



Office of Management and Budget
2023 Chief Freedom of Information Act Officer Report

Daniel F. Jacobson
General Counsel and
Chief FOIA Officer

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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 2023 Chief FOIA Officer Reports, and covers a reporting period from March 2022 to March 2023. 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. 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.

1. *The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at the Assistant Secretary or equivalent level. See 5 U.S.C. § 552(j)(1) (2018). 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, Daniel F. Jacobson, as its Chief FOIA Officer.

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?*

OMB has made the reduction of its FOIA backlog a top priority. To achieve this, OMB has established internal benchmarks, increased short-term funding, and incorporated the resource needs of the FOIA Office as part of its core budget. At the same time, OMB is working on a long-term staffing and resource plan.

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?*

Yes.

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:

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

Yes.

- b. *If yes, please provide:*

i. *the number of times your agency issued a full or partial Glomar response (separate full and partial if possible):* None.

ii. *the number of times a Glomar response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times):* Not applicable.

- c. *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.*

Public Reading Room

OMB makes available in its Public Reading Room and in the Regulatory/Paperwork Records Management Center information pertaining to matters that OMB issued, adopted, or promulgated. These are commonly known as “reading room materials.” These materials include the Federal Budget, OMB Circulars, selected OMB Bulletins, regulations and information collections reviewed by OMB, other policies and management documents, and OMB’s Annual FOIA Report. Many of these documents are also available through OMB’s website at <https://www.whitehouse.gov/omb/information-for-agencies/>.

FOIA Library

Certain OMB documents are available to the public without having to make a FOIA request, at <https://www.whitehouse.gov/omb/freedom-of-information-act-foia/>. These “proactive disclosures” are provided in the interest of transparency, and include documents that have been requested frequently. They include, for example, calendars of current and former OMB Directors, which are posted online on a rolling basis.

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.

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.*

OMB annually provides training to its new political staff about their duties and obligations under FOIA as well as their records management responsibilities. In addition, the FOIA staff periodically provides targeted training to particular divisions and offices upon request.

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.*

In addition to participating in virtual training offered by the Justice Department's Office of Information Policy (OIP), OMB's FOIA staff regularly meet informally to discuss recent developments in the law, share best practices, and socialize FOIA information and knowledge acquired from its interactions with the Justice Department's trial attorneys and Assistant United States Attorneys' from across the country.

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.*

Not applicable.

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?*

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 is in the process of instituting FOIA-specific training for all new employees during the onboarding process as well as providing annual FOIA refresher training for existing employees.

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.*

No.

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, OMB's FOIA staff regularly and proactively contacts requesters to discuss search terms, narrow search results, and seek clarification about scope. Through this dialogue, OMB is able to produce records on a faster timeline while at the same time saving agency time and resources by processing only those records of interest to the requester.

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).*

Two requesters reached out to OMB's FOIA Public Liaison during the reporting period.

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.*

During the reporting period, OMB undertook a comprehensive review of its short- and long-term staffing and resource needs. As a result of this review, OMB provided additional funding to the FOIA Team to hire a sixth contractor on a short-term basis. The agency is actively working on a long-term staffing and resource plan.

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.

OMB utilizes a specialized FOIA tracking and management software (FOIAXpress) for data compilation, work summaries, charts, and progress reports, including development of annual and quarterly reports.

12. 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 exempt information can be released under the foreseeable harm standard. Applying a presumption of openness, our staff assess whether this can be accomplished by examining, among other things, the nature of the exempt information and the passage of time.

III. Steps Taken to Improve 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.

OMB evaluates records for proactive disclosure on an ongoing basis, consistent with the statutory and regulatory requirements on proactive disclosures. Proactive disclosures are included on OMB’s FOIA website and reflected in OMB’s Annual FOIA Report.

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.

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 materials of public interest, such as the Director’s calendars, and it is updated periodically.

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?

OMB's FOIA website is designed to be user-friendly and informative to the public. The website also has a records library that is periodically updated by OMB's FOIA staff.

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.*

OMB has continued to build out its FOIA website during the reporting period. The website 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.

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

Yes, agency personnel and OMB's FOIA staff collaborate to ensure that there is no inadvertent release of personally identifiable information or other sensitive information exempt from disclosure under the FOIA statute.

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

None.

IV. Steps Taken 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.*

OMB has been exploring updates to its existing technology platforms such as eDiscovery (Ringtail) and tracking software (FOIAXpress) to further streamline the processing of records and to help with record-keeping given the continued high volume of incoming FOIA requests.

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.*

No.

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?*

Yes.

6. *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 2023.*

Not applicable.

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.*

OMB's raw statistical data for the Fiscal Year 2021 Annual FOIA Report is available at the following URL: https://www.whitehouse.gov/wp-content/uploads/2022/02/Annual_Report_Raw_Data.xlsx and OMB's raw statistical data for the Fiscal Year 2022 Annual FOIA Report is available at the following URL: <https://www.whitehouse.gov/wp-content/uploads/2023/01/FY2022-FOIA-Raw-Data.xls>

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.

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

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

No. OMB does not frequently receive first-party requests outside of the FOIA process. As a result, first-party requests are handled through the standard FOIA process.

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

For the time being, OMB is confident that it can best address first-party requests within the same framework as other FOIA requests.

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.*

12 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.*

During the reporting period, OMB hired additional FOIA personnel. We anticipate that this change combined with improvements to internal processes will help reduce the number of days needed to adjudicate requests for expedited processing.

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?*

No.

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.*

73 percent.

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?*

Not applicable.

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?*

The number of FOIA requests in OMB's backlog decreased from 656 at the close of Fiscal Year 2021 to 589 at the close of Fiscal Year 2022.

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?*

Not applicable.

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 or an increase in the complexity of the requests received; impact of COVID-19 and workplace and safety precautions.*

Not applicable. OMB's FOIA backlog decreased by approximately 10% since last fiscal year.

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. If your agency has no request backlog, please answer with "N/A."*

As reported in OMB's FY 2022 Annual FOIA Report, OMB received 263 new requests in Fiscal Year 2022 and had a backlog of 589 open requests at the end of Fiscal Year 2022. Therefore, the percentage of requests that comprise the backlog out of the total number of requests received during Fiscal Year 2022 ($589 \div 263 \times 100$) is 224%.

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?*

Yes, OMB had a backlog of 3 appeals at the close of Fiscal Year 2022, which is a decrease from the 10 appeals in the backlog at the end of Fiscal Year 2021. Presently, OMB has one open appeal and we anticipate reaching zero by the end of the reporting period.

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?*

Not applicable.

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: an increase in the number of incoming requests; a loss of staff or an increase in the complexity of the requests received; impact of COVID-19 and workplace and safety precautions.*

Not applicable. OMB's appeal backlog decreased during Fiscal Year 2022.

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. If your agency did not receive any appeals in Fiscal Year 2022 and/or has no appeal backlog, please answer with "N/A."*

The percentage of appeals that make up the backlog (3) out of the total number of appeals received by OMB in Fiscal Year 2022 (3), is 100%.

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?

Not applicable.

19. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2021, what is your agency's plan to reduce this backlog during Fiscal Year 2022? In particular, please also detail how your agency developed and plans to execute your backlog reduction plans.

Not applicable.

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?

No.

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 fewer than ten total oldest requests to close, please indicate that.

During Fiscal Year 2022, OMB closed one of the ten oldest requests listed in its Fiscal Year 2021 Annual FOIA Report. Additionally, since the beginning of Fiscal Year 2023, OMB closed another one of the ten oldest requests listed in its Fiscal Year 2022 Annual FOIA Report.

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

OMB has set an internal goal to close its ten oldest requests by the end of May 2023.

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?

No.

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 VI.C.(5) of your Fiscal Year 2021 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

OMB's FOIA staff closed seven of the ten oldest appeals in Fiscal Year 2022.

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

OMB currently has one appeal pending. Additionally, OMB's FOIA Office has a new standard operating procedure in place to ensure that FOIA appeals are timely processed.

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?*

Yes.

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 2020 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.*

Not applicable.

28. *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 2023.*

During the reporting period, OMB closed its ten oldest consultations and eliminated all but one of its oldest appeals. Additionally, OMB is making staffing changes to help close its ten oldest FOIA requests by the end of May 2023.

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, OMB was the subject of FOIA litigation in two new cases during the reporting period. This brings the total number of active FOIA cases to nine. As a small agency with a heavy FOIA volume and backlog, OMB’s FOIA litigation docket places a significant burden on the agency’s FOIA staff because the same personnel who would be processing non-litigation FOIA requests are required to prioritize the processing of FOIA requests in litigation. This means fewer resources are available to process non-litigation FOIA requests. Additionally, FOIA litigation requires significantly greater attorney involvement. As a result, OMB’s FOIA staff has less time to work on non-litigation matters, such as agency consultations, complex FOIA requests, and administrative appeals.

30. *How many requests during Fiscal Year 2022 involved unusual circumstances as defined by the FOIA?*

None.