

# 2022 Chief FOIA Officer Report

## National Archives and Records Administration

Gary M. Stern, General Counsel and Chief FOIA Officer

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### 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?

**Answer: Yes**

2. Please provide the name and title of your agency's Chief FOIA Officer.

**Answer: Gary M. Stern, General Counsel**

#### 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.

**Answer: Yes. Annual training is provided as part of the mandatory training for all of NARA. Furthermore, FOIA personnel were encouraged to attend OIP and American Society of Access professionals (ASAP) virtual training offerings through the Chief FOIA Officers's Council.**

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?

**Answer: Yes**

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

**Answer:**

- DOJ, OIP B6 and B7 training
- DOJ, OIP Virtual Best Practices for FOIA Programs in the Intelligence Community
- DOJ, OIP Virtual Best Practices FOIA Administration During the Pandemic
- FOIA at the Presidential Libraries (at NARA.)
- Annual National Training Conference – American Society of Access Professionals (ASAP): The program combines “nuts & bolts” training topics with the thought-provoking and practical issues associated with FOIA and Privacy Act processing and requesting as well as records management. A special feature of the program is breakout sessions for individual agencies that give participants a unique opportunity for questions and answers as they pertain to their own agency policies.
- FOIA, Appeals & Litigation at NARA
- FOIA Professionals Continuing Education: Advanced training on specific components of the FOIA, new court decisions, and successful implementation of other agency best practices.
- FOIA Litigation Seminar: Guidance on successful litigation strategy, advanced litigation considerations, and details on the preparation of Vaughn Indices and declarations
- FBI briefing on their FOIA Program and training on how they handle certain exemptions, in particular (b)(7)(D)
- EPA briefing on their FOIA Program and training on how they handle (b)(4)
- FOIA Review Master Classes (internal training):
  - Exemption (b)(7)(F)
  - Exemption (b)(3) 10 USC 130a - Technical military and space data and 22 USC 2778 - Arms Export and ITAR
  - Exemption (b)(3) 41 USC § 4702 (formerly 41 U.S.C. § 253b(m)(1)) - Contractor proposals and 42 USC 2102 - Procurement Integrity Act
  - Exemption (b)(9)
  - 18 U.S.C. §§ 2510, et seq. (Title III of the Omnibus Crime Control and Safe Streets Act)
  - Exemption (b)(3) Exemption (b)(7)(D)
  - Exemption (b)(6)
  - Exemption (b)(7)(E)
  - Exemption (b)(3) 8 U.S.C. § 1202(f) (Immigration and Nationality Act)
  - Exemption (b)(3) 54 U.S.C. § 307103 - Historic Preservation - Miscellaneous; 54 U.S.C. § 100707- Confidentiality of information; 16 U.S.C. § 470 (Archeological Resources Protection Act of 1979)
  - Exemption (b)(3) - 18 USC 3123(d), Nondisclosure of Existence of Pen Register or a Trap and Trace Device
  - Exemption (b)(3) 6 USC 673(a)(1)(a), The Critical Infrastructure Information Act of 2002
  - Exemption (b)(3) - 10 USC 424 - DIA, NGA, NRO
  - Exemption (b)(3) 50 U.S.C. § 4820(h) Export Control - Confidentiality of Information
  - Exemption (b)(3) - 31 USC 5319, The Bank Secrecy Act

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.

**Answer; 95%**

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.

**Answer: N/A, NARA exceeded 80%**

8. Did the personnel at your agency who have FOIA responsibilities attend training in federal records management during this reporting period?

**Answer: Yes. Due to the nature of NARA's mission, all NARA staff must complete mandatory training regarding records management.**

C. Outreach

9. Did your FOIA professionals engage in any outreach or dialogue, outside of the standard request process, with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

**Answer: Yes. The Archivist of the United States ("Archivist") has continued the Freedom of Information Act ("FOIA") Advisory Committee ("Committee") in May 2020 to obtain advice on improvements to the FOIA and study the current FOIA landscape across the Executive Branch. The Committee is subject to the Federal Advisory Committee Act, and allows the public an opportunity to ask questions and provide comments. (See <https://www.archives.gov/ogis/foia-advisory-committee>)**

**The Archivist, the General Counsel/Chief FOIA Officer, and other NARA senior officials have regular meetings and conversations with representatives of the requester community to discuss issues related to access to records at the National Archives, including access through the FOIA.**

D. Other Initiatives

10. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe:

how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and

if senior leaders at your agency received a briefing on your agency's FOIA resources, obligations and expectations during the FOIA process?

**Answer: NARA's Chief FOIA Officer has included an agency-wide basic FOIA training module that is part of a broader basic training requirement for all NARA employees within NARA's Learning Management System (LMS). This training is mandatory, and must be completed annually. Furthermore, the training is reviewed every year in order to focus on specific components of the FOIA.**

11. 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.

**Answer: Through its core statutory mission, NARA proactively makes the vast majority of its archival records available to the public without the need to file a FOIA request. Furthermore, due to the age of most of the records in the National Archives, NARA**

**routinely makes discretionary releases in the processing of access requests to our archival holdings. NARA's holdings are described in the National Archives Catalog (see <http://www.archives.gov/research/catalog/>).**

## **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 2021, 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 2021 Annual FOIA Report.

**Answer: 5 days**

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 2021 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.

**Answer: N/A**

3. The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within 180 days. In 2016, OIP issued Guidance for Agency FOIA Regulations and the accompanying Template for Agency FOIA Regulations to assist agencies in updating their regulations in accordance with the statute. 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?

**Answer: Yes. However, NARA is preparing to update our regulations in light of new Supreme Court rulings on exemptions.**

4. Standard Operating Procedures (SOPs) generally document your agency's internal processes for administering the FOIA beyond your FOIA regulations and FOIA Reference Guide. As noted in OIP's guidance, having SOPs can improve the consistency and quality of an agency's FOIA process. SOPs can also serve as a significant resource for incoming FOIA professionals and a way to preserve much of the agency's institutional knowledge on administering the FOIA from how to handle requests from start-to-finish, to identifying and making proactive disclosures, to maintaining a FOIA website. Does your agency have up-to-date internal SOPs for your FOIA administration?

**Answer: Yes. NARA's offices that process FOIA requests have separate SOPs. Each office reviews their SOPs on an annual basis.**

5. If not, please provide a timeline for when your agency plans to develop or update its SOPs.

**Answer: N/A**

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

**Answer: FOIA is not required to obtain access to archival records that are already open to the public.**

7. If yes, please provide examples. If no, please explain if such opportunities exist at your agency and whether there are any challenges in establishing alternative means of access.

**Answer: Examples of NARA's program to make federal records available to the public can be seen in the [NARA Catalog](#).**

8. Did your agency conduct a self-assessment of its FOIA administration during the reporting period? If so, please describe the self-assessment methods used, such as analyzing Annual Report or raw data, using active workflows and track management, reviewing and updating processing procedures, etc. In addition, please specifically highlight any data analysis methods or technologies used to assess your agency's FOIA program.

**Answer: NARA did not conduct a self-assessment of its FOIA program in FY 2021; however the Chief FOIA Officer required all of the NARA FOIA program offices to complete the OIP FOIA Self-Assessment Toolkit in FY 2020. The accumulated data was then utilized by the Chief FOIA Officer as he conducted FOIA Management Oversight Reviews of NARA's FOIA program offices.**

9. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2021 (please provide a total number or an estimate of the number).

**Answer: Estimate of 2,084.**

10. Has your agency reviewed its FOIA-related staffing capabilities to identify resources needed to respond to current and anticipated FOIA demands?

**Answer: Yes. As part of the Chief FOIA Officer's call to the processing offices for data for the FOIA Self-Assessment Toolkit, an evaluation and assessment of staffing needs was requested, and supplied.**

11. Optional -- Please describe:

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

Any challenges your agency faces in this area.

**Answer: The Chief FOIA Officer is committed to conducting annual FOIA management oversight reviews of the NARA FOIA program offices. This internal review will help reveal best practices and also any gaps in processing FOIAs across all of the agency.**

### **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. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

**Answer: Releasing records to the public is a mainstay of NARA's core mission, and the Chief FOIA Officer has been reviewing the Office of Government Information Services (OGIS) report on posting to agency webpages to improve NARA's FOIA programs. One plan for FY 2022 - 2023 is to focus on publishing FOIA Logs on a quarterly basis.**

**Another pilot effort sets up collaboration between an archival processing office and a FOIA processing office to search for series of records to be proactively reviewed and released.**

**Furthermore, another program to with the goal expand review of accessioned records when a folder has been requested under FOIA. The plan is to review the whole box proactively.**

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

**Answer: Records Related to the Request for Presidential Records by the House Select Committee to Investigate the January 6th Attack on the United States Capitol; Records Relating to the Archivist's Task Force on Racism; 2020 Presidential Election Unofficial Certificates submitted to The Office of the Federal Register.**

**The following records were processed and placed in NARA's Catalog proactively based on a collaborative process between two NARA offices (see Success Stories):**

**PRP 11: <https://catalog.archives.gov/id/154934516>**

**PRP 14: <https://catalog.archives.gov/id/160916819>**

**PRP 15: <https://catalog.archives.gov/id/160916866>**

**(In order to access the records you have to click on the link next to "Includes:" to see the files that were uploaded to the catalog. Ex. PRP 15 you would click on "187 item(s) described in the catalog")**

3. Does your agency disseminate common types of material outside of FOIA, including in online databases where the public may access them? If yes, please provide examples and, if applicable, statutory authority.

**Answer: Yes. Through its core statutory mission, NARA proactively makes the vast majority of its archival records available to the public without the need to file a FOIA request. Furthermore, due to the age of most of the records in the National Archives, NARA routinely makes discretionary releases in the processing of access requests to our**



**archival holdings. NARA's holdings are described in the National Archives Catalog (see <http://www.archives.gov/research/catalog/>).**

4. 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?

**Answer: Yes. NARA publishes electronic finding aids and summary descriptions on various series in our holdings. The finding aids and descriptions are made available on [www.archives.gov](http://www.archives.gov) with references to available documents. The goal of this effort is to provide more context to released materials and provide immediate access to records not available yet in the National Archives Catalog.**

5. 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.

**Answer: NARA's Strategic Plan 2018-2022 (see [Strategic Plan 2018-2022 | National Archives](#)) notes in Strategic Goal 1: Make Access Happen, that "we are instead making access happen by delivering increasing volumes of electronic records to the American public online, using flexible tools and accessible resources that promote public participation."**

**One example is NARA's Citizen Archivist Program (see [Citizen Archivist | National Archives](#)) in which the public can contribute to the National Archives Catalog by tagging, transcribing and adding comments to our records, making them more accessible and searchable.**

**Another example is specific records collated to cover various topics of interest to the public are published on NARA's main webpage. The month of February NARA focused on African American History (see [African American History | National Archives](#). Or The Flu Pandemic of 1918 (see [The Flu Pandemic of 1918 | National Archives](#)).**

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

**Answer: Yes. The majority of records that are disclosed proactively at NARA are the result of Research Services, Legislative Archives, and the Presidential Libraries. Each of these offices post records through the National Archives Catalog, or on their respective webpage.**

Optional -- Please describe:

Best practices used to improve proactive disclosures

Any challenges your agency faces in this area

**Answer: Through its core statutory mission, NARA proactively makes the vast majority of its archival records available to the public without the need to file a FOIA request. Furthermore, due to the age of most of the records in the National Archives, NARA routinely makes discretionary releases in the processing of access requests to our archival holdings. NARA's holdings are described in the National Archives Catalog (see <http://www.archives.gov/research/catalog/>).**

Releasing records to the public is part of NARA's core mission, and we have made digitizing our paper records a key strategic goal. However, due to the massive volume of our archival records, NARA cannot digitize everything by itself. Therefore, in accordance with NARA's Digitization Strategy, NARA is digitizing our holdings using a five-prong approach: Partnerships, Crowd Sourced Digitization, Agency Transfers, Culture of Digitization, and NARA Digitization Projects. (See <http://www.archives.gov/digitization/pdf/digitization-strategy-20152024.pdf>.)

## 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 describes your agency's efforts in this area.

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

**Answer: As part of our continued efforts to maximize our use of existing technologies, we explored ways to improve two of the systems we use to process FOIA requests for archival records (ADRRES and URTS). For example, we hope to develop a personally identifiable information finder (PII Finder) for use during FOIA document review. During the pandemic, our archival FOIA reviewers began using Adobe DC Pro to redact remotely. This software has allowed our staff to perform mission-critical work in our efforts to improve quality control and to work remotely.**

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program.

**Answer: We implemented a temporary FOIA case tracking system to generate temporary case numbers for FOIA requests received during the pandemic. The temporary case numbers are being replaced with permanently assigned numbers when staff are able to report onsite.**

3. 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?

**Answer: Various FOIA units have assigned web teams that maintain internet content. These staff have undergone training and continuously coordinate with NARA's Office of Innovation to follow established protocols and best practices. Webteam members update content and ensure easy access when it comes to navigating NARA's online content.**

4. Did all four of your agency's quarterly reports for Fiscal Year 2021 appear on your agency's website and on FOIA.gov?

**Answer: Yes**



5. 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 2022.

**Answer: N/A**

6. 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 2020 Annual FOIA Report and, if available, for your agency's Fiscal Year 2021 Annual FOIA Report.

**Answer:** <https://www.archives.gov/files/foia/nara-foia-raw-foia-data-fy20.xlsx>

<https://www.archives.gov/files/foia/reports/nara-foia-raw-date-fy21.xlsx>

7. Optional -- Please describe:

Best practices used in greater utilizing technology

Any challenges your agency faces in this area

**Answer: NARA has acquired an eDiscovery tool to help respond to special access requests from Congress for Trump presidential records.**

## **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 2020 and 2021 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?

**Answer: 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 2021?

**Answer: No**

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2021 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.

**Answer: 92.28%**

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?

**Answer: N/A. NARA tracks simple requests.**

## B. Backlogs

When answering these questions, please refer to your Fiscal Year 2021 Annual FOIA Report, Sections XII.D-E, which compare the numbers of requests and appeals received, processed, and backlogged between Fiscal Years 2020 and 2021.

### BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2021, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2020?

**Answer: NARA's backlog increased by over 5,000 requests. This is a direct result of our facilities being closed during most of the reporting time period. Now that NARA has partially staffed all of our facilities, employees are logging in many additional backlogged FOIAs. As of this report NARA has a backlog of approximately 10,000 FOIAs.**

6. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2021 than it did during Fiscal Year 2020?

**Answer: No. NARA processed 25,721 requests in 2020 and 6867 requests in 2021. Note that the discrepancy in processed FOIAs is solely due to the COVID-19 pandemic.**

7. If your agency's request backlog increased during Fiscal Year 2021, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

An increase in the number of incoming requests.

A loss of staff.

An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.

Impact of COVID-19 and workplace and safety precautions

Any other reasons – please briefly describe or provide examples when possible.

**Answer: The increase in NARA's backlog is partly attributed to COVID-19. NARA's facilities were closed to staff or allowed to operate with only a skeletal staff for most of the**

**reporting period, such that FOIA requests for records that could only be accessed at the facility could not be answered in a timely manner. Furthermore, the consolidation of all classified Presidential records to the National Declassification Center has been halted due to the pandemic which delays the processing of those records requested. Another contributing factor is NARA received an increased number of FOIA lawsuits, resulting in staff being reassigned from working complex FOIA requests to work on the litigation cases.**

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 2021. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A."

**Answer: Backlog is 56.55% of total FOIA requests received.**

#### BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2021, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2020?

**Answer: No, NARA's appeal backlog stayed the same at 99.**

10. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2021 than it did during Fiscal Year 2020?

**Answer: No, NARA received 54 appeals and closed 49 appeals.**

11. If your agency's appeal backlog increased during Fiscal Year 2021, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

An increase in the number of incoming appeals.

A loss of staff.

An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.

Impact of COVID-19 and workplace and safety precautions.

Any other reasons – please briefly describe or provide examples when possible.

**Answer: One contributing factor to the growth of the appeal backlog is the complexity of the requests. Many of the appeals were for classified archival records that were created by other agencies. All classified cases are referred to the creating agency for review and declassification determination. Another contributing factor is the COVID-19 pandemic, since so many of NARA's facilities were closed to the staff and therefore FOIA appeals that relate to records located at the facility could not be answered in a timely manner.**

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 2021. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2021 and/or has no appeal backlog, please answer with "N/A."

**Answer: 183%**

### C. Backlog Reduction Plans

13. In the 2021 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2020 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 2021?

**Answer: No, NARA was unable to implement a backlog reduction plan for the three archival program offices that comprise the vast majority of NARA's FOIA backlog due to resource limitations with respect to both staff and technology, as well as the closing of our facilities for part of the year due to the Covid-19 Pandemic. As OIP noted in 2018, "agencies' backlogs may increase due to circumstances outside of their control. Many agencies strive to respond to significantly more requests received while relying on the same amount of (or, in some instances, fewer) experienced FOIA staff. As the number of requests received across the government continues its upward trend, many agencies reach a point at which, despite their best efforts to streamline processing and leverage technology, their backlog will nevertheless increase."**

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

**Answer: In light of the Covid-19 Pandemic, virtually all of NARA's facilities remain closed in the first half of FY 2022, which is resulting in an increase in our backlogs. Once we are able to return to our buildings, we will be able to assess the extent of the backlog and consider options for addressing it.**

### 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 2020 and Fiscal Year 2021 when completing this section of your Chief FOIA Officer Report.

#### OLDEST REQUESTS

15. In Fiscal Year 2021, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2020 Annual FOIA Report?

**Answer: 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 2020 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

**Answer: NARA did not close any of the 10 oldest cases in FY 21. A number of NARA's oldest cases were requests for classified archival records that were created by other agencies. All classified cases were referred to the creating agency for review and declassification determination. Due to COVID-19 and the closure of buildings to staff, the other remaining open cases could not be closed.**

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

**Answer: Due to the pandemic, NARA has not been able to make much progress in reducing the overall age of our pending requests.**

#### TEN OLDEST APPEALS

18. In Fiscal Year 2021, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2020 Annual FOIA Report?

**Answer: 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 VI.C.(5) of your Fiscal Year 2020 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

**Answer: In FY 21, NARA did not close any of its ten oldest appeals. NARA's oldest appeals are all for classified archival records that were created by other agencies, which have to be sent out for consultation with these agencies. The agencies have not yet responded.**

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

**Answer: In FY 2021, staff continued its practice of identifying simple and ready to close appeals within its backlog to more complex appeals or appeals awaiting outside review. Using these distinctions, NARA was able to focus its efforts on closing any outstanding simpler appeals as well as older, more complex appeals that were ready to close. Staff also closed all incoming appeals that were simple and ready to close. NARA's appeal backlog did not grow.**

#### TEN OLDEST CONSULTATIONS

21. In Fiscal Year 2021, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2020 Annual FOIA Report?

**Answer: Yes**

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

**Answer: N/A**

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 2020.

**Answer: A number of NARA's ten oldest FOIA requests were for classified archival records that were created by other agencies, and are therefore waiting on consultations to other agencies for their declassification decisions. NARA has assigned an employee in the National Declassification Center and the Presidential Libraries to track the ten oldest requests and to regularly contact those agencies that are slow in making their determinations. In addition, even though NARA is the appeal authority for FOIA requests of archival records that contain classified national security information instead of the agency with the classification equity, NARA does not have the authority to declassify the information contained in our classified holdings. All FOIA requests and appeals that involve classified information require consultations with the creating/originating agency, and often with multiple other agencies/components. This process inevitably adds to the time needed for the review and processing of requests and appeals for the withholding of classified information. During the pandemic, agencies were unable to respond to our requests for consults in a timely manner. Nor were NARA staff able to process FOIAs or consultation returns while the buildings were closed due to COVID-19.**

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.

**Answer: The following three of the ten oldest are out on consultation:**

<b>Case Number</b>	<b>Initial Date</b>	<b>Sent Consult</b>	<b>Last Contact</b>
<b>F05-001</b>	<b>12/20/2004</b>	<b>Unknown</b>	<b>2/19/2020</b>
<b>F05-002</b>	<b>12/20/2004</b>	<b>Unknown</b>	<b>2/19/2020</b>
<b>F05-003</b>	<b>12/20/2004</b>	<b>Unknown</b>	<b>2/19/2020</b>

**\*Note: the sent consult date is currently "unknown" because the information is stored in closed facilities.**

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 2022.

**Answer: NARA will continue to press those originating agencies that possess the classification equities to complete the declassification review of the remaining records**



**responsive to each request or appeal, including by contacting the Chief FOIA Officer of each agency. NARA has completed a Backlog Reduction Plan that addresses how NARA transmits, and receives back, classified records requiring referral for FOIA and Mandatory Declassification Review (MDR) to and from agencies which would significantly improve both the response time and document accountability.**

#### F. Success Stories

Out of all the activities undertaken by your agency since March 2021 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, 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 key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

#### ~~Section 1: Steps Taken to Apply the Presumption of Openness~~

**Answer: The Electronic Records Division (RRE) and Special Access and FOIA Program (RF) collaborated on a project to proactively review unclassified, restricted records and upload them to the National Archives Catalog. RRE identified multiple series of unclassified, but restricted, accessioned electronic records of moderate-to-high research interest and provided copies to RF for review. RF created project tracking spreadsheets, reviewed the records for access restrictions, and created public access copies of records for upload to the Catalog. RRE then uploaded the public access copies to the catalog. Records from four series are now fully accessible in the Catalog and several more are ready for final processing and upload.**