

## CHIEF FOIA OFFICERS REPORT 2023

### 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.

*Gregory R. Baker, Deputy General Counsel – Administration*

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?

*The Office of the General Counsel (OGC) conducted outreach to non-FOIA professionals within the agency reminding them of their privacy expectations and responsibilities under FOIA and the OGC remains available to staff to answer questions related to FOIA responsibilities and requirements by phone calls, emails and virtual meetings. All employees are aware of the importance of FOIA in the core mission of the Agency.*

### 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?

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

6.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.

*The Agency does not specifically track Glomar responses, however the overall number of Glomar responses are incorporated into our calculations of 'full denials' for reporting purposes and are listed as 'full denial other'. We would need to program law manager with a new radio button for attorneys to select Glomar and we would need to program our FOIA software Xera with a radio button that tracks Glomar responses. Right now we list Glomar as 'Full Denial: Other.' This process would probably take about 15-20 contractor hours. We only receive 1-2 Glomar a year so re-programming software to track Glomar specifically has not been considered.*

7. 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.

*When processing requests, OGC staff and Agency leadership are reminded that there should be a presumption of openness when releasing documents.*

8. 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.

## **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.

*FOIA staff are regularly reminded and encouraged to take any FOIA training offered throughout the year. A FOIA course is always available on the agency's online training platform. Additionally, FOIA staff save training material from FOIA trainings they have attended to a shared drive so that all FOIA staff can access and view. Moreover, staff members who attend FOIA trainings brief the entire FOIA team on any new information learned at the training. Furthermore, the FOIA Liaison, who reports to the Chief FOIA Officer, has set automatic reminders for when DOJ-OIP FOIA trainings become available and timely forwards that information to all FOIA staff and encourages them to register and attend.*

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.

- FOIA Workshop 10/25/22
- Introduction to the Freedom of Information Act - 11/8/22
- Freedom of Information Act Litigation Seminar - 11/9/22
- Exemption 4 and Exemption 5 - 1/18/23
- Privacy Considerations Training - 1/25/23
- Advanced Freedom of Information Act Training - 2/8/23
- Virtual Introduction to FOIA 4/4/23
- Continuing FOIA Education - 7/12/23

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?

*The Office of the General Counsel (OGC) conducted multiple trainings for non-FOIA professionals new to the agency reminding them of their privacy expectations and responsibilities under FOIA and was available to OGC and non-OGC staff to answer questions related to FOIA responsibilities and requirements by phone calls, emails and virtual meetings. All new employees receive FOIA training via email, conducted by the FOIA Attorney, during onboarding.*

## **B. Outreach**

7. 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.

*Our FOIA Attorney emails or calls requesters for any large or unclear requests and to resolve issues before appeal. Due to these efforts we have significantly sped up processing times and reduced the FOIA backlogs.*

8. Outside of the standard request process or routine FOIA Liaison or FOIA Requester Service Center interactions, did your FOIA professionals engage in any outreach or dialogue, with the requester community or open government groups regarding your administration of the FOIA? For example, did you proactively contact frequent requesters, host FOIA-related conference calls with open government groups, or provide FOIA training to members of the public? 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.*

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 2023 (please provide a total number or an estimate of the number).

*Zero.*

### **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.

*In FY 23 the Agency hired two new attorneys who can complete FOIA duties if needed. The Agency has also made improvements in the Xera FOIA software that we use to process 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.

*The Chief FOIA Officer receives a weekly FOIA report and the FOIA Attorney reviews both Agency FOIA tracking systems weekly. The Commission reviews the Quarterly FOIA reports during session and receives updates on FOIA Appeals as they come into the Agency.*

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

*When processing requests, OGC staff and Agency leadership are reminded that there should be a presumption of openness when releasing documents. Additionally, the Agency makes a consistent effort to reach out to requesters to clarify and narrow requests whenever possible.*

### **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.

*The Agency reviews and identifies any records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Should such records arise, the Agency is prepared to proactively disclose these documents on our public website. In FY 2023, the FEC continued to proactively post updated information on its website regarding the Agency's enforcement and compliance processes — reporting thresholds, manuals, and other procedural guidance — to make the FEC's processes more transparent to the public. This information is available at the following link:*

*<https://www.fec.gov/legal-resources/enforcement/procedural-materials/>.*

2. How long after identifying a record for proactive disclosure does it take your agency to post it?

*The Agency did not have records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D) during FY23. The Agency has launched an updated Open Government Page, which highlights efforts to provide new information to the public on how federal campaigns are financed and how the FEC operates. This page can be found at the following link: <https://www.fec.gov/about/open/>. Included on this page are links to new categories of information that are being released in accordance with the FEC's Policy Statement on Disclosure of Certain Documents in Enforcement, Administrative Fines, Alternative Dispute Resolution Cases and Administrative Matters. The FEC generally does not receive many FOIA requests for the same documents. However, the Agency's FOIA Requester Service Center monitors its FOIA request log, and if frequently requested records are identified, they will be posted to the Commission's website.*

3. Does your agency post logs of its FOIA requests?

- If so, what information is contained in the logs?

- Are they posted in CSV format? If not, what format are they posted in?

No.

4. 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.

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5. 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?

*The Commission is a disclosure agency. We, therefore, routinely place numerous categories of records on the public record. Because these records are made publicly available pursuant to other statutory provisions, the FEC generally will not process these requests under FOIA. The below documents are included within the categories of records routinely made publicly available:*

- *Campaign finance reports are placed on the public record within 48 hours of receipt at the FEC.*
- *Redacted files for closed enforcement matters are made available to the public within 30 days after the parties involved have been notified that the entire matter has been closed.*
- *Advisory opinions from 1975 to the present, including documents related to advisory opinions — such as requests, drafts and public comments — from 1990 to the present.*

6. 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.

*The FEC launched its new website in 2017, which allows members of the public to more easily locate and access documents proactively disclosed by the Agency. Specifically, the new website offers improved navigation, content and readability; is mobile-device friendly; and allows users to access a significantly wider universe of campaign finance data than previously available*

*through the FEC's website. The Agency continues to add new content to the website on a regular basis and make improvements.*

7. 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.

*The Agency works with the IT department to regularly update the website with public documents and with the various components that provide the information uploaded to our public website.*

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

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#### **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?

*During FY 2019, the Agency implemented an advanced new eDiscovery and FOIA tool agency wide called Xera. This tool made it easier for FOIA and Non- FOIA professionals to search Agency data and review records to ensure that the Agency is providing every available record to requesters and to streamline our FOIA process. During FY 2023 the Agency also reviewed all open caseloads and worked to ensure that older cases were processed in a timely fashion. Due to our efforts, we successfully reduced processing times. During FY23 the Agency also added two new Admin Law Attorneys to staff to increase the ability to process incoming FOIA requests.*



2. Please briefly describe any new types of technology your agency uses to support your FOIA program.

*The Agency uses the Xera document review software which allows FOIA staff to search emails agency-wide without having to ask individuals to produce documents manually. The software also allows more efficient review, de-duplication, categorization, and coding of records.*

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.

*The Agency uses Xera document review software which allows FOIA staff to search emails agency-wide without having to ask individuals to produce documents manually. The software also allows more efficient review, de-duplication, categorization, and coding of 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 2023 appear on FOIA.gov?

*Yes.*

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 2024.

*N/A.*

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 2022 Annual FOIA Report and, if available, for your agency's Fiscal Year 2023 Annual FOIA Report.

<https://www.fec.gov/about/reports-about-fec/foia-reports/chief-foia-officer-report-fy-2022/>

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.

*The Agency uses Xera document review software which allows FOIA staff to search emails agency-wide without having to ask individuals to produce documents manually. The software also allows more efficient review, de-duplication, categorization, and coding of records.*

## **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.*

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

*Because we are a Commission run Agency, all record responses must first be approved by the Commission before release.*

3. Please describe any other steps your agency has taken to remove barriers to accessing government information.

*N/A.*

### **B. Timeliness**

4. For Fiscal Year 2023, 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 2024 Annual FOIA Report.

*In FY23 we had no requests that were granted expedited processing.*

5. 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 2023 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.*

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

*No, however we calculate simple requests separately for the purposes of the Annual Report.*

7. 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 2023?

*Yes.*

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

*N/A*

9. Please provide the percentage of requests processed by your agency in Fiscal Year 2023 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.

*0%, all small requests are completed promptly without delay and under the statutory time limit.*

10. 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**

11. If your agency had a backlog of requests at the close of Fiscal Year 2023, 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 2022?

*Decreased from 4 to 1.*

12. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2023 than it did during Fiscal Year 2022?

*Yes.*

13. If your agency's request backlog increased during Fiscal Year 2023, 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

*N/A*

14. 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 2023. 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."

1.08%  $(1/92) \times 100$

## **BACKLOGGED APPEALS**

15. If your agency had a backlog of appeals at the close of Fiscal Year 2023, 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 2022?

*none*

16. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2023 than it did during Fiscal Year 2022?

*We had no backlogged appeals in FY 2023.*

17. If your agency's appeal backlog increased during Fiscal Year 2023, 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)
- Impact of COVID-19 and workplace and safety precautions
- Any other reasons – please briefly describe or provide examples when possible

*none*

18. 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 2023. 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 2023 and/or has no appeal backlog, please answer with "N/A."

*0%*

#### **D. Backlog Reduction Plans**

19. In the 2023 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2023 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 2023?

*N/A.*

20. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2023, please explain your agency's plan to reduce this backlog during Fiscal Year 2024.

*N/A.*

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

##### **TEN OLDEST REQUESTS**

21. In Fiscal Year 2023, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2022 Annual FOIA Report?

*Yes.*

22. 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 2023 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

*N/A*

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

*We reduced processing times and increased efficiency.*

### **TEN OLDEST APPEALS**

24. In Fiscal Year 2023, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2022 Annual FOIA Report?

*Yes, there was only 1.*

25. 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 2023 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

*N/A.*

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

*We closed our one oldest open appeal.*

### **TEN OLDEST CONSULTATIONS**

27. In Fiscal Year 2023, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2022 Annual FOIA Report?

*N/A. No consultations were pending.*

28. 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 2023 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

*N/A. No consultations pending.*

### **ADDITIONAL INFORMATION REGARDING TEN OLDEST**

29. 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 2024.

*In FY23 we had no backlogged appeals.*

## **F. Additional Information about FOIA Processing**

30. 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:

*We had no new requests that went to litigation regarding FOIA in FY23.*