separately when they occur.

- b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?

Answer: Yes

- 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?

Answer: No

The Commission tracks simple and complex requests.

Backlogs and "Ten Oldest" Requests, Appeals and Consultations

2. Refer to Sections 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. Section VII.E, entitled, "Pending Requests-Ten Oldest Pending Requests," Section VI.C.(5), entitled, "Ten Oldest 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.

Backlogs

- a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012?

Answer: N/A

The Commission did not have a backlog of requests at the end of FY 2012.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?

Answer: N/A

The Commission did not have a backlog of requests or administrative appeals at the end of either FY 2012 or FY 2013.

Ten Oldest Requests

- c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?

Answer: N/A

The Commission did not have any pending requests at the end of FY 2012.

- d. 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 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed two of them, you should note that you closed two out of seven "oldest" requests.

Answer: N/A

The Commission did not have any pending requests at the end of FY 2012.

Ten Oldest Appeals

- e. In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?

Answer: N/A

The Commission did not have any pending administrative appeals at the end of FY 2012.

- f. If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C.(5) of your Fiscal Year 2012 Annual FOIA Report.

Answer: N/A

The Commission did not have any pending administrative appeals as of the end of FY 2012.

Ten Oldest Consultations

- g. In Fiscal Year 2012, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012?

Answer: N/A

The Commission did not have any pending consultations as of the end of FY

2012.

- h. If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report.

Answer: N/A

The Commission did not have any pending consultations as of the end of FY 2012.

Reasons for Any Backlogs:

- 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 and/or Appeal Backlog

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests?

Answer: N/A

The Commission did not have a backlog of requests at the end of FY 2012.

- b. Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff?

Answer: N/A

The Commission did not have a backlog of requests at the end of FY 2012.

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

Answer: N/A

The Commission did not have a backlog of requests at the end of FY 2012.

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

Answer: N/A

The Commission did not have a backlog of requests at the end of FY 2012.

“Ten oldest” Not Closed

- e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012.

Answer: N/A

The Commission did not have a backlog of requests nor appeals from Fiscal Year 2012.

- f. If your agency was unable to close any of its ten oldest requests or appeals 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.

Answer: N/A

The Commission did not have a backlog of requests nor appeals from Fiscal Year 2012.

Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:

Given the importance of these milestones, it is critical that Chief FOIA Officers assess the causes for not achieving success and create plans to address them

4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close these “ten oldest” requests, appeals, and consultations during Fiscal Year 2014.

Answer: N/A

The Commission had one pending request at the end of Fiscal Year 2013. This request was closed in November. The Commission did not have any pending appeals or consultations at the end of Fiscal Year 2013.

5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency’s plan for achieving backlog reduction in the year ahead.

Answer: N/A

The Commission had a backlog of one pending requests at the end of Fiscal Year 2013, for which an interim response was provided during FY 2013. The request was closed in FY 2014.

Interim Responses:

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

6. Does your agency have a system in place to provide interim responses to requesters when appropriate?

Answer: Yes. The Commission provides an interim response when appropriate.

7. If your agency had a backlog in Fiscal Year 2013, 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.

Answer: The Commission did not have a backlog in Fiscal Year 2013.

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 2013?

Answer: No, the Commission did not invoke a statutory exclusion during FY 2013.

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

*Answer: N/A
The Commission invoked no statutory exclusions during FY 2013.*

Spotlight on Success

Describe one success story that you would like to highlight as emblematic of your agency's efforts.

Success Story (Stories):

In response to requests from the public, the Commission updated its website's search engine capabilities, affording the public an improved search functionality. This easier to use search function supplements the more complex search options used by frequent users of the site. Part of the mission of the Commission is to provide transparency to the public, and proactive disclosure is integral to this mission.

The Commission is proud that with a limited number of FOIA staff and a high volume of work, the Commission was able to produce responses to all simple requests within the statutory deadline of 20 business days; the single complex FOIA received by the Commission required 9 additional days. The Commission prides itself on how quickly and professionally we answer all FOIA requests, and the high priority given to responding completely and properly to all requests.

The fact that the Commission publishes most of its records on its website, and clearly identifies any proprietary or confidential information, reduces the number of records requests the Commission receives.