

Executive Office of the President

Office of Science and Technology Policy



2023 Chief Freedom of Information Act Officer
Annual Report

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The Office of Science and Technology Policy (OSTP) is pleased to present its annual Chief FOIA Officer Report. The 2022 Fiscal Year demonstrated OSTP's continued commitment to its FOIA program despite its small size as an agency. In Fiscal Year 2022, we received 104 FOIA requests.

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 three full-time contractors devoted to FOIA, as well as one lawyer who spends 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 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 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,

Rachel Wallace

Deputy Counsel and Chief Operating Officer

SECTION I: FOIA LEADERSHIP AND APPLYING THE PRESUMPTION OF OPENNESS

The guiding principle underlying the Attorney General’s FOIA Guidelines is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

A. Leadership Support for FOIA

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. See 5 U.S.C. § 552(j)(1) (2018). Is your agency’s Chief FOIA Officer at or above this level?

Yes.

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

Rachel Wallace, Chief Operating Officer and Deputy General Counsel.

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

OSTP has been heavily engaged in promoting policies that encourage openness in research and in government operations, data, and information. In particular, OSTP was a driving force behind the issuance of the [Fifth U.S. Open Government National Action Plan](#), which made numerous commitments from across the Federal Government to: “ensure, consistent with law, that the public has access to Federal Government data, research, and information; empower citizens to participate in the work of Federal Government; transform the way Federal agencies interact with the public; fight corruption and support the integrity of Federal Government programs; and ensure that the Federal Government upholds the rule of law fairly for all people.” In line with those commitments, OSTP has increased the number of records that it has posted on its FOIA library and continues to explore a variety of mechanisms to expand its engagement with the public.

B. Presumption of Openness

4. The Attorney General’s 2022 FOIA Guidelines provides that “agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.” Does your agency provide such confirmation in its response letters?

OSTP considers the foreseeable harm standard when reviewing and applying FOIA exemptions. Additionally, the determination letter informs requestors of the justification for the applicable FOIA exemptions. We notify requesters that we have considered the “foreseeable harm standard” when reviewing records and applying redactions.

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interested protected by a FOIA exemption. This is commonly referred to as a Glomar response. With respect to these responses, please answer the below questions:

In addition to tracking the asserted exemption, does your agency specifically track whether a request involved a Glomar response?

Yes.

If yes, please provide:

the number of times your agency issued a full or partial Glomar response (separate full and partial if possible);

Zero.

the number of times a Glomar response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).

Zero.

If your agency does not track the use of Glomar responses, what would your agency need to do to track in the future? If possible, please describe the resources and time involved.

Not applicable.

6. 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.

SECTION II: ENSURING FAIR AND EFFECTIVE FOIA ADMINISTRATION

The Attorney General’s FOIA Guidelines provide that “[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of FOIA obligations by the entire agency workforce.” The Guidelines reinforce longstanding guidance to “work with FOIA requesters in a spirit of cooperation.” The Attorney General also “urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency’s FOIA administration” as part of ensuring fair and effective FOIA administration.

A. FOIA Training

1. 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 FOIA training events. Additionally, information learned at these events are discussed internally amongst the FOIA professionals and efforts are made to adopt some of the best practices from these sessions.

2. 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.

3. 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 FOIA requests.

Fiscal Year 2022 was a challenging year due to the ongoing outbreak of COVID-19, which resulted in the cancellation of several in-person training programs. However, our commitment to FOIA training did not wane.

In furtherance of that commitment, OSTP FOIA professionals attended various virtual training sessions held by the DOJ.

4. Please 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%,

5. 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.

6. 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; and if senior leaders at your agency received a briefing on your agency's FOIA resources, obligations and expectations during the FOIA process?

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. This training occurs through a virtual course taken by all new staff. Following this course, one of OSTP's attorneys contacts each new staff member to answer any questions they may have on FOIA or any other legal obligation.

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 divisional meetings and work with staff to ensure that proper FOIA procedures are followed for records management and FOIA requests.

B. Outreach

7. Did your FOIA professionals engage in any outreach or dialogue, outside of the standard request process, 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, it is carefully examined to determine if it is: a permissible request; overly broad; asking for the creation of a new record not in existence at the time of the request; or one that requires further clarification.

If there is any issue with the request, the requestor is contacted by email to ask for clarification or schedule a conference call to discuss the issue(s). Additionally, a pre-review case assessment is performed in situations involving complex requests that generate voluminous records to determine if the 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 opportunities for FOIA professionals at various Agencies and Departments to interact, improving the Consultation and Referral process, as well as exposure to ways of improving the FOIA process.

8. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue, and, if applicable, any specific examples.

Yes, we proactively contact requestors regarding complex or overly broad requests.

Requestors are informed of OSTP's FOIA regulation as well as precedents regarding overly broad requests lacking specificity. We provide recommendations and examples on how the requests could be narrowed. However, the communication informs them that, in narrowing the scope, they are not compelled to adopt, or limited their request to, the cited examples.

9. 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 Fiscal Year 2022 (please provide a total number or an estimate of the number).

Once.

C. Other Initiatives

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

Yes. OSTP is actively recruiting FOIA personnel to manage its ever expanding and complex FOIA requests. We also work with requestors to narrow overly broad requests so they could be promptly processed. Thus, ensuring that FOIA personnel maximize their time on reviewing records that are responsive to the requests.

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

We review the annual report, quarterly reports and raw data against the FOIA tracking tool/ log to ensure consistency in the reported information. Additionally, OSTP uses a central tracking system to record FOIA requests. This system makes it possible to track current and past FOIA requests. Furthermore, it makes it possible to re-assign FOIA personnel to priority requests and closeout our backlogs.

12. Optional -- If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.

SECTION III: PROACTIVE DISCLOSURES

The Attorney General's FOIA Guidelines emphasize that "proactive disclosure of information is . . . fundamental to the faithful application of the FOIA." The Guidelines direct agencies to post "records online quickly and systematically in advance of any public request" and reiterate that agencies should post records "in the most useful, searchable, and open formats possible."

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

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/. Additionally, we post materials and other contents that may be of interest to the public at <https://www.whitehouse.gov/ostp/legal/>. For instance, calendar entries and staff lists are posted and periodically updated on the preceding web page.

2. 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.

When OSTP receive repeated requests for the same information, we post that material and others that may be of interest to the public at <https://www.whitehouse.gov/ostp/legal/>. OSTP posts staffing lists, calendar entries, Requests for Information (RFIs) and responses to those RFIs, and important agency announcements such as Executive Orders, Presidential Memoranda and Directives.

3. 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.

4. 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.

We have been working to better organize our FOIA library to make it easier for the public to use and access. We also regularly communicate 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 and has been working to ensure that more of our materials are section 508 compliant.

5. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

Yes. OSTP FOIA routinely interacts with agency staff members to post responses to Request for Information (RFIs) and with its Communications Office to post copies of OSTP or National Science and Technology Council (NSTC) reports online at: www.whitehouse.gov/ostp/documents-and-reports/. Furthermore, we post materials that may be of interest to the public at <https://www.whitehouse.gov/ostp/legal/>.

6. Optional -- Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.

Regular communication with requestors helps to identify possible situations where certain information has already been released as well as information that may be of interest to the public. In addition, in response to growing interest by the public, we have been working with our staff to release not only RFIs, but public comments received in response to the RFIs.

SECTION IV: STEPS TAKE TO GREATER UTILIZE TECHNOLOGY

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's FOIA Guidelines emphasize the importance of making FOIA websites easily navigable and complying with the FOIA.gov interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

Yes.

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program.

OSTP works with the Office of Administration (hereafter "OA"), another component within the Executive Office of the President (henceforth "EOP") network, as well as with the E-Discovery team at the EOP. The E-Discovery team 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 those records. This software greatly assists in the production phase of FOIA requests by ensuring that correct file types are provided so documents that are potentially responsive to the requests are easily disseminated. This team has provided OSTP with helpful tools that allow for a more efficient review of large-scale electronic documents. Those tools are helpful in identifying duplicate documents and extremely useful 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.

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.

Yes. OSTP uses predictive coding software and technology assisted reviews in processing FOIA requests to ensure faster and accurate review of potentially responsive records.

4. 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.

5. Did all four of your agency's quarterly reports for Fiscal Year 2022 appear on FOIA.gov?

3 of the 4 quarterly reports were posted in 2022. The fourth was posted this year.

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2023.

OSTP has experienced a significant amount of staff turnover in the last 2 years. The legal team, which manages our FOIA program, experienced some staff shortages. As a result, one of the quarterly reports was not posted in time. That has since been corrected; and we anticipate that all 4 quarterly reports will be posted in a timely manner going forward, as they had been in prior years.

7. 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 2021 Annual FOIA Report and, if available, for your agency's Fiscal Year 2022 Annual FOIA Report.

<https://www.whitehouse.gov/wp-content/uploads/2022/04/2022.04.15-Raw-Data.xlsx>

8. In February 2019, DOJ and OMB issued joint Guidance establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

Yes.

9. Optional -- Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

SECTION V: STEPS TAKEN TO REMOVE BARRIERS TO ACCESS, IMPROVE TIMELINESS IN RESPONDING TO REQUESTS, AND REDUCE BACKLOGS

The Attorney General's FOIA Guidelines instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

A. Remove Barriers to Access

1. Has your agency established alternative means of access to first-party requested records outside of the FOIA process?

No. First-party requested records are processed under the FOIA and Privacy Act.

2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.

We do not have opportunities for providing such records outside of the FOIA or Privacy Act process, and we rarely receive such requests outside of these established processes.

B. Timeliness

3. For Fiscal Year 2022, 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 2022 Annual FOIA Report.

8 days.

4. 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 2022 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.

N/A.

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

Yes.

6. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2022?

The average number of days to process simple requests was higher than 20 days. Some of these requests should have been classified as complex requests because of the volume of documents that were generated after conducting searches of the database for potentially responsive records as well as the need for referral and/or consultation. Additionally, some of these requests were from our FOIA backlog.

7. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?

No.

8. Please provide the percentage of requests processed by your agency in Fiscal Year 2022 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.

52.3%

9. 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.

C. Backlogs

BACKLOGGED REQUESTS

10. If your agency had a backlog of requests at the close of Fiscal Year 2022, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

No.

11. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2022 than it did during Fiscal Year 2021?

No.

12. If your agency's request backlog increased during Fiscal Year 2022, 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)

Impact of COVID-19 and workplace and safety precautions

Any other reasons – please briefly describe or provide examples when possible

The backlog increased due to complexity of the requests received during Fiscal Year 2022. Additionally, the complex requests generated more voluminous records compared to those from previous years. Furthermore, we experienced FOIA staff turn-over that impacted our FOIA processing timeline.

13. 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 2022. 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. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A."

150.96

BACKLOGGED APPEALS

14. If your agency had a backlog of appeals at the close of Fiscal Year 2022, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

N/A.

15. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2022 than it did during Fiscal Year 2021?

N/A.

16. If your agency's appeal backlog increased during Fiscal Year 2022, 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:

N/A.

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)

Impact of COVID-19 and workplace and safety precautions

Any other reasons – please briefly describe or provide examples when possible

N/A.

17. 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 2022. 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. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2022 and/or has no appeal backlog, please answer with "N/A."

N/A.

D. Backlog Reduction Plans

18. In the 2022 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2021 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 2022?

N/A.

19. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2022, please explain your agency's plan to reduce this backlog during Fiscal Year 2023.

N/A.

E. Reducing the Age of Requests, Appeals, and Consultations

TEN OLDEST REQUESTS

20. In Fiscal Year 2022, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2021 Annual FOIA Report?

Yes.

21. 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 2021 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

N/A.

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

We routinely review the pending FOIA request metrics to determine how best to allocate our resources to those requests and have brought on additional staff to help reduce our backlog.

TEN OLDEST APPEALS

23. In Fiscal Year 2022, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2021 Annual FOIA Report?

Yes.

24. 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 2021 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A.

25. 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

26. In Fiscal Year 2022, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2021 Annual FOIA Report?

N/A.

27. 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 2021 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

N/A.

ADDITIONAL INFORMATION REGARDING TEN OLDEST

28. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2023.

N/A.

F. Additional Information about FOIA Processing

29. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency's overall FOIA request processing and backlog. If possible, please indicate the number and nature of requests subject to litigation, common causes leading to litigation, and any other information to illustrate the impact of litigation on your overall FOIA administration.

Yes. The FOIA litigations adversely impacted our overall FOIA administration because they shifted resources from our FOIA backlog or pending requests to requests under litigation to ensure compliance with court orders or consensus reached with opposing counsel.

We had four FOIA lawsuits. Three of those were from the same requestor and filed under a single Complaint. Requestor, in the preceding case, contested our application of Exemptions 5 and 6 to the records produced in response to one of his requests and included the two other requests pending before the agency.

The fourth lawsuit involved a requestor who filed lawsuits against multiple Federal agencies and included OSTP as part of that litigation.

30. How many requests during Fiscal Year 2022 involved unusual circumstances as defined by the FOIA? (This information is available in your agency's FY22 raw data).

No.