

**U.S. Environmental Protection Agency**

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**U.S. Environmental Protection Agency  
Chief FOIA Officer Report for 2014  
(March 2013 – March 2014)**

The Agency continues to address the FOIA program improvements discussed in its 2012 Chief FOIA Officer Report, to ensure full implementation of the FOIA and the President's Memorandum on transparency and open government. As reported last year, the EPA Deputy Administrator convened a workgroup in July 2010 and charged it with conducting a review of the Environmental Protection Agency's Freedom of Information Act policies and practices. The workgroup reported to the Deputy Administrator in June 2011 that:

- Across-the-board policies and procedures needed to be updated or created to promote transparency;
- An expanding volume of electronic documents needed to be searched and provided to requesters because of the growing use of email;
- Integrated processing tools needed to efficiently manage FOIA processes; and
- Training is needed to improve overall understanding of FOIA requirements and improve management accountability.

EPA continues to implement the workgroup's recommendations with its renewed commitment to the workgroup's action plan. EPA made significant progress in meeting the charge by the Deputy Administrator to implement program improvements. Even with the government shutdown and staff furloughs, the agency successfully:

- Issued an interim FOIA policy and interim FOIA processing procedures;
- Established an implementation schedule for the 22 FOIA recommendations made by the FOIA Workgroup;
- Began quarterly reporting to the Deputy Administrator on the progress made in implementing the FOIA Workgroup recommendations;
- Developed progress reports and began quarterly reporting to Agency Deputy Assistant Administrators and Deputy Regional Administrators on the processing status of FOIA requests in their organizations;
- Delivered training to the Agency's FOIA coordinators, officers, employees and managers who make decisions on the release of documents; and
- Developed a new FOIA Intranet site that provides immediate access to FOIA guidance, management reports, tools and training courses.

The reduction in days worked did affect some of the commitments made in last year's report. Specifically, some scheduled training had to be canceled/rescheduled. EPA will

complete all training in FY14. Additionally, EPA had to adjust its goal of publishing its proposed FOIA regulations from December 31, 2014, to Q3 FY14.

Despite the loss in productivity from both the furloughs and the shutdown of the government, EPA is on schedule to provide FOIA training for all staff in FY 2014 with a focus on roles and responsibilities in responding to FOIAs, timeliness of responses, exemptions and discretionary releases. In addition to the commitments EPA made last year in its report, it is finalizing its interim FOIA procedures this fiscal year to ensure consistency of decision-making on the use of exemptions and consistency in the materials provided to FOIA requesters.

In addition to the above accomplishments, EPA implemented other recommendations made by the FOIA Workgroup, provided training for FOIAonline, worked with the Office of Inspector General on two reviews of the National FOIA program and successfully completed piloting its new suite of eDiscovery tools which will be used to manage complex FOIA requests.

EPA serves as the Project Management Organization (PMO) for the FOIAonline partnership. The Agency's primary responsibility, in this capacity, is to manage the system infrastructure on a day- to-day basis and provide support to partner agencies. The PMO also coordinates inter-agency responsibilities including planning and information exchange, providing staffing resources to support the governance structure and logistical and administrative support for FOIAonline meetings. The PMO also meets with other agencies interested in considering FOIAonline for their organizations and coordinates data migration, configuration, and training when an agency decides to join the FOIAonline partnership.

During the period of March 2013 through February 2014, three new agency partners implemented FOIAonline, i.e., US Customs and Boarder Protection, Pension Benefit Guaranty Corporation, and the Department of the Navy (including Naval and Marine operations). Together, these agencies receive an average of 64,000 FOIA requests per year bringing the overall average number of requests received by partner agencies to over 80,000 per year. During this reporting period, FOIAonline functionality was expanded to fully support receipt and processing of appeals, a Common Access Card for identify verification was implemented, reporting features were expanded and user requested features were added. In addition, EPA collaborated with the Department of Justice's Office of Information Policy to ensure the accuracy of the FOIA annual reports generated by system. In March 2014, FOIAonline will implement a rendering solution to support greater access to documents and records loaded in the system. The rendering solution will create an additional text layer to produce a PDF file for documents loaded into FOIAonline either by the public or the agency that will make these documents easier to search and more accessible to individuals who use screen readers.

## **Section I: Steps Taken to Apply the Presumption of Openness**

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.

*FOIA Training:*

**1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?**

**Answer:** Yes.

If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.

The agency FOIA Officer, in partnership with the Office of General Counsel, held six face-to-face trainings for staff and managers. These trainings, called *FOIA Boot Camps*, provided in-depth reviews of the FOIA process with a focus on procedures, exemptions and discretionary releases of records. The *Boot Camp* training materials were shared with all agency FOIA professionals, i.e., employees and contractors who have day-to-day FOIA responsibilities or interact with FOIA requesters on a regular basis. The agency also sponsored a FOIA training that was delivered by staff from the Department of Justice, Office of Information Policy, and was open to all employees. The training was provided live to employees in the Washington metropolitan area and via web broadcast to employees in other Agency locations across the country. The training is available on demand on the EPA FOIA Intranet site.

The agency FOIA Officer meets monthly with Regional FOIA Officers and Headquarter FOIA coordinators who are responsible for FOIA processing activities in their organizations. Trainings are provided during these meetings to ensure they have the knowledge and support to perform their duties. We estimate that most employees with regular FOIA responsibilities received training during this reporting period.

**2. Did your FOIA professionals attend any FOIA training during the reporting period such as that provided by the Department of Justice?**

**Answer:** Yes. EPA FOIA professionals attended trainings offered by the Department of Justice, the Office of Government Information Services, National Archives and Records Administration and the American Society of Access Professionals.

Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period.

**Answer:** EPA estimates that 80-90% of FOIA professionals attended substantive training during the reporting period.

- 3. OIP has issued guidance that every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year. Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year.**

**Answer:** EPA and the Department of Justice provided FOIA training to all agency FOIA professionals in September 2013. Furthermore, all FOIA professionals and managers were offered additional training in February 2014. This training focused on application of FOIA exemptions, redactions and discretionary disclosures. These trainings are posted to the FOIA Intranet and are available "on demand" and for future use. The Agency is also developing mandatory online FOIA training for all EPA employees and contractors that will be available at the end of FY 2014.

*Outreach:*

- 4. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement.**

**Answer: Answer:** Yes. The Federal government sought input on the Open Government National Action Plan 2.0 (NAP) from a range of Civil Society organizations. EPA representatives met with Civil Society organizations throughout the year as a part of the Agency's work with the White House the Global Open Government Partnership to create the on NAP 2.0 that contains a number of commitments tailored to improve, simplify and make FOIA processing more uniform across the federal government and to provide a consolidated request portal that allows the public to submit a request to any Federal agency from a single website and includes additional tools to improve the customer experience. EPA's interactions with Civil Society members also provide opportunities to receive feedback and insight from the requester community on EPA's FOIA program and FOIAonline as well as benefit from their comments on FOIA activities across the federal government. Furthermore, EPA FOIA professionals also regularly engage with FOIA requesters during the processing of their FOIA requests. These conversations provide opportunities for informal conversations in which requesters frequently provide feedback on what works well and areas on which to focus for improvement.

*Discretionary Disclosures:*

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

**5. Does your agency have a formal process in place to review records for discretionary release? If so, please briefly describe this process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases.**

**Answer:** Yes. In keeping with the policies of the Administration, EPA policy (excerpted below after the URL) requires that all records requested under FOIA be released unless an exemption applies and that exemption is mandatory or, for discretionary exemptions, the agency determines that harm would result from their disclosure ([http://www.epa.gov/foia/atermarkProcessing FOIA Requests.html](http://www.epa.gov/foia/atermarkProcessing%20FOIA%20Requests.html)).

*When processing a FOIA request, review records with a presumption of openness toward determining what can be disclosed, rather than what can be withheld. When full disclosure of a record is not possible, consider making a partial disclosure. Whether a release involves boxes of material, or only a few pages, it is important to remember that the increased transparency resulting from even a partial disclosure of records is worthwhile.*

- *Records cannot be withheld merely to protect public officials from embarrassment, or "because errors and failures might be revealed, or because of speculative or abstract fears." Rather, agencies should only withhold records, or portions of records, when they reasonably foresee that disclosure would harm an interest protected by one of the exemptions or when disclosure is prohibited by law".*
- *Documents protected by FOIA Exemptions 5, and parts of 7, are not statutorily exempt from release. Agency staff must use their judgment to make determinations for each document, guided by the "fundamental commitment to open government" that the Attorney General directed should be "realized in practice."*
- *In reviewing a record, the Agency must first ensure that any portion being considered for withholding fits all requirements of the exemption being considered. If the exemption applies, the Agency should then take the second step of determining whether to make a discretionary release of the record or portion of the record.*

- *For all records, the age of the document and the sensitivity of its content are universal factors that need to be evaluated in making a decision whether to make a discretionary release. Thus, the Agency should view each request with a presumption of openness, strive to maximize the amount of records released and aim to release portions of records when full release is not possible.*
- *The Agency should not withhold records merely because an exemption legally applies. For any document or portion of a document for which a discretionary release is possible, consider making such a release and withhold only if the agency reasonably foresees that disclosure would harm an interest protected by an exemption.*

**During the reporting period did your agency make any discretionary releases of otherwise exempt information?**

**Answer:** Yes.

**6. What exemptions would have covered the information that was released as a matter of discretion?**

**Answer:** Exemption 5 and parts of exemption 7.

**7. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.**

**Answer:** In keeping with the policies of the Administration, EPA policy requires that all records under FOIA be released unless an exemption applies and that exemption is mandatory or, for discretionary exemptions, the agency determines that harm that would result from their disclosure. At EPA, we receive a significant number of requests for information that is both internal to the agency and pre-decisional, thereby qualifying it as exempt from mandatory disclosure under FOIA exemption 5. Specific examples include requests for documents related to rulemakings or other significant actions. When responding to these requests, the agency works to make the discretionary release of many of these internal, pre-decisional documents, unless the agency articulates a harm that would result from their disclosure. Furthermore, EPA releases agency records in response to a FOIA request through FOIAonline unless these are special circumstances, such as a first party FOIA request seeking records about the requester.

FOIAonline allows the public direct access to all records released through prior FOIA requests.

Furthermore, during the reporting year, EPA launched many newly transformed topic-based websites under One EPA Web, which allows the public access to proactively released records including national topics such as:

- [Pollution Prevention Week](#)
- [Cleaning Up Our Land, Water and Air](#)
- [Green Chemistry](#)
- [Green Sports](#)
- [Protecting Pets from Fleas and Ticks](#)
- [Toxics Release Inventory](#)

And more regional topics, such as:

- [Bristol Bay Watershed Assessment](#)
- [Salish Sea Ecosystem Report](#)
- [San Joaquin Valley](#)

**8. If your agency was not able to make any discretionary releases of information, please explain why.**

**Answer:** N/A.

*Other Initiatives:*

**9. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014.**

**Answer:** Yes. All the quarterly FOIA reports were posted.

**10. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please provide links in your description.**

**Answer:** FOIA-related meetings and training sessions include a discussion on “openness” to ensure that all records are reviewed with a presumption of disclosure and that training is provided to attendees who must make these decisions. FOIAonline was launched and provides the public with easier access to FOIA requests and previously released records. EPA is fully committed to make all releases of records in response to a FOIA request available to the public, unless special circumstances apply, such as a first party FOIA request seeking records about the requester.

Additionally, all records reviewed by EPA in processing FOIA requests, follow the guidance set forth in an Agency-wide Memorandum on Transparency in EPA Operations, which clearly states that “all Agency personnel should ensure that the

principle of openness is applied to the extent possible when responding to FOIA requests." [http://epa.gov/foia/docs/Transparency\\_in\\_EPAs\\_Operations.pdf](http://epa.gov/foia/docs/Transparency_in_EPAs_Operations.pdf) Accordingly, records reviewed by EPA in processing FOIA requests and appeals are reviewed with this presumption in mind.

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

As the Attorney General emphasized in his FOIA Guidelines, "[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.

Describe here the steps your agency has taken to ensure that your management of your FOIA program is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

### *Personnel:*

During Sunshine Week 2012, OPM announced the creation of a new job series entitled the Government Information Series, to address the work performed by FOIA and Privacy Act professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

#### **1. Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series?**

**Answer:** No. (Please see question 3, below.)

#### **2. If not, what proportion of personnel has been converted to the new job series?**

**Answer:** None known to date.

#### **3. If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted?**

**Answer:** The agency FOIA Officer has been working with human resources staff to develop position descriptions that incorporate elements from the new job series, as appropriate. The process to complete this activity, including negotiations with the Agency's unions, is expected to be completed in early FY15.

### *Processing Procedures:*



- 4. For Fiscal Year 2013, did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.**

**Answer:** EPA's average processing time was 10.53 days. EPA is working to reduce the average processing time by reviewing resources allocated to support this activity. EPA is also establishing more oversight, including providing FOIA management reports to managers, and periodically reviewing its response rate through FOIAonline management reports.

- 5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.**

**Answer:** Yes. EPA tracks all referrals and consultations using FOIAonline. EPA electronically seeks input from other components and partner agencies on the releasability or other issues associated with requested records. FOIAonline automates the process for partner agencies and allows for easier document transfer, tracking and accountability.

*Requester Services:*

- 6. Do you use e-mail or other electronic means to communicate with requesters when feasible?**

**Answer:** Yes. EPA uses e-mail as well as FOIAonline to communicate with requesters. FOIAonline automatically provides requesters with a notice that their request has been received by the agency, allow requesters to check the status of and amend their requests via the system, and perform other tasks. Requesters are provided a link to responsive documents electronically via FOIAonline. All actions are automatically linked to the FOIA request in question. FOIAonline allows the Agency to communicate with requesters who have provided an email address through the application. These communications are maintained as records in FOIAonline. Furthermore, users who have established accounts in FOIAonline can communicate with the FOIA professional who is responsible for processing the request.

**Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?**

**Answer:** Yes. All appeal determinations issued by the Office of General Counsel contain OGIS contact information. EPA's Public Liaison also makes requesters aware of OGIS' role when contacted.

- 7. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc.**

**Answer:** In addition to the processing efficiencies delivered by FOIAonline, FOIA trainings, a new interim FOIA Policy and interim FOIA processing procedures, EPA's Deputy Administrator requested that the Office of Inspector General review the processes used by EPA to make fee waiver decisions. The OIG is completing its review and is developing its final report. The EPA identified an opportunity to improve our FOIA system by providing data on the operation of that system to the senior leaders of the agency. Beginning in 4<sup>th</sup> quarter of FY 2013, the EPA's FOIA Program began providing the senior leaders of all of the agency's 23 components with a quarterly report on FOIA requests within that leader's organization. For the first time, senior leaders at the EPA have at their fingertips regular data about their office's response to FOIA requests. These reports have generated senior-level attention on FOIA processing, thereby improving the EPA's response to FOIA requests.

### **Section III: Steps Taken to Increase Proactive Disclosures**

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Describe here the steps your agency has taken both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2013 to March 2014). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

*Posting Material:*

- 1. Do your FOIA professionals have a system in place to identify records for proactive disclosures?**

**Answer: Yes.** All records are reviewed with a presumption of disclosure. Please see discussion under Item 2, below.

- 2. If so, describe the system that is in place.**

**Answer:** EPA operates under the premise that most information should be made publically available and works to make proactive releases when appropriate. EPA also makes records released through FOIAonline available to the public through its on-line repository. Furthermore, the Agency regularly updates its website and the data sets available on Data.gov. EPA professionals always look to make records available to the public when it is deems there is a significant interest in the topic. This is done through EPA's Website. (See response to question 5, section I.)

**Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.**

**Answer:** In addition to news releases and environmental information and tips on how people can help to protect the environment, EPA has posted more than 165,000 records of responsive information to FOIA requests on FOIAonline since its launch on October 1, 2012. The Agency also posts frequently requested records to its regional and headquarters FOIA websites. Now that FOIAonline is fully implemented, nearly all responsive records are posted in FOIAonline and available to the public unless special circumstances apply. (See Section IV., question 3).

In the past year, EPA provided numerous other sources of information ranging from scientific studies to data sets posted on Data.gov. For additional information, visit <http://www.data.gov/list/agency/monthly/4/2013>.

*Making Posted Material More Useful:*

- 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, such as soliciting feedback on the content and presentation of posted material, improving search capabilities on the site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.?**

**Answer:** Yes.

- 4. If so, provide examples of such improvements.**

**Answer:** EPA is rebuilding its Internet site under the One EPA Web project, focusing on supporting audiences' top tasks with the most directly relevant content. One EPA Web provides easier access to information about environmental issues and the agency's work. EPA's website, epa.gov, is the Agency's primary interface for providing public access to environmental information. EPA's website is the interactive tool of choice for the delivery of information. In fact EPA Policy states: "The EPA website is a fundamental part of every Agency program; taken together, these pages are the foundation of the Agency's environmental outreach and communication program and serve as a primary mechanism for public engagement

in Agency activities.” The site conveys and amplifies the Agency’s mission, goals and work. It provides both opportunity and obligation to present timely information, data and interpretation to a globe-spanning audience.

EPA encourages aggressive use of EPA websites to allow and encourage the electronic conduct of Agency business. EPA websites shall communicate the fullest array of Agency information, including: general information, program actions and activities, regulations, data, science and educational materials. EPA also uses its diverse and growing set of social media channels to disseminate information beyond its own website, including news releases, tips on what people can do to protect the environment, inviting readers to contribute ideas, etc.

**5. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized?**

**Answer:** Through the restructuring of EPA’s website, EPA.gov, the agency will better meet the needs of web visitors by providing easier access to information about environmental issues and the agency’s work; improving EPA’s transparency and openness; providing a single, consolidated resource for priority topics; and creating more relevant content for specific audiences.

During the reporting year, EPA launched many newly transformed topic-based websites under One EPA Web, including national topics such as:

- [Pollution Prevention Week](#)
- [Cleaning Up Our Land, Water and Air](#)
- [Green Chemistry](#)
- [Green Sports](#)
- [Protecting Pets from Fleas and Ticks](#)
- [Toxics Release Inventory](#)

And more regional topics, such as:

- [Bristol Bay Watershed Assessment](#)
- [Salish Sea Ecosystem Report](#)
- [San Joaquin Valley](#)

EPA uses social media every day, publishing dozens of blog posts, tweets, Facebook posts, and other posts every month, including proactive disclosures. One specific example of a new offering launched during the reporting period is our leadership blog, [EPA Connect](#). For other social media, please see our [social media page](#).

**6. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.**

**Answer:** No.

**7. Describe any other steps taken to increase proactive disclosures at your agency.**

**Answer:** EPA continues to make proactive disclosures through its website, including its FOIA libraries.

**Section IV: Steps Taken to Greater Utilize Technology**

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the Internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. Over the past several years, agencies have reported widespread use of technology in receiving and tracking FOIA requests and in preparing agency Annual FOIA Reports. For 2014, as we have done over the past years, the questions have been further refined and now address different, more innovative aspects of technology use.

*Online tracking of FOIA requests:*

**1. Can a FOIA requester track the status of his/her request electronically?**

**Answer:** Yes.

**2. If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?**

**Answer:** FOIAonline provides the public with the ability to submit and track requests electronically. Once a request is made, the system immediately provides the requester with a tracking number. FOIAonline also allows the public to create FOIA logs and search for requests and records in the system. Non-system users are provided a tracking number in the acknowledgement letter sent by the Agency.

**3. Describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.**

**Answer:** FOIAonline allows a requester to create an account, which provides access to a dashboard of requests in the system. FOIAonline also provides the status of all pending requests that the requester and members of the public can see. The FOIAonline status categories are: submitted, evaluated, assigned, processed and

closed. Additionally, when requesters have accounts, they are automatically provided electronic notices when their request moves from one processing stage to another. When responsive records are released, the records are posted to the FOIAonline repository and a link to their location is provided to the requester unless the volume of records is very large and converting to e-format is not practicable or if the documents are subject to special handling such as those for controlled unclassified information.

**4. In particular, does your agency tracking system provide the requester with an estimated date of completion for his/her request?**

**Answer:** Yes. FOIAonline provides requesters with the statutory response date, however, agency personnel are able to modify that date and provide the requester with a new estimated completion date through the system.

**5. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability? If not, please explain why.**

**Answer:** N/A.

*Use of technology to facilitate processing of requests:*

**6. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?**

**Answer:** Yes.

**If so, describe the technological improvements being made.**

**Answer:** EPA has deployed a number of technologies to improve FOIA efficiency. First, EPA began to deploy sophisticated electronic discovery tools to improve the agency's ability to search, collect, de-duplicate, review and redact FOIA requests that involve large volumes of electronic records, and/or span multiple geographic locations, and/or involve issues with agency-wide implications. Second, EPA's use of FOIAonline provides a number of efficiencies. FOIAonline automatically tracks FOIA requests submitted or uploaded into the system. It posts information released under a FOIA request, which previously had to be uploaded by agency staff for public access. FOIAonline also enables partner agencies to share and track documents needed for consultations and referrals. Finally, FOIAonline will be enhanced in FY2014 to allow agencies to be able to pre-populate information about frequent requesters.

**7. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program?**

**Answer:** Yes. Although FOIAonline is compliant with Section 508 of the Americans with Disabilities Act, requests and attachments submitted by requesters are usually not. FOIAonline will be enhanced in March 2014 to provide agencies with a tool to assist in making all system documents compliant with Section 508.

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

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section 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 those contained in the specified sections of your agency's 2013 Annual FOIA Report and, when applicable, your agency's 2012 Annual FOIA Report.*

***Simple Track Requests:***

**1. 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.**

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

**Answer:** Yes.

b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?

**Answer:** The average number of processing days was 27.

c. If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?

**Answer:** N/A. EPA tracks simple requests separately.

***Backlogs and "Ten Oldest" Requests, Appeals and Consultations:***

2. **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. 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 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.**

Backlogs

- a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012?

**Answer:** The FY12 backlog was 468 and the FY13 backlog is 1,265. EPA's believes that several factors contributed to the increase in the number of backlogged FOIA requests. The sheer complexity and size of requests and the change in how the Agency calculates its backlog numbers are the primary factors. EPA did not previously count a request to be in the backlog if an extension was granted by the requester. During DOJ's testing of FOIAonline reporting functionality, it was noted that any request pending at an agency for more than 20 working days, or additional 10 days if taken for unusual circumstances, regardless of an extension, is considered backlogged. This definition does not distinguish between requests of varying complexity. For example, in FY 2012 the EPA processed a FOIA request that required the agency to review over 1.5 million collected documents of which 250,000 documents were deemed potentially responsive and ultimately processed more than 50,000 documents for production. Despite the clear impossibility of completing this request within the initial statutory timeline, under the approach used in today's report the EPA would count such a response as "backlogged." While this particular request is an extreme example, it demonstrates how the agency's response, while technically "backlogged" under these criteria, is still appropriate.

Other factors such as EPA's mandatory 47 furlough hours and the work in anticipation of the government shutdown also contributed to our increasing backlog. EPA employees were one of the hardest hit agencies by the mandatory furlough hours.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?

**Answer:** No. The increase was primarily due to the number of new appeals received, the complexity of the appeals and the mandatory furlough days.



### Ten Oldest Requests

- c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?

**Answer:** The EPA closed eight of our ten oldest requests.

- d. 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 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed two of them, you should note that you closed two out of seven "oldest" requests.

**Answer: Eight.** The other two oldest requests have now been closed.

### Ten Oldest Appeals

- e. In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?

**Answer:** EPA closed nine of the ten oldest appeals from the 2012 FOIA Annual Report.

- f. If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C. (5) of your Fiscal Year 2012 Annual FOIA Report.

**Answer:** EPA closed nine of the ten oldest appeals from the 2012 FOIA Annual Report. EPA plans to close the remaining tenth appeal in Q3 FY 2014. EPA closed 182 appeals during FY2013 and reported 83 appeals in Section VI.C. (5) of the FY12 Annual FOIA Report.

### Ten Oldest Consultations

- g. In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012?

**Answer:** Yes.

- h. If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report.

**Answer:** N/A.

*Reasons for Any Backlogs:*

- 3. If you answered “no” to any of the questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:**

Request and/or Appeal Backlog

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals?

**Answer:** Yes. As previously stated, the sheer complexity and size of requests and appeals contributed to both increases.

- b. Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff?

**Answer:** Yes. During the reporting period, the EPA was impacted by a loss of staff, furloughs related to the Budget Control Act, and the government shutdown. First, there were several temporary vacancies that arose in both our headquarters and regional offices. Due to funding limitations imposed by the Budget Control Act, the EPA was forced to implement hiring restrictions – either freezes in all hiring or hiring at a rate less than one to one (three departures for every hire, for example) – for much of the reporting period. Second, every employee of the EPA was required to take 47 hours of uncompensated furlough during the reporting period while not all agency employees have FOIA responsibilities, all agency employees – including all employees with FOIA responsibilities – were furloughed for nearly six days during the reporting period. Third, during the shutdown of the government, EPA employees were legally prohibited from working on FOIA-related matters.

- c. Was the lack of a reduction in the request and/or appeal backlog caused by an increase in the complexity of the requests received?

**Answer:** Yes.

- d. What other causes, if any, contributed to the lack of a decrease in the request and/or appeal backlog?

**Answer:** See answer to 3.b above. EPA employees were required to take 47 hours of furlough during FY 13 due to the budget sequester, in addition work in anticipation of the government shutdown also contributed to our increasing backlog.

“Ten oldest” Not Closed

Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012.

**Answer:** EPA successfully closed eight of the ten oldest requests, nine of the ten oldest appeals, and the ten oldest consultations during this reporting period. EPA has now successfully closed all ten of the oldest requests from the FY12 annual report. During the fiscal year, the Agency worked diligently on processing FOIA appeals, including its ten oldest appeals. However, resources for processing FOIA appeals were limited due to increased FOIA litigation as well as in the Agency's push to improve the FOIA process overall. Finally, the impacts described in section 3.b also affected the agency's FOIA program.

- e. If your agency was unable to close any of its ten oldest requests or appeals 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.

**Answer:** N/A

*Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:*

Given the importance of these milestones, it is critical that Chief FOIA Officers assess the causes for not achieving success and create plans to address them.

- 4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2014.**

**Answer:** EPA has now closed its 10 oldest requests and consultations during the Chief FOIA Report reporting period. However, due to the volume of FOIA litigation, EPA was unable to close the 10 oldest appeals. The Office of General Counsel has committed to focusing on appeal determinations this FY and anticipates closing the one remaining appeal from the 10 oldest appeals identified in our previous report before the end of FY 14.

- 5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency's plan for achieving backlog reduction in the year ahead.**

**Answer:** To increase accountability and better manage FOIA administration across the agency, the Chief FOIA Officer began providing quarterly FOIA management reports to all senior managers in Q4 FY13 that provide processing statistics for their organizations. These statistics include the number of requests that are overdue.

Managers are using these reports to assure that adequate resources are allocated to their FOIA administration responsibilities. EPA is also mandating FOIA training for its FOIA professionals along with exploring the acquisition of redaction tools that will help FOIA staff process responsive records more quickly.

*Interim Responses:*

OIP has issued guidance encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information.

**6. Does your agency have a system in place to provide interim responses to requesters when appropriate?**

**Answer:** Yes. FOIAonline allows EPA to make interim releases, as necessary.

**7. If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.**

**Answer:** Approximately 5% of all backlogged requests received interim responses.

**Use of FOIA's Law Enforcement "Exclusions"**

In order to increase transparency regarding the use of the FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to "treat the records as not subject to the requirements of [the FOIA]," 5 U.S.C. § 552(c) (1), (2), (3), please answer the following questions:

**1. Did your agency invoke a statutory exclusion during Fiscal Year 2013?**

**Answer:** No

**2. If so, what was the total number of times exclusions were invoked?**

**Answer:** N/A.

**Spotlight on Success**

Out of all the activities undertaken by your agency since March 2013 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, these agency **success stories** will be highlighted during Sunshine Week by OIP. 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 a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

**Answer:** FOIAonline is a multi-agency fee-for-service web-application enabling the public to submit FOIA requests to participating agencies, track the progress of an agency's response to a request, search for information previously made available, generate up-to-the-minute reports on FOIA processing, and create an account to manage requests, searches, and appeals. The system also enables partner agencies to receive, manage, track and respond to FOIA requests, store records in a repository, generate reports (e.g., annual FOIA report submitted to the Department of Justice), communicate with requestors and manage FOIA case files as electronic records.

FOIAonline was built for \$1M on an existing platform avoiding millions in start-up costs. Furthermore, costs to operate *FOIAonline*, total approximately \$0.75M for all partner agencies, a fraction of the cost for a comparable stand-alone system.

The public appears to have embraced *FOIAonline*. Since the launch of FOIAonline EPA processed/processing over 18,000 FOIA requests, posted more than 168,000 records, handled over 400 appeals, and handled more than 70 referrals through *FOIAonline*. Numerous non-governmental groups and individuals have expressed support for *FOIAonline*.