



# **FEDERAL ELECTION COMMISSION**

**2020 CHIEF FOIA OFFICER REPORT**

## High-Volume Agencies Receiving More Than 50 Requests in FY18

### Content of 2020 Chief FOIA Officer Reports

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

*Yes.*

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

- *Continuing Freedom of Information Act Education on April 24, 2019*
- *Advanced Freedom of Information Act Seminar on May 14, 2019*
- *Freedom of Information Act for Attorneys and Access Professionals on July 23-24, 2019*
- *Annual FOIA Report Refresher Training on October 17, 2019*
- *Chief FOIA Officer Report Training on December 10, 2019*
- *Freedom of Information Act Training through SkillPort December 2019*

5. 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.*

6. 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**

7. 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 2019.*

### **D. Other Initiatives**

8. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA.

*During FY 2019, 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.*

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

9. 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.

*The Agency has worked hard in 2019 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 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 describes your agency's efforts in this area.

1. For Fiscal Year 2019, 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 2019 Annual FOIA Report.

*Ten days.*

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

*Not applicable.*

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report data, using active workflows and track management, reviewing and updating processing procedures, etc.

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 strive to reduce the backlog by more than 50% during FY 2020.*

4. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2019 (please provide a total number or an estimate of the number).

*During FY 2019, requesters sought assistance from the FOIA Public Liaison in connection with one FOIA appeal.*

5. Optional -- Please describe:

Best practices used to ensure that your FOIA system operates efficiently and effectively

Any challenges your agency faces in this area

*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 64%.*

### **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 2019, 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://transition.fec.gov/law/procedural\\_materials.shtml](https://transition.fec.gov/law/procedural_materials.shtml). 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.

*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. While some of the webpages are still in transition, 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 2019 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. Is your agency leveraging or exploring any new technology to facilitate efficiency in its FOIA administration that you have not previously reported? If so, please describe the type of technology.

*Yes. The Agency has recently procured and is in the process of integrating an eDiscovery system, iConect-Xera, which allows the FOIA Requester Service Center to efficiently search all Agency email accounts and accelerate processing times by automatically removing duplicates from responsive 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 2019?

*Yes. The FEC successfully posted all four quarterly reports for Fiscal Year 2019.*

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 2020.

*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 2018 Annual FOIA Report and, if available, for your agency's Fiscal Year 2019 Annual FOIA Report.

[https://www.fec.gov/documents/1196/FOIA\\_annual\\_report\\_fiscal\\_year\\_2018\\_uUb5kic.csv](https://www.fec.gov/documents/1196/FOIA_annual_report_fiscal_year_2018_uUb5kic.csv)

[https://www.fec.gov/documents/2061/FOIA\\_annual\\_report\\_fiscal\\_year\\_2019.csv](https://www.fec.gov/documents/2061/FOIA_annual_report_fiscal_year_2019.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 2019 Annual FOIA Report and, when applicable, your agency's 2018 Annual FOIA Report.

### **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, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2019?

*No. In Fiscal Year 2019, the overall average number of days for the FEC to process simple requests was 54.8 days. The average number of days was higher than usual this fiscal year due to the closure of 47 backlogged cases from prior years.*

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2019 that were placed in your simple track.

*48.8 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 2018 and Fiscal Year 2019 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 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?

*Yes, the FEC's backlog did decrease. At the close of Fiscal Year 2019, the FEC had 51 backlogged FOIA requests, 21 fewer than the FEC had at the end of Fiscal Year 2018.*

6. If not, did your agency process more requests during Fiscal Year 2019 than it did during Fiscal Year 2018?

*Not applicable.*

7. If your agency's request backlog increased during Fiscal Year 2019, 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 2019. If your agency has no request backlog, please answer with "N/A."

*43.9 percent.*

## **BACKLOGGED APPEALS**

9. If your agency had a backlog of appeals at the close of Fiscal Year 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?

*Yes, the FEC's backlog did decrease. At the close of Fiscal Year 2019, the FEC had 1 backlogged FOIA appeal, eight fewer than the FEC had at the end of Fiscal Year 2018.*

10. If not, did your agency process more appeals during Fiscal Year 2019 than it did during Fiscal Year 2018?

*Not applicable.*

11. If your agency's appeal backlog increased during Fiscal Year 2019, 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.

*Not applicable.*

12. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2019. If your agency did not receive any appeals in Fiscal Year 2019 and/or has no appeal backlog, please answer with "N/A."

*100 percent.*

## **C. Backlog Reduction Plans**

13. In the 2019 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2018 was asked to provide a plan for achieving backlog reduction in the year ahead. Did you 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 2019?

*Not applicable.*

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2019, what is your agency's plan to reduce this backlog during Fiscal Year 2020?

*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 2018 and Fiscal Year 2019 when completing this section of your Chief FOIA Officer Report.

#### **OLDEST REQUESTS**

15. In Fiscal Year 2019, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2018 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 2018 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

*Eight 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.*

## TEN OLDEST APPEALS

18. In Fiscal Year 2019, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

*No.*

19. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2018 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

*Eight of the nine oldest appeals were closed by the end of the fiscal year.*

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 by 88% in Fiscal Year 2019.*

## TEN OLDEST CONSULTATIONS

21. In Fiscal Year 2019, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

*Not applicable. The FEC did not have any consultations pending at the end of Fiscal Year 2018.*

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 2018 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 2018.*

## 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 2020.

*The FEC closed eight out of its ten oldest pending requests; closing 47 of the 73 backlogged requests. The FEC also closed eight of its nine oldest appeals. 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 2019 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency’s efforts. The success story can come from any one of the five key areas. As noted above, OIP will highlight these agency success stories during Sunshine Week. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

*During the 2018 Fiscal Year, the Agency hired a dedicated FOIA Attorney and focused on closing out backlogged cases. Because of the allocation of resources toward the reduction of the Agency backlog, forty-seven (47) of the oldest backlogged cases for the Agency were closed in the last year decreasing the backlog by 64%. To further assist in clearing the Agency backlog, the Agency purchased a new eDiscovery system, iConect-Xera, which has allowed the Agency to process high volume cases more efficiently.*