Executive Office of the President

Office of Science and Technology Policy

2020 Chief Freedom of Information Act Officer
Annual Report

Rachael Leonard
Chief FOIA Officer
Chief Operating Officer and General Counsel
The Office of Science and Technology Policy (OSTP) is pleased to present its annual Chief FOIA Officer Report. The 2019 Fiscal Year was a successful year for OSTP’s FOIA processing. OSTP is a small agency and, in Fiscal Year 2019, we received 86 requests for records under FOIA.

We remain fully committed to administering FOIA as required by Congress. OSTP provides the President and others within the Executive Branch with advice on the scientific, engineering, and technological aspects of the economy, national security, homeland security, health, foreign relations, and the environment. Our agency exists by creation of Congress, and Congress specifically situated the agency within the Executive Office of the President (EOP).

We operate with a small budget and currently have one full-time contractor devoted to FOIA, as well as two lawyers who spend a considerable amount of their time administering FOIA. For our small agency, this constitutes a substantial amount of time, resources, and funds. Like other Agencies, we use a multi-track process to coordinate FOIA requests. Because we are within the EOP and lead interagency processes, many of our FOIA requests are complex, voluminous, and require interagency coordination.

OSTP routinely engages with requestors about their FOIA requests to gain a better understanding of what is being requested and how to best address each request. OSTP values the opportunity for our FOIA staff to participate in FOIA training programs offered throughout the year. This ensures that OSTP follows FOIA best practices and fosters an environment that provides an efficient and accurate FOIA responses to requestors. OSTP interacts with other Federal FOIA professionals to ensure that the referral and consultation process is run smoothly and to allow FOIA requests to be processed in a timely fashion. Our office also reviews technology offerings, procedures, and tracking systems in an effort to enhance the overall FOIA request process.

Faithfully administering FOIA is a top priority for our agency. We remain committed to working with The Department of Justice to provide efficient, accurate, and timely responses to FOIA requests.

Sincerely,

Nicholas Wittenberg
Legal Counsel

Rachael Leonard
Chief FOIA Officer
Chief Operating Officer and
General Counsel
I. **Section 1: Steps Taken to Apply the Presumption of Openness**

The guiding principle underlying DOJ’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.

A. **FOIA Leadership**

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at the Assistant Secretary or equivalent level. Is your agency’s Chief FOIA Officer at this level?

   Yes.

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

   Rachael Leonard, Chief Operating Officer and General Counsel

B. **FOIA Training**

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

   Yes

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

   OSTP welcomes the opportunity for its staff to attend FOIA training regularly throughout the year. This training is vital to ensure that professionals engaged in processing FOIA requests are using the best practices and operating in an efficient and effective manner to ensure requestors are receiving fulsome and timely response to their requests. OSTP FOIA professionals attended training offered by the Department of Justice (DOJ) Office of Information Policy (OIP) including the Introduction to the FOIA, FOIA for Attorneys and Access Professionals, and the Chief FOIA Officer Report Training.

   OSTP staff also attended an eDiscovery conference in Chicago. This conference exposed staff to many updates and future offerings for eDiscovery which have the capabilities for FOIAs to be processed in a more efficient manner. Presentations were given on case law updates, litigation suggestions, predictive coding and the reduction of manual review, as well as identifying best practices for complex eDiscovery
matters. This conference provided another opportunity for staff to meet with fellow Government professionals as well individuals from the requesting community.

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

100 percent.

6. 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.

N/A

C. Outreach

7. Did your FOIA professionals engage in any outreach or dialogue 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.

OSTP FOIA professionals regularly engage with the requesting community throughout the FOIA process to better understand the needs of various requestors, resolve potential issues, and ensure the timely and efficient production of requested documents. OSTP applies the highest FOIA professional standards throughout the process and appreciates the opportunity to dialogue with requestors. OSTP also attends various training events to meet with fellow Government professionals and individuals from the requestor community. These engagements provide excellent opportunities for OSTP FOIA professionals to gain a better understanding of the needs of the FOIA community. They also provide an opportunity for FOIA professionals at various Agencies and Departments to interact, improving the Consultation and Referral process, as well as exposure to ways to improve every step of the FOIA process.

D. Other Initiatives

8. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA.

As part of OSTP’s onboarding process, the Office of General Counsel provides all staff – leadership, career OSTP professionals, those on detail from other Agencies, academic fellows, contractors, and interns – with comprehensive FOIA training. Our
attorneys distribute OIP’s FOIA infographic to all new employees as part of the agency’s onboarding materials. Additionally, OSTP FOIA professionals regularly update staff on FOIA requirements at all-hands and division meetings, and work with staff to ensure the proper FOIA procedures are followed for records management and FOIA requests.

9. 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.

OSTP embraces the presumptions of openness and provides documents on its website for easy dissemination and review. OSTP also ensures that it follows the best technology practices to ensure that documents are released in a timely fashion and in easily accessible formats.

II. Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests

DOJ’s FOIA Guidelines emphasize that “[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 the management of your FOIA program is effective and efficient. You should also include any additional information that describes your agency's efforts in this area.

1. For Fiscal Year 2019, 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 2019 Annual FOIA Report.

58.7

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.

OSTP has established a plan to reduce its backlog. For those requestors who are still interested, OSTP will working with them to identify the specific content they are seeking, a plan to provide them with the documents, and an estimated time frame when the requestor can expect to receive documents.

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report data, using active workflows and track management, reviewing and updating processing procedures, etc.
• Note: In September 2017, OIP released a FOIA Self-Assessment Toolkit as a resource for agencies conducting a self-assessment of their FOIA program. The Toolkit is available on OIP’s website for all agencies to use.

OSTP conducted multiple self-assessments of its FOIA process, from start to finish, to ensure responses were being provided in a timely fashion. Staff reviewed current records to ensure that tracking data was kept up to date. FOIA professionals met regularly to discuss the status of FOIA requests. Staff also reviewed and updated procedures to reduce the backlog. These initiatives were carried out using the OIP Self-Assessment Toolkit to ensure best practices are followed.

4. 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 FY 2018 (please provide a total number or an estimate of the number).

OSTP has not received any FOIA requests where the requestor sought assistance from the Office’s Public Liaison during this reporting period. This may be because OSTP regularly reaches out to requestors by email and phone to answer any questions or concerns that requestors have in the processing of their request.

5. Optional -- Please describe:

• Best practices used to ensure that your FOIA system operates efficiently and effectively

OSTP FOIA professionals meet regularly to discuss requests received, those currently being reviewed, and requests that been answered, as well as strategies to improve processing requests. This allows for tracking to be kept current and fosters an environment that promotes openness and ensures that requests are being responded to in a timely fashion.

• Any challenges your agency faces in this area

OSTP has a small FOIA staff that work on numerous, high volume requests. While this can be a significant logistical challenge, our routine interaction with requestors allows for a smoother FOIA process with an engaged requesting community.

III. Section III: Steps Taken to Increase Proactive Disclosures

The Department of Justice has long 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.

1. 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.

OSTP does not routinely receive requests for the same information. However, when we do receive such requests, we post that material and others that may be of interest to the public at https://www.whitehouse.gov/ostp/legal/.

All important agency announcements, like those associated with Executive Orders, Presidential Memoranda, or Directives, are posted to www.whitehouse.gov/news/. In addition, OSTP works with its Communications Office to post copies of OSTP or National Science and Technology Council (NSTC) reports online, www.whitehouse.gov/ostp/documents-and-reports/.

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?

Yes.

3. If yes, please provide examples of such improvements.

OSTP regularly communicates with requestors seeking information that is already accessible from OSTP’s website. Additionally, OSTP makes every effort to be responsive to requestors and the public regarding accessibility and file formats.

4. Optional -- Please describe:
   - Best practices used to improve proactive disclosures
     Regular communication with requestors helps identify possible situations where certain information has already been released.
   - Any challenges your agency faces in this area

IV. Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information more accessible. 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.

1. Is your agency leveraging technology to facilitate efficiency in conducting searches, including searches for emails? If so, please describe the type of technology used. If not, please explain why and please describe the typical search process used instead.

OSTP works with the Office of Administration (OA), another component within the EOP, as well as with the eDiscovery team at the EOP. eDiscovery provides the technical expertise in the collection of documents. In addition to the collection of responsible documents, the eDiscovery team also maintains the software that allows each EOP component to review documents. This software greatly assists in the production phase of FOIA requests, ensuring that correct file types are provided so that documents can be easily disseminated. This team has provided OSTP with helpful tools that allow for a more efficient review of large scale electronic documents. These tools assist with identifying duplicate documents and useful procedures in the mass coding of similar documents, as well as categorizing documents by custodian, time frame, or keywords to provide a more efficient review process. eDiscovery and EOP components meet regularly to look at tools and solutions for eDiscovery review to ensure best practices are achieved in the collection, review, and production phases.

2. OIP issued guidance in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

Yes.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2019?

Yes.

https://www.whitehouse.gov/ostp/legal/


4. 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 2020.

OSTP will continue to post quarterly reports for Fiscal Year 2020. Due to the security features at The White House quarterly reports cannot be automatically pulled and posted to FOIA.gov. Therefore, each quarterly report is emailed to DOJ OIP.

5. 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 2018 Annual FOIA Report and, if available, for your agency’s Fiscal Year 2019 Annual FOIA Report.


6. Optional -- Please describe:

- Best practices used in greater utilizing technology

OSTP strives to ensure that it achieves best practices in the utilization of technology for FOIA processing. OSTP FOIA professionals regularly attend training seminars and conferences on FOIA, including technology presentations. OSTP FOIA professionals regularly meet with fellow FOIA professionals to gain insight into what other Agencies and Departments are using, as well as engaging the requestor community to gain a better understanding of their needs in the timely processing of FOIA requests.

- Any challenges your agency faces in this area

As noted previously, OSTP’s limited funding and staff numbers pose a challenge for responding to the numerous, high volume requests that it receives. However, we work to manage that challenge by routinely reaching out to FOIA requestors to gain a better understanding of each particular request.

V. **Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs**
The Department of Justice has emphasized the importance of improving timeliness in responding to requests. This section of 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 2019 Annual FOIA Report and, when applicable, your agency’s 2018 Annual FOIA Report.

A. 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.

2. If your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2019?

   The average number of days to process a simple request was 53 days, but the median processing time for simple requests was 21 days. There was a single, uniquely challenging request, which likely should have been classified as a complex request, that impacted the processing of the rest of the simple requests.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2019 that were placed in your simple track.

   55.55% of processed 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.

B. 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 2018 and Fiscal Year 2019 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 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?

No.

6. If not, did your agency process more requests during Fiscal Year 2019 than it did during Fiscal Year 2018?

No.

7. If your agency’s request backlog increased during Fiscal Year 2019, 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.
• A loss of staff.
• 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.
• Any other reasons – please briefly describe or provide examples when possible.

Our backlog increased for several, compounding reasons. This fiscal year, we received more complex FOIA requests, with more documents to review per request, on top of a prior backlog of highly complex and voluminous requests. Additionally, OSTP had an almost complete turnover in FOIA contracting staff and the sudden, unexpected loss of experienced, long-term OSTP FOIA professionals. Given the limited FOIA staff to begin with, the remaining FOIA professionals had to bring on and train up new FOIA professionals, which added to the delay of efficiently processing FOIA. Significant time was spent on training new FOIA staff in the processing FOIA requests, as well as ensuring best practices were followed and consistent procedures maintained throughout the year. It was critical to provide this investment in training and supervising the practice of the efficient and effective processing of FOIA as it takes time for individuals to develop the skills to timely review and respond appropriately to FOIA requests.

8. 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 2019. If your agency has no request backlog, please answer with “N/A.”
100%

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?

Yes, there were 2 backlog appeals that were closed in the first quarter of FY 2019.

10. If not, did your agency process more appeals during Fiscal Year 2019 than it did during Fiscal Year 2018?

No.

11. If your agency’s appeal backlog increased during Fiscal Year 2019, 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.
- A loss of staff.
- 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.
- Any other reasons – please briefly describe or provide examples when possible.
- The appeals were received towards the end of FY 2018, so they could not be processed until the beginning of the new fiscal year. Both were closed during the first quarter of FY 2019.

12. 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 2019. If your agency did not receive any appeals in Fiscal Year 2019 and/or has no appeal backlog, please answer with "N/A."

100%

C. Backlog Reduction Plans

13. In the 2019 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2018 was asked to provide a plan for achieving backlog reduction in the year ahead. Did you 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 2018?

N/A.
14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2019, what is your agency’s plan to reduce this backlog during Fiscal Year 2020?

N/A.

D. Status of 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 2018 and Fiscal Year 2019 when completing this section of your Chief FOIA Officer Report.

OLDEST REQUESTS

15. In Fiscal Year 2019, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

No.

16. 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 2018 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

We closed 3 of them.

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

We are currently reviewing our oldest requests and contacting the requesters for clarification to see if the scope of the requests could be narrowed or simplified. We had made recommendations regarding adding or removing certain terms to or from the requests. Being in constant communication with the requesters has proven to be significantly helpful in our concerted efforts to eliminate or reduce our backlog.

TEN OLDEST APPEALS

18. In Fiscal Year 2019, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

Yes.
19. 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 2018 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

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

N/A.

TEN OLDEST CONSULTATIONS

21. In Fiscal Year 2019, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

N/A.

22. 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 2018 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

There were no consultations pending from 2018.

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

23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2019.

Most of the oldest requests are complex requests that generated voluminous search results. The volume of documents coupled with the number of new complex and voluminous requests have compounded the backlog.

24. 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.

25. 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 2020.
We have developed a plan to close our oldest requests. Part of the plan includes reviewing the oldest requests to determine where we are in the process of responding to those requests. We are in regular communication with the requesters to determine if the scope of the requests could be narrowed in an effort to expedite the review and production of documents. We are working with the requesters to identify ways that the review process can be efficiently conducted so that the documents can be produced more quickly. This includes removing terms that could, potentially, generate non-responsive materials and enlarge the overall review process without providing the requestor with the information being sought.

F. Success Stories

Out of all the activities undertaken by your agency since March 2019 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency’s efforts. The success story can come from any one of the five key areas. As noted above, OIP will highlight these agency success stories during Sunshine Week. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

Our success comes from our requestor engagement. In addition to sending routine correspondence, we also schedule conference calls with requestors to discuss the status and scope of their FOIA requests. When FOIA requests are complex, we work with requestors to establishing rolling production schedules so they can see documents as quickly as possible. Additionally, we work with requestors on matters that involve consultations or referrals to ensure that they understand the process.

We recently contacted one requester who had submitted one of our oldest requests. The requester was delighted to hear from us. He agreed with our recommendations that certain documents should be removed from the search results because they were potentially false positive search results. Additionally, even though a requester does not need to state the purpose for which he is seeking the requested documents, this requester went into detail about the purpose for which he was seeking the documents, helping us to better understand and respond to his request.

Our communication efforts have also proven vital in narrowing the scope of requests with other requesters. In some cases, search results that were in the tens of thousands of documents were dramatically reduced to a more manageable number because the requesters agreed to remove or add certain terms to the requests. This allowed those requestors to receive documents efficiently and in a timelier manner.