



FEDERAL ELECTION COMMISSION

2021 CHIEF FOIA OFFICER REPORT

High-Volume Agencies Receiving More Than 50 Requests in FY19
Content of 2021 Chief FOIA Officer Reports

Section 1: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying DOJ's FOIA Guidelines is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

A. FOIA Leadership

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at the Assistant Secretary or equivalent level. *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.

Gregory R. Baker, Deputy General Counsel – Administration

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.

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 it. 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 sign up.

4. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend substantive FOIA training during the reporting period such as that provided by the Department of Justice?

Yes.

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

- *Best Practices Workshop on Technology in FOIA on April 20, 2020*
- *Exemption 4 Workshop on July 14, 2020*
- *Exemption 5 Workshop on July 14, 2020*
- *Annual FOIA Report Refresher Training on October 15, 2020*
- *Litigation Workshop on October 20, 2020*
- *Artificial Intelligence for FOIA Professionals on November 5, 2020*
- *Freedom of Information Act Training through SkillPort on November 27, 2020*
- *Chief FOIA Officer Report Training on December 10, 2020*
- *Exemption 1 and Exemption 7 Workshop on January 19, 2021*

6. 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 percent.

7. OIP has directed agencies to “take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year.” If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency’s plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

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.

The FEC did not engage in any outreach or dialog in FY 2020.

D. Other Initiatives

9. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff.

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.

An agency wide reminder was sent in December 2019 via the CIO Alec Palmer reminding all FEC staff of their obligations under FOIA.

Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests

DOJ's FOIA Guidelines emphasize that "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." It is essential that agencies effectively manage their FOIA program.

Please answer the following questions to describe the steps your agency has taken to ensure that the management of your FOIA program is effective and efficient. You should also include any additional information that that describes your agency's efforts in this area.

1. For Fiscal Year 2020, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2020 Annual FOIA Report.

Not applicable.

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2020 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

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 or raw data, using active workflows and track management, reviewing and updating processing procedures, etc.

Note: In September 2017, OIP released a FOIA Self-Assessment Toolkit as a resource for agencies conducting a self-assessment of their FOIA program. The Toolkit is available on OIP's website for all agencies to use.

During the reporting period, the agency did not conduct a self-assessment of its FOIA program

using the FOIA Self-Assessment Toolkit; however, as an agency we conduct weekly reviews of open caseloads and were able to reduce the backlog by more than 87% during FY 2020.

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?

The Agency's FOIA Service Center has written FOIA processing procedures as well as standardized acknowledgement and response letter templates, including for exemptions that are saved on a shared drive that any FOIA team member can access.

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

Not applicable.

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

The team has a designated FOIA Attorney who routinely reviews and updates the FOIA procedures and templates to account for changes in law, best practices, and technology as needed.

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

The agency has a guide for FOIA, including how to submit requests, on its website. The agency does not post its processing procedures on its website since the procedures reference internal drives, databases, and naming conventions.

5. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2020 (please provide a total number or an estimate of the number).

During FY 2020, requesters sought assistance from the FOIA Public Liaison in connection with two FOIA requests and appeals.

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?

The FEC does not receive common categories of first-party requests. Nevertheless, 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 following 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.*

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?

Draft updates have been made to the Commission's FOIA regulations in accordance with the FOIA Improvement Act of 2016. However, the adoption of updated FOIA regulations has been hindered by the lack of Commission quorum. The Agency recently gained quorum and the FOIA team intends to seek adoption of updated FOIA regulations.

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

The pandemic had minimal impact on FOIA processing. All FOIA staff were telework ready pre-pandemic. The software used to search for records is accessible remotely and the vast majority of FOIAs were processed without delays due to the pandemic. There were two infrequent scenarios involving delays due to the pandemic: 1) A small number of requests that were sent through the mail were received late because staff were not able to check the mail regularly because of building closure. 2) Responsive records for one FOIA was so large that it could not be sent over email. Ordinarily, such a response would be saved to a thumb drive and mailed to the requester, but that was not possible due to the pandemic. Instead, FOIA staff worked with the Commission's IT department and the requester to place the files on a secured File Transfer Protocol to give the requesters access to the records.

9. Optional -- Please describe:

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

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. 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 our backlog as an Agency by 87%.

Section III: Steps Taken to Increase Proactive Disclosures

The Department of Justice has long focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

1. Provide examples of any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

In FY 2020, 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/>. 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.

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.

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.

4. Optional -- Please describe:

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

The Agency has worked hard in 2020 to update our website and to ensure that accurate FOIA contact information, request guidelines, and Agency FOIA data is available to the public. We frequently include links to public records as a courtesy in FOIA responses and upload public records to the website quickly and frequently in an effort to promote transparency and openness. As an agency we do not charge fees to any requester in an effort to ensure that the public has free and easy access to the Agency's data and records.

Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information more accessible. In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that that describes your agency's efforts in this area.

1. 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.

The Agency recently obtained the web-based, iCONNECT-XERA document review platform which allows FOIA staff to search emails agency-wide without having to go through individual Commission employees. The software also allows more efficient review, de-duplication, categorization, and coding of records.

2. OIP issued guidance in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources, and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

Yes.

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

Yes. The FEC successfully posted all four quarterly reports for Fiscal Year 2020.

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.

Not applicable.

5. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2019 Annual FOIA Report and, if available, for your agency's Fiscal Year 2020 Annual FOIA Report.

https://www.fec.gov/documents/2061/FOIA_annual_report_fiscal_year_2019.csv

https://www.fec.gov/documents/2893/FOIA_annual_report_fiscal_year_2020.csv

6. Optional -- Please describe:

- Best practices used in greater utilizing technology
- Any challenges your agency faces in this area

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.

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

The Department of Justice has emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations.

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's FY 2019 and 2020 Annual FOIA Reports.

A. Simple Track

Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

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

Yes.

2. If your agency uses a separate track for simple requests, 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 2020?

No. In Fiscal Year 2020, the overall average number of days for the FEC to process simple requests was 36.4 days. The average number of days was higher than usual this fiscal year due to the closure of 54 backlogged cases from prior years.

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.

53.3 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.

B. Backlogs

Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2019 and Fiscal Year 2020 when completing this section of your Chief FOIA Officer Report.

BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2020, 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?

Yes, the FEC's backlog did decrease. At the close of Fiscal Year 2020, the FEC had 12 backlogged FOIA requests, 39 fewer than the FEC had at the end of Fiscal Year 2019.

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?

Not applicable.

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.

Not applicable.

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."

11.4 percent.

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, the FEC's backlog did not decrease. At the close of Fiscal Year 2020, the FEC had two backlogged FOIA appeals, one more than the FEC had at the end of Fiscal Year 2019.

10. If not, according to section VI.A of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2020 than it did during Fiscal Year 2019?

No, the FEC did not process more appeals during Fiscal Year 2020 than it did during Fiscal Year 2019. In Fiscal Year 2019 the FEC processed nine appeals and in Fiscal Year 2020 the FEC processed seven appeals.

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.

The agency's appeal backlog increased by one appeal due to technological challenges faced by Commissioners voting remotely.

12. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2020. 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 2020 and/or has no appeal backlog, please answer with "N/A."

25 percent.

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? 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, please explain 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.

Nine requests were closed by the end of the fiscal year.

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

During Fiscal Year 2018, the Agency hired a full time FOIA attorney which helped us to reduce our backlog by 64% in Fiscal Year 2019 and 87% in Fiscal Year 2020.

TEN OLDEST APPEALS

18. In Fiscal Year 2020, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5. of your Fiscal Year 2019 Annual FOIA Report?

Yes.

19. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VI.C.(5) of your Fiscal Year 2019 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

Not applicable.

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

During Fiscal Year 2018, the Agency hired a full time FOIA attorney which helped us to reduce our backlog.

TEN OLDEST CONSULTATIONS

21. In Fiscal Year 2020, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2019 Annual FOIA Report?

Not applicable. The FEC did not have any consultations pending at the end of Fiscal Year 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.

The FEC did not have any consultations pending at the end of Fiscal Year 2019.

E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans

23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2019.

Not applicable.

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.

The FEC closed nine out of its ten oldest pending requests; closing 54 of the 62 backlogged requests. The FEC also closed the only appeal pending at the end of Fiscal Year 2019. The FEC did not have any consultations pending at the end of Fiscal Year 2019. The addition of the new FOIA attorney and the new eDiscovery system has the FEC moving in the right direction.

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, but should not be something that you have reported in a prior year. 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.

- *The individual members of the FOIA team have done a remarkable job keeping up with their FOIA caseloads given the unique challenges presented by the pandemic.*
- *FOIAs continue to be processed quickly and efficiently, with an emphasis on reducing the backlog.*