



Office of Management and Budget
2021 Chief Freedom of Information Act (FOIA)
Officer Report

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Introduction

The Freedom of Information Act (FOIA) requires all agency Chief FOIA Officers to report to the Attorney General on their performance in implementing the FOIA. *See* 5 U.S.C. § 552(j)(2)(D). The Office of Management and Budget's (OMB) Chief FOIA Officer has reviewed all aspects of the agency's FOIA administration and issues this report concerning the steps OMB has taken to improve FOIA operations and facilitate information disclosure. This report has been prepared in accordance with the Department of Justice's Guidelines for 2021 Chief FOIA Officer Reports, and covers a reporting period from March 2020 to March 2021. Copies of this Report are available for download on OMB's FOIA website at <https://www.whitehouse.gov/omb/freedom-of-information-act-foia/>.

I. Steps Taken 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.*

OMB has designated its General Counsel, Samuel R. Bagenstos, as its Chief FOIA Officer.

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.*

In consultation with the Department of Justice's Office of Information Policy (OIP), OMB is in the process of developing FOIA training for agency personnel.

4. *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.

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

OMB has continued the agency's ongoing investment in training of OMB staff who have daily FOIA processing responsibilities ("OMB FOIA staff") on FOIA best practices

THIS REPORT HAS BEEN PREPARED IN ACCORDANCE WITH THE DEPARTMENT OF JUSTICE'S GUIDELINES FOR 2021 CHIEF FOIA OFFICER REPORTS.

during the reporting period. OMB FOIA staff attended training provided by the DOJ OIP and NUIX, the vendor of the agency's eDiscovery software platform.

The DOJ training sessions OMB FOIA staff attended included "Virtual Introduction to the Freedom of Information Act," "Virtual Privacy Considerations Workshop," "Virtual Litigation Workshop," "Artificial Intelligence for FOIA professionals," "Virtual Annual FOIA Report Training," and "Virtual Chief FOIA Officer Report Training." The training offered by Nuix, the vendor of document processing software acquired by OMB and used by OMB FOIA staff, covered the use of software tools effectively to administer the FOIA's response and reporting requirements.

In addition to formal training courses, OMB FOIA staff continue to meet informally to discuss specific areas of FOIA law or procedure as well as best practices, developments in FOIA caselaw, and updates to DOJ guidance and advisories.

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 of OMB FOIA staff completed training.

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.

Not applicable.

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.

While OMB FOIA staff have not engaged in dialogue with the requester community or open government groups regarding its overall administration of the FOIA, OMB FOIA staff have regularly contacted requesters about the specific records they seek. Through this outreach process, OMB FOIA staff developed a stronger understanding of requesters' interests and priorities and, in turn, refined search terms and review parameters.

**OMB FOIA STAFF HAVE
REGULARLY CONTACTED
REQUESTERS ABOUT THE
SPECIFIC RECORDS THEY
SEEK.**

D. Other Initiatives to Apply the Presumption of Openness

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.

The Executive Office of the President's onboarding training for new staff (including all OMB staff) includes training on employees' responsibilities to preserve records under the Federal Records Act and Presidential Records Act. Additionally, OMB provides informational materials to new staff regarding their FOIA obligations and OMB's FOIA processes.

**OMB PROVIDES
INFORMATIONAL
MATERIALS TO NEW
STAFF REGARDING THEIR
FOIA OBLIGATIONS AND
OMB'S FOIA PROCESSES.**

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.

OMB FOIA staff are specifically encouraged and trained to consider whether partial disclosure of non-exempt information is possible. To the extent practicable, OMB FOIA staff assess whether this can be accomplished by carefully limiting redactions to exempt material. OMB FOIA staff's adherence to this practice is evident in the number of partially released documents provided in response to FOIA requests. When working with agency staff to conduct custodial searches for records, OMB FOIA staff instruct potential custodians of records to identify all responsive records, regardless of whether those records may be exempt. Then exemption determinations are made by trained FOIA staff who are familiar with the FOIA and its exemptions.

II. Steps Taken to Ensure that OMB Has an Effective System in Place for Responding to Requests

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.

Not applicable. Although OMB received requests for expedited processing in Fiscal Year 2020, it did not adjudicate those requests because it had not yet implemented a multi-track system. OMB has begun adjudicating expedited requests since the start of Fiscal Year 2021.

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.

Not applicable.

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.

During the reporting period, OMB periodically assessed its FOIA program, including the agency's allocation of resources, staff, and technology as well as the agency's FOIA

intake and review process. Supervisors of OMB FOIA staff analyzed annual report data to determine useful benchmarks and overall program goals and priorities. As a result of these reviews, OMB has revised the contract for its team of FOIA contractors, adjusted and streamlined workflow procedures, and applied benchmarks and output requirements.

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.

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

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?

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

OMB has published its Standard Operating Procedures (SOPs) for answering FOIA requests as part of answers to frequently asked questions about the agency's FOIA process on its website at <https://www.whitehouse.gov/omb/freedom-of-information-act-foia/>. Among the procedures discussed on that page are how to submit a FOIA request to OMB, what fees apply, how OMB FOIA staff will respond to requests, how to inquire about submitted requests and responses, and how to submit an appeal. OMB has updated these SOPs to account for changes in the law since the passage of the 2016 amendments to the FOIA. OMB has also made changes on its website to inform readers of the addition of the government-wide National FOIA Portal.

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 2020 (please provide a total number or an estimate of the number).

One requester sought assistance from the agency's FOIA Public Liaison during Fiscal Year 2020.

5. Optional – Please describe:

- Best practices used to ensure that your FOIA system operates efficiently and effectively*
- Any challenges your agency faces in this area*

OMB has adopted a multi-track processing system in its recently-revised agency FOIA regulation. Under this system, OMB FOIA staff identify requests as “simple,” “complex,” or “expedited.” During the reporting period, OMB updated its internal request intake procedures to better support multi-track processing. Additionally, OMB

FOIA staff commonly contact requesters to seek clarification regarding their requests and this often results in a more narrowly targeted search for information.

OMB regularly reassesses its workflow processes involving search, processing, quality control and consultation so as to ensure scalability. Doing so allowed OMB to help address its ever-increasing volume of FOIA requests by working to eliminate bottlenecks and optimizing processes.

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, OMB does not frequently receive first-party requests.

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, OMB updated its FOIA regulations in May 2019.

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.*

OMB has operated on maximum telework status during the reporting period. To the extent possible, all FOIA searches and processing are accomplished in a virtual environment.

III. Steps Taken to Increase Proactive Disclosures

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.*

OMB's records library is publicly available on the agency's FOIA website at www.whitehouse.gov/omb/freedom-of-information-act-foia/. This website includes, for example, over one hundred thousand public comments regarding government-wide reorganization.

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. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-*

actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

OMB has continued to build out its FOIA website during the reporting period. The website now includes information on submitting requests and appeals, names of key staff, and a link to the National FOIA Portal. OMB continues to look for ways to make more information available to the public. All documents posted to OMB's FOIA library are published in accessible PDF format, with machine-readable text encoding for compliance with Section 508 of the Rehabilitation Act.


4. Optional -- Please describe:

- *Best practices used to improve proactive disclosures*
- *Any challenges your agency faces in this area*

IV. Steps Taken to Greater Utilize Technology

1. Please briefly describe the types of technology your agency uses to support your FOIA program. In addition, please highlight if your agency is leveraging or exploring any new technology that you have not previously reported. If so, please describe the type of technology.

During the reporting period, the FOIA staff continued to implement an automated FOIA tracking system (FOIAXpress). Implementation of the tracking system has led to increases in efficiency in intake and handling of FOIA requests and in the creation of required quarterly and annual FOIA reports. The cloud-based system also ensures secure retention of information and records collected as potentially responsive to each FOIA request and allows multiple FOIA staff members to review this information. Additionally, FOIAXpress has allowed OMB to integrate its processes with the National FOIA Portal so that requests submitted through the National FOIA Portal are received directly by OMB's system for processing.



**THE CLOUD-BASED
FOIAXPRESS SYSTEM
ENSURES SECURE
RETENTION OF
INFORMATION AND
RECORDS FOR EACH FOIA
REQUEST.**

OMB has also continued to implement a file sharing tool for transmitting document sets of all sizes to requesters regardless of any file size limitations. This has allowed OMB to send large sets of documents in an electronic format, providing faster and higher quality service to requesters. Requesters can also submit new requests and status inquiries to OMB via email at OMBFOIA@omb.eop.gov.

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?

In response to OIP's 2017 guidance, OMB continued to review its website in Fiscal Year 2020 to ensure that it contains the elements noted in DOJ's 2016 guidance regarding agency FOIA websites, including improving the information and resources available to requesters.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2020?

Yes.

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.

OMB has posted all quarterly reports during the reporting period. OMB is working with OIP to ensure that quarterly reports are also posted to FOIA.gov.

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.

OMB's raw statistical data for the Fiscal Year 2019 Annual FOIA Report is available at the following URL: www.whitehouse.gov/wp-content/uploads/2020/03/OMB-FY2019-FOIA-Annual-Report-Rafw-Data.csv.

OMB's raw statistical data for the Fiscal Year 2020 Annual FOIA Report is available at the following URL: http://www.whitehouse.gov/wp-content/uploads/2021/03/Annual_Report_Raw_Data_10012019_09302020.xlsx.

V. Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs

A. Simple Track

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

Yes, OMB has implemented a simple track.

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?

No.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2020 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100.

28 percent.

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?*

Not applicable.

OMB FOIA STAFF
PROCESSED 105 REQUESTS
IN THE AGENCY'S SIMPLE
RESPONSE TRACK, 28
PERCENT OF ALL
REQUESTS PROCESSED.

B. Backlogs

BACKLOGGED REQUESTS

5. *If your agency had a backlog of requests at the close of Fiscal Year 2020, according to Annual FOIA Report Section XII.A, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?*

No, the number of FOIA requests in OMB's backlog increased from 568 at the close of Fiscal Year 2019 to 638 at the close of Fiscal Year 2020.

6. *If not, according to Annual FOIA Report Section V.A, did your agency process more requests during Fiscal Year 2020 than it did during Fiscal Year 2019?*

Yes.

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.*

OMB's increased FOIA backlog during Fiscal Year 2020 was the result of a combination of factors, including a continued increase in the volume of FOIA requests and FOIA cases in litigation (including court-ordered production schedules). Throughout the reporting period, FOIA staff completed responses to highly complex and novel requests involving classified information and commercially sensitive information requiring special consultation procedures. Additionally, OMB FOIA staff continued to devote substantial time and resources to closing out the agency's most complex requests from prior fiscal years.

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.*

Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. If your agency has no request backlog, please answer with “N/A.”

As reported in OMB’s FY 2020 Annual FOIA Report, OMB received 438 new requests in FY 2020 and had a backlog of 638 open requests at the end of FY 2020. Therefore, the percentage of requests that comprise the backlog out of the total number received during FY 2020 ($638 \div 438 \times 100$) is 146 percent. During FY 2020, OMB’s FOIA staff aimed to complete every request dated from before Fiscal Year 2019, and came within five requests of doing so. The below table shows the overall trends in the receipt and processing of all “FOIA Matters,” which include FOIA requests, consultations, and appeals.

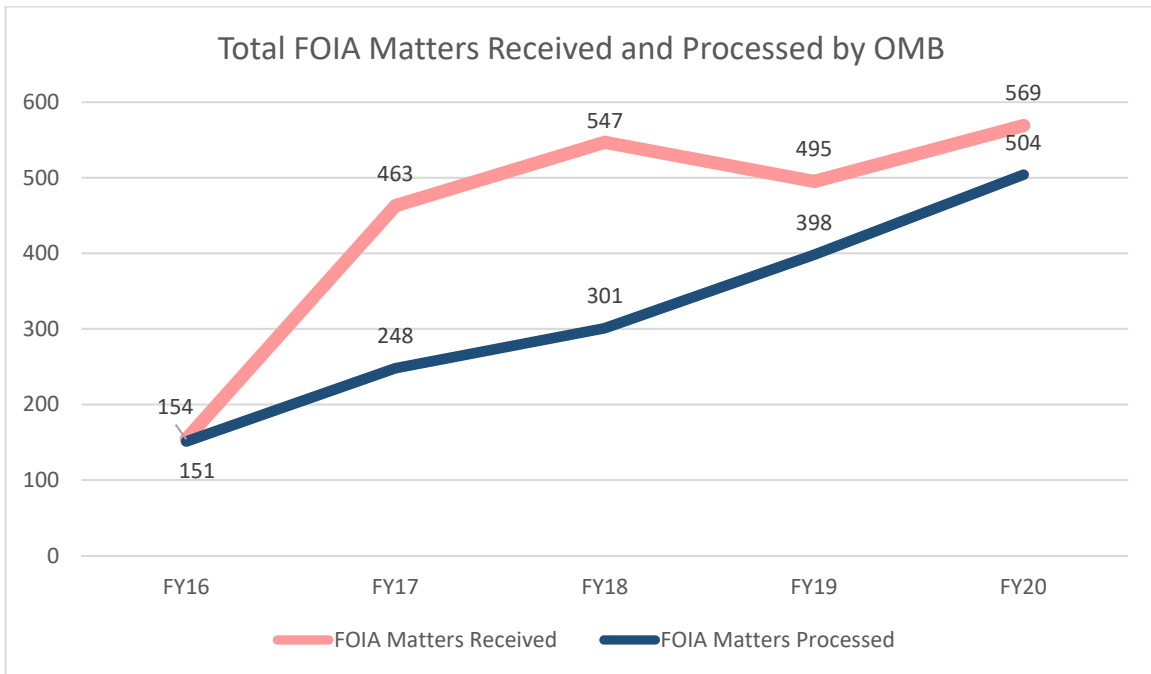


Figure 1. FOIA Matters Received and Processed by Fiscal Year, FY2016 to FY2020.

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2020, according to Section XII.A of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

No, OMB had a backlog of 10 appeals at the close of Fiscal Year 2020, an increase from 4 at the end of Fiscal Year 2019.

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 appeals.*
- *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.*

OMB's appeal backlog increased during Fiscal Year 2020. OMB's incoming appeals have increased along with the increasing volume of FOIA requests over several years.

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. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. If your agency did not receive any appeals in Fiscal Year 2019 and/or has no appeal backlog, please answer with "N/A."*

The percentage of appeals that make up the backlog (10) out of the total number of appeals received by OMB in Fiscal Year 2019 (6), is 167%.

C. Backlog Reduction Plans

13. *In the 2020 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2019 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year?*

Not applicable.

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 2020?

Not applicable.

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?*

Not applicable.

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 pending perfected requests that were reported in Section VII.E. of 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.

During Fiscal Year 2020, the agency closed two of the ten oldest requests listed in its Fiscal Year 2019 Annual FOIA Report.



OMB CLOSED TWO OF THE TEN OLDEST REQUESTS FROM ITS FISCAL YEAR 2019 ANNUAL FOIA REPORT.

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

OMB prioritized responding to the oldest requests and concentrated on closing all requests received in Fiscal Year 2019 or before.

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?

No.

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.

OMB FOIA staff did not close any of the five appeals listed in the FY 2019 report by the end of FY 2020. OMB had listed five appeals to close from FY 2019 but was not able to close them during FY 2020.

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

OMB completed one appeal in Fiscal Year 2020, and worked on one additional appeal that was not closed until after the end of the fiscal year.

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?

Yes, OMB FOIA staff closed each of the ten oldest consultations that were reported in OMB's Fiscal Year 2019 report.

DURING FY 2020, OMB
FOIA STAFF CLOSED
EACH OF THE
AGENCY'S TEN
OLDEST
CONSULTATIONS
REPORTED IN FY 2019.

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 2019 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.*

Not applicable.

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 2020.*

OMB focused substantial resources on closing its oldest requests, appeals, and consultations. Some of these proved difficult to close because they are highly complex.

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.*

Not applicable.

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.*

OMB plans to close its ten oldest appeals during Fiscal Year 2021 by dedicating staff time to complete the processing of these appeals. One of OMB's oldest appeals was closed just prior to the filing of this report.

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.

- OMB FOIA staff closed 504 FOIA matters in FY 2020, more than any previous year, and three times the number closed in FY 2016.
- OMB FOIA staff closed all ten of the agency's previously-listed ten oldest consultations from other agencies during FY 2020.
- OMB FOIA staff greatly improved proactive communications with requesters, including reaching out to engage in discussions with requesters regarding their requests. This led to significant improvements in understanding requesters' interests and priorities for their requests. Requesters appreciated having additional input on the handling of their requests and OMB was able to significantly improve efficient handling of requests.