

Executive Office of the President

Office of Science and Technology Policy



2021 Chief Freedom of Information Act Officer  
Annual Report

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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 2020 Fiscal Year was a challenging, but successful year where OSTP remained committed to its FOIA program. OSTP is a small agency and, in Fiscal Year 2020, we received 84 requests for records under FOIA.

OSTP remains actively engaged in 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 and a law clerk who spend a substantial amount of time administering the program. Like other Agencies, we use a multi-track process to coordinate FOIA requests. Because we are within the EOP and lead inter-agency processes, many of our FOIA requests are complex, voluminous, and require inter-agency coordination.

OSTP regularly engages with requestors about their FOIA matters to gain a better understanding of what is being requested. Emails and phone calls help provide open communication with and foster positive dialogues with the requesting community. OSTP is constantly looking to improve the FOIA process from start to finish. We ensure all staff are regularly attending training throughout the year, and we include a FOIA training module as part of every new employee's onboarding process at OSTP. This ensures that OSTP follows FOIA best practices and fosters an environment that provides efficient and accurate FOIA responses to requestors.

OSTP regularly works with FOIA officials throughout the Government. Our office also reviews technology offerings, procedures, and tracking systems in an effort to enhance the overall FOIA request process. OSTP has also promoted future uses of artificial intelligence (A.I.) that could greatly aid in the FOIA process by allowing for a more accurate and efficient review model. We encourage the use of AI tools that would allow for real time reporting, something that would benefit both requestors and agencies.

OSTP is fully committed to efficient, accurate, and timely administration of FOIA requests. We look forward to a continued and excellent working relationship with the Department of Justice.

Sincerely,

Nicholas Wittenberg  
Legal Counsel

Rachel Wallace  
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.

Rachel Wallace, Chief Operating Officer and General Counsel

### **B. FOIA Training**

3. 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.

OSTP encourages its FOIA professionals to attend FOIA training sessions offered by the Department of Justice (hereinafter, "DOJ"), the Chief FOIA Officers Council Technology Committee and other training events. Information regarding these events are disseminated to our FOIA professionals. Furthermore, efforts are made to adopt best practices identified in these trainings.

4. 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.

5. 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 regularly attend FOIA training throughout the year. The training sessions help to ensure that the professionals who are engaged in FOIA processing are knowledgeable about legal developments and

technological advancements (for example, predictive coding and the latest e-discovery review platforms) in the field. Learning about changes in the laws or practices governing the Act as well as the most recent or best tools in the field help us to effectively and efficiently process all FOIA requests.

Fiscal Year 2020 was a very challenging year due to the outbreak of COVID-19, which resulted in the cancelation of several training programs. However, our commitment to FOIA training did not wane.

In furtherance of that commitment, OSTP FOIA professionals attended various training sessions including the Artificial Intelligence 101 training event held virtually on November 5, 2020. The event featured Chief FOIA Officers (“CFO”) Council Technology Committee working group on AI) and over 400 Federal employees and contractors. <https://www.justice.gov/oip/blog/oip-hosts-artificial-intelligence-event-featuring-cfo-council-technology-committee-working>.

Nicholas Wittenberg, who is a member of the OSTP FOIA team, was a presenter and chairperson of the event.

The AI 101 training session afforded OSTP the opportunity to provide extensive information on how Federal FOIA programs could effectively and efficiently maximize AI to meet their FOIA processing obligations. Additionally, it provided an avenue for attendees to share information regarding technologies currently in use at various agencies.

Additionally, OSTP personnel participated in training events hosted by other organizations, including on the following topics:

- FOIA-Privacy Act Workshop, September 4-6, 2019 – This two-day continuing legal education program gave an overview of both the privacy act and the FOIA. The training session provided information on developments in the law as well as best practices for efficiently processing FOIA and Privacy requests.
- National Training Conference, July 28-29, 2020 – This two-day continuing legal education program provided training on FOIA requests, exemptions, working with requestors, available technologies and best practices for enhancing FOIA processing across the Government.
- Food for Thought Training, December 08, 2020 – This one-hour session provided an overview of the recent United States Supreme Court Case, *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019) and the applicability of Exemption Four to FOIA records.

6. 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.

7. 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**

8. 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 their needs, resolve potential issues, and ensure timely and efficient production of requested documents.

Upon receipt of a request, we carefully examine it to determine if it is: a permissible request; overly broad; asks for the creation of a new record not in existence at the time of the request; or requires further clarification.

If there is any issue with the request, we will contact the requestor by email or schedule a conference call to discuss the issue(s). Also, we perform pre-review case assessment in situations involving complex requests that generate voluminous records to determine if their scope could be narrowed.

Furthermore, OSTP staff members attend 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 insight into 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**

9. 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.

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.

10. 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 presumption 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 2020, 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 2020 Annual FOIA Report.

45.2

2. 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 2020 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.

The average number of days is seemingly high due to one of our backlog requests. The median number of days is 5.5, which is more reflective of the timeframe for responding to most of the expedited processing requests received in Fiscal Year 2020.

Additionally, OSTP has established a plan to reduce its backlog. For those requestors who are still interested in receiving documents pertaining to their request, OSTP is working with them to identify the specific content they are seeking and devising plans for producing the records as well as the estimated completion timeframe.

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 or raw 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. Standard Operating Procedures (SOPs): Having SOPs can improve the consistency and quality of an agency's FOIA process. In addition, describing an agency's standard practices for handling FOIA requests on agency FOIA websites can help requesters better understand how their request will be handled.

OSTP has extensive SOPs to efficiently and accurately process, review, and produce responsive documents for the FOIA requests that we receive. Additionally, all staff as part of the onboard training when joining OSTP are given an overview of OSTP's FOIA process. Furthermore, OSTP's Office of General Counsel constantly updates and improves the SOPs to ensure that best practices are followed.

- a. Does your agency have SOPs that outline general processes for handling FOIA requests and appeals?

Yes.

- b. If not, does your agency have plans to create FOIA SOPs?

- c. If yes, how often are they reviewed/updated to account for changes in law, best practices, and technology?

Quarterly.

- d. In addition to having SOPs, does your agency post or otherwise describe your standard processes for handling requests on your website?

Yes.

5. 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 2020 (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.

6. Does your agency frequently receive common categories of first-party requests? If so, please describe the types of requests and if your agency has explored establishing alternative means of access to these records outside of the FOIA process?

No.

7. The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within 180 days. Has your agency updated its FOIA regulations in accordance with the FOIA Improvement Act of 2016? If not, what is your agency's plan to update your regulations?

Yes.

<https://www.federalregister.gov/documents/2020/11/04/2020-22375/implementing-the-freedom-of-information-act>

8. Please explain how your agency worked to mitigate the impact of the COVID-19 pandemic on FOIA processing. Examples could include, but are not limited to: altering workflows, implementing new technology, providing notices and instructions or otherwise communicating directly with requesters.

The outbreak of COVID-19 and subsequent influx of requests with high document counts stemming from COVID-19-related FOIA requests made the Fiscal Year very challenging. For instance, we had two very complex FOIA requests with subparts that had a combined total of over 40,000 documents. 14,600 for one and 26,000-plus for the other.



To mitigate the impact of the pandemic on FOIA processing, OSTP FOIA worked with requestors to narrow the scope of their requests, where feasible; performed pre-review case assessments to determine ways of refining search terms that were generating false positive results; and reached consensus with requestors to produce responsive documents on a rolling basis.

9. Optional -- Please describe:

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

OSTP FOIA professionals meet regularly, in person and virtually, to discuss new or pending requests. As part of those meetings, we devise strategies for improving our FOIA processing system. These sessions help to ensure proper tracking of all new and pending requests. These efforts foster openness and ensure that requests are responded to in a timely manner.

- Any challenges your agency faces in this area

OSTP has a small FOIA staff that work on numerous, high volume, requests. The current outbreak of COVID-19 exacerbated this challenge during Fiscal Year 2020. Under normal circumstances, OSTP FOIA would receive seasonal assistance in processing FOIA requests. Unfortunately, the pandemic made that impossible for Fiscal Year 2020. So, we had to do more with less assistance.

Additionally, we had a significant influx of requests regarding COVID-19. Although the requests sought information on the same subject matter (that is, COVID-19), the production documents were not always substitutable, because most of them focused on different aspects of the efforts to combat the pandemic. So, the documents were not always inter-changeable. Furthermore, the search results yielded higher than usual document counts. This necessitated longer review times.

Despite these challenges, OSTP FOIA was able to rise to the occasion by routinely interacting with requestors and working with them to narrow the scope of their requests, where feasible, as well as producing responsive records on a rolling basis. These resourceful efforts helped us to meet these challenges and fulfill our obligations under the FOIA.

### **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/>.

Important agency announcements, like those associated with Executive Orders, Presidential Memoranda, or Directives, are posted to [www.whitehouse.gov/news/](http://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/](http://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 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 Executive Office of the President (EOP) network, as well as with the eDiscovery team at the EOP. E-Discovery provides technical expertise in the collection of documents. In addition to the collection of responsive documents, the eDiscovery team also maintains the software that allows each EOP component to review these records. This software greatly assists in the production phase of FOIA requests, ensuring that correct file types are provided so that potentially responsive documents are 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 procedures for mass coding such records as well as categorizing documents by custodian, time frame, or keywords to provide a more efficient review process. E-Discovery and EOP components meet regularly to examine tools and discuss solutions for the eDiscovery review process to ensure that best practices are adopted 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 2020?

Yes.

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

<https://www.whitehouse.gov/wp-content/uploads/2021/03/2020.01.24-2020-FOIA-Quarterly-Report-Q1.pdf> (PDF)

<https://www.whitehouse.gov/wp-content/uploads/2021/03/OSTP-2020-Q1.zip> (XML)

[https://www.whitehouse.gov/wp-content/uploads/2021/03/2020.04.15-FOIA-Quarterly-Report\\_Q2.pdf](https://www.whitehouse.gov/wp-content/uploads/2021/03/2020.04.15-FOIA-Quarterly-Report_Q2.pdf) (PDF)

<https://www.whitehouse.gov/wp-content/uploads/2021/03/OSTP-2020-Q2.zip>  
(XML)

<https://www.whitehouse.gov/wp-content/uploads/2021/03/2020.07.20-Q3-FOIA-Report-.pdf> (PDF)

<https://www.whitehouse.gov/wp-content/uploads/2021/03/OSTP-2020-Q3.zip>  
(XML)

[https://www.whitehouse.gov/wp-content/uploads/2021/03/2020.10.19-FOIA-Quarterly-Report\\_Q4.pdf](https://www.whitehouse.gov/wp-content/uploads/2021/03/2020.10.19-FOIA-Quarterly-Report_Q4.pdf) (PDF)

<https://www.whitehouse.gov/wp-content/uploads/2021/03/OSTP-2020-Q4.zip>  
(XML)

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 2021.

OSTP will continue to post quarterly reports for Fiscal Year 2021. Quarterly reports cannot be automatically pulled and posted to FOIA.gov due to the security features at The White House. 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 2019 Annual FOIA Report and, if available, for your agency's Fiscal Year 2020 Annual FOIA Report.

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

<https://www.whitehouse.gov/wp-content/uploads/2021/03/2019-FOIA-Annual-Report.pdf> (PDF)

<https://www.whitehouse.gov/wp-content/uploads/2021/03/2019-FOIA-Annual-Report.zip> (XML)

<https://www.whitehouse.gov/wp-content/uploads/2021/03/2019-FOIA-Annual-Report.zip> (Raw Data Report)

<https://www.whitehouse.gov/wp-content/uploads/2021/03/OSTP-FY20-Final-Annual-Freedom-of-Information-Act-Report.pdf> (PDF)

<https://www.whitehouse.gov/wp-content/uploads/2021/03/OSTP-FY20-Final.zip>  
(XML)

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 the 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

OSTP's limited funding, small staff numbers, the outbreak of COVID-19 and subsequent influx of requests with high document counts made the Fiscal Year very challenging. For instance, we had two very complex FOIA requests with subparts that had a combined total of over 40,000 documents. 14,600 for one and 26,000-plus for the other. Notably, we have successfully reviewed 10,000 of the 14,600 documents for the former and diligently working on the latter request.

Furthermore, these requests required working with the requestors over the course of weeks to perfect them, because the initial submissions were either overly broad or lacked specificity and, in some instances, the subparts were impermissible under the FOIA. It is also worth mentioning that one of these two requests started off with over 3 million document hits, and the other initially had over 90,000 hits. Both of them required time-intensive pre-review case assessment that proved vital in refining the search terms/parameters and ultimately in reducing the document count.

The preceding were not the only challenges we faced. The pandemic also resulted in members of the FOIA team having to work remotely, which means most of the work had to be done on laptops rather than desktops with two monitors and printing capabilities. At first blush, this might seem insignificant, but reviewing consultation documents from other agencies where the duplicates had not been deduped proved challenging because some of them contained inconsistent redactions. Normally, the problem could be less burdensome by printing prior versions and comparing them with the most recent ones, but that was not possible without a printer. The records required going back to prior versions for comparison, which was very time consuming. Furthermore, it meant having to do most of the review on one screen with less room to fully view the records.

In spite of these challenges, we were able to respond to FOIA requests, convened phone meetings with requestors, performed pre-case assessments for complex requests, successfully processed expedited requests within the statutory timeframe, and resolved other FOIA related issues.

**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 2020 Annual FOIA Report and, when applicable, your agency's 2019 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 2020?

The average number of days to process a simple request was 216.07 days, but the median processing time for simple requests was 11 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 2020 that were placed in your simple track.

60% 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 2019 and Fiscal Year 2020 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 2020, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

No.

6. If not, did your agency process more requests during Fiscal Year 2020 than it did during Fiscal Year 2019?

No.

7. If your agency's request backlog increased during Fiscal Year 2020, 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. For the 2020 Fiscal Year, OSTP not only received more complex FOIA requests, but the outbreak of COVID-19 created myriad unforeseen challenges.”

Chief amongst them was the influx of FOIA requests related to the pandemic. Most of these generated thousands of potentially responsive records. For instance, one of them initially had 90,000 plus records that were ultimately reduced to 26,000 after pre-review case assessments and negotiations with the requestor. There were other requests on the same subject matter that generated voluminous records. As previously

noted, these records were not always substitutable because they dealt with different aspects of the efforts to combat the pandemic.

Furthermore, the seasonal assistance we normally receive was not available because of the pandemic. Given the limited FOIA staff to begin with, the remaining FOIA professionals had to do more with less. However, our resourcefulness and resolve helped to meet these challenges head-on by working tirelessly with requestors and developing strategies for dealing with the influx of requests and the voluminous search results associated with them.

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 2020. If your agency has no request backlog, please answer with “N/A.”

121%.

### **BACKLOGGED APPEALS**

9. If your agency had a backlog of appeals at the close of Fiscal Year 2020, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

N/A.

10. If not, did your agency process more appeals during Fiscal Year 2020 than it did during Fiscal Year 2019?

No.

11. If your agency’s appeal backlog increased during Fiscal Year 2020, 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.

We did not have a backlog of appeals at the close of FY2020.

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



2020. If your agency did not receive any appeals in Fiscal Year 2019 and/or has no appeal backlog, please answer with "N/A."

N/A.

### **C. Backlog Reduction Plans**

13. In the 2019 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1,000 requests in Fiscal Year 2018 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 2018?

N/A.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2020, what is your agency's plan to reduce this backlog during Fiscal Year 2021?

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 2019 and Fiscal Year 2020 when completing this section of your Chief FOIA Officer Report.

#### **OLDEST REQUESTS**

15. In Fiscal Year 2020, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2019 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 2019 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

We closed 4 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 2020, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2019 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 2019 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 2020, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2019 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 2020 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

N/A.

### **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 challenges associated with the pandemic 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 2021.

We have developed a plan to close our oldest requests. Part of the plan includes reviewing them to determine where we are in the process. Additionally, we regularly communicate with requestors to determine if the scope could be narrowed so the review and production schedules could be accelerated. This also includes removing terms that could potentially generate non-responsive contents so the overall review process would be more efficient.

## **F. Success Stories**

Out of all the activities undertaken by your agency since March 2020 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 engagement with requestors and internal meetings to develop strategies for tackling complex requests. In addition to sending routine correspondence, we also schedule conference calls with requestors to discuss the status and scope of their FOIA requests.

When we receive complex FOIA requests, as in the two cases previously mentioned herein (one request with initial document hits of 3 million and another with 99,000 hits), we contact requestors to see if the scope could be narrowed. Also, we perform pre-review case assessment to determine potentially non-responsive terms that are driving the voluminous document count. Part of our communication with requestors include scheduling rolling productions for voluminous records and working with

them on saving all consultations and referrals till the end of the review, so records containing OSTP-only equities could be expeditiously processed first. Furthermore, we perform legal research on issues arising from the FOIA requests, so our determinations are not arbitrary, but based on legal justifications and precedents.

The response from our requestors have been overwhelmingly positive. In some cases, they acquiesced to removing impermissible portions of their requests, refining or submitting new search terms or requests as well as agreeing to rolling productions, even in cases where they originally sought records on expedited basis.

Our success is attributable to being innovative when faced with seemingly insurmountable challenges, along with the commitment of our FOIA team to being diligent and responsive to requestors.