



# NATIONAL ARCHIVES

**FISCAL YEAR 2024**

**Chief FOIA Officer Report**

**Gary M. Stern, General Counsel and Chief FOIA Officer**

**March 1, 2024**

## Section I: FOIA Leadership and Applying the Presumption of Openness

The guiding principle underlying the Attorney General's 2022 [FOIA Guidelines](#) is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

### A. Leadership Support for FOIA

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. See 5 U.S.C. § 552(j)(1) (2018). Is your agency's Chief FOIA Officer at or above this level?

**A. Yes**

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

**A. Gary M. Stern, General Counsel. Mr. Stern is also the Chief FOIA Officer, Senior Agency Official for Privacy, and Senior Agency Official for Controlled Unclassified Information**

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

**A. The National Archives and Records Administration's (NARA) recent [Strategic Plan 2022-2026](#) states in section 1.4: "By FY 2026, 95 percent of customer requests will be ready within the promised time. NARA strives to promote public access by providing consistent, reliable, and reputable service in response to customer requests. NARA provides service to a variety of public and federal agency customers. This objective is a weighted average of NARA's average response time when: furnishing items in public research rooms, responding to reference requests by email and mail, providing veterans and their families with copies of military separation documents (DD-214), and responding to Freedom of Information Act (FOIA) requests from the public."**

### B. Presumption of Openness

4. The Attorney General's 2022 FOIA Guidelines provides that "agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions." Does your agency provide such confirmation in its response letters?

**A. Yes, although not in all of NARA's FOIA program offices. However, NARA has always considered public releases under a "foreseeable harm" standard, even prior to the creation of the Freedom of Information Act statute.**

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interested protected by a FOIA exemption. This is commonly referred to as a *Glomar* response. If your agency tracks Glomar responses, please provide:

- the number of times your agency issued a full or partial *Glomar* response (separate full and partial if possible);

**A. NARA does not track Glomar responses in a formal manner. Due to the infrequent use of the Glomar, NARA notes the use in the case file only.**

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

**A. N/A**

6. If your agency does not track the use of Glomar responses, are you planning to track this information in the future?

**A. NARA is currently investigating a FOIA tracking system that utilizes modular FOIA components. This application would be used across the agency and would capture such data.**

7. Optional -- If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

**A. 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 and digitized content accessed in the National Archives Catalog (see <http://www.archives.gov/research/catalog/>).**

## **Section II: Ensuring Fair and Effective FOIA Administration**

The Attorney General's 2022 [FOIA Guidelines](#) provide that “[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of FOIA obligations by the entire agency workforce.” The Guidelines reinforce longstanding guidance to “work with FOIA requesters in a spirit of cooperation.” The Attorney General also “urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency’s FOIA administration” as part of ensuring fair and effective FOIA administration.

### **A. FOIA Training**

1. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

**A. Annual training is provided as part of the mandatory training for all NARA staff. Furthermore, FOIA personnel are strongly encouraged to attend OIP and Non Government Organizations training offerings through the Chief FOIA Officers Council.**

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

**A. Yes.**

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

A.

- **Department of Defense virtual FOIA briefing, July 13, 2023**
- **American Society of Access Professionals: Recent Significant FOIA Decisions March 14, 2023**
- **Office of Information Policy: Exemption 1 and Exemption 7 Training June 6, 2023**
- **Office of Information Policy: Privacy Considerations Training July 11, 2023**

4. Please provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

A. **95%**

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

A. **N/A**

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and if senior leaders at your agency received a briefing on your agency’s FOIA resources, obligations and expectations during the FOIA process?

A. **As noted above, NARA requires an annual mandatory training for all employees, including senior leadership, that contains a FOIA/Privacy Act component. The component focuses on the requirements of NARA employees to search for responsive records across the various records media that are used (ex. Paper, email, voicemail, spreadsheets, etc.).**

**B. Outreach**

7. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue and, if applicable, any specific examples.

A. **Yes.**

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

dialogue and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

**A. Yes. The Archivist of the United States ("Archivist") asked 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.**

**This includes participation in DOJ's "Sunshine Week" programs. For FY23, NARA live-streamed a panel discussion entitled "Making Access Happen: FOIA at the National Archives" and also posted a number of shorter FOIA videos to its YouTube channel.**

9. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during Fiscal Year 2023 (please provide a total number or an estimate of the number for the agency overall).

**A. More than 530 times.**

**C. Other Initiatives**

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

**A. Yes. NARA's Management Team has considered proposals for increased resources for FOIA technology and staff. Discussions are ongoing regarding available resource allocation for new technology acquisition.**

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

**A. Each FOIA Program Office tracks its requests within each queue, and uses that information to make appropriate adjustments. Some offices that deal with routine and semi-standardized requests are able to implement page or case quotas to allow for completion estimates and workload balancing amongst staff.**

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

**A. When NARA receives a significant number of requests in response to a newsworthy event, we make every effort to categorize the requests and responsive records for efficient processing. Documents released in response to such requests are posted to NARA's electronic FOIA Reading Room.**

### **Section III: Proactive Disclosures**

The Attorney General's 2022 [FOIA Guidelines](#) emphasize that "proactive disclosure of information is . . . fundamental to the faithful application of the FOIA." The Guidelines direct agencies to post "records online quickly and systematically in advance of any public request" and reiterate that agencies should post records "in the most useful, searchable, and open formats possible."

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

**A. Releasing records to the public is a mainstay of NARA's core mission, and the Chief FOIA Officer has been reviewing the Archivist's Freedom of Information Act (FOIA) Advisory Committee's "Lessons Learned" Report (see [The National Archives and Records Administration's Fifth National Action Plan for Open Government 2022-2024 Lessons Learned from the FOIA Advisory Committee](#)), the Office of Government Information Services (OGIS) report on posting to agency webpages to improve NARA's FOIA programs, and "Improving Access to Government data, Research, and Information" with the White House Office of Science and Technology Policy, the White House Council on Environmental Quality, and the General Services Administration (see [August 16, 2023 Public Engagement Session - Increasing Civic Space to Engage the Public | open.USA.gov](#))**

**One plan has been the effort to set up collaboration between an archival processing office and a FOIA processing office to search for serieses of records to be proactively reviewed and released.**

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

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

**A. This depends on the nature of the records. For records that are operational in nature, the length of time for posting can be in hours. However, if the records are in the accessioned holdings of NARA, there is usually a 6 month waiting period to post due to the volume of records being posted.**

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

**A. Yes.**

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

**A. Case number, Requester (unless first person), Subject, Date Received, Date Completed, Determination, and Denial Reason(s)**

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

**A. They are not posted in CSV format. NARA currently posts in a PDF formatting in order to safely protect first party user's information.**

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

A. [Obama Library FOIA Log 2020-2023 \(archives.gov\)](#)

[Plan to Eliminate Records Backlog at NPRC \(archives.gov\)](#)

5. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website?

**A. 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/>).**

6. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

**A. The National Archives has stated its strong emphasis on enhanced description of our holdings in our Strategic Plan 2022 - 2026. (see [NARA 2022-2026 Strategic Plan \(archives.gov\)](#))**

7. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

**A. 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. In order to post records in an efficient manner, all offices interact with our Web Development Office, and components within the Chief Information Officer's office.**

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

**A. 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 Take to Greater Utilize Technology**

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's 2022 [FOIA Guidelines](#) emphasize the importance of making FOIA websites easily navigable and complying with the [FOIA.gov](#) interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

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

**A. The Archivist of the United States, Dr. Colleen Shogan, has created a senior level committee, FOIA and AI Executive Steering Committee, to determine current technical capabilities and identify agency needs. And to research available technologies in light of their applicability to NARA's needs.**

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

**A. NARA has not adopted new technology since the last reporting period. There has been insufficient funding allocated to purchase new technology.**

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.

**A. Various offices continue to work with contractors to implement an auto-redact tool for an unclassified redaction system. The timeline for completing the tool was impacted by issues related to funding, including a reduction in funding for the support contract.**

**Furthermore, NARA continues to work with contractors to develop better processes for machine learning, though NARA has not been able to make needed updates due to budget constraints.**

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

**A. Yes.**

5. Did all four of your agency's [quarterly reports](#) for Fiscal Year 2023 appear on FOIA.gov?

**A. No.**

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2024.

**A. NARA did not post the last three quarterly reports in a timely fashion due to litigation demands. However, the remaining three reports will be posted prior to the end of January 2024.**



7. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2022 Annual FOIA Report and, if available, for your agency's Fiscal Year 2023 Annual FOIA Report.

**A.** <https://www.archives.gov/files/foia/foia-raw-data-2022.xlsx>

8. In February 2019, DOJ and OMB issued joint [Guidance](#) establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

**A. No. However, NARA continues to pursue interoperability as a requirement in future contracts going forward.**

9. Optional -- Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

**A. N/A**

#### **Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness in Responding to Requests, and Reduce Backlogs**

The Attorney General's 2022 [FOIA Guidelines](#) instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

##### **A. Remove Barriers to Access**

1. Has your agency established alternative means of access to first-party requested records, outside of the typical FOIA or Privacy Act process?

**A. Yes**

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

**A. The National Personnel Records Center uses [eVetRecs](#) Online Service Records Request tool for veterans to request their own or family member's records. NARA has also partnered with the Veterans Administration to digitize veteran's Official Military Personnel Files (OMPF). This will make it easier for veterans to view and retrieve their records.**

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

**A. As noted above, NARA strives to make all information in the holdings of the National Archives available to the public, and requires a FOIA request for records in our holdings only when the records**

**are restricted because of sensitive information contained therein. When we identify records with no restrictions, those records are available in NARA's Catalog and our research rooms.**

## **B. Timeliness**

4. For Fiscal Year 2023, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2023 Annual FOIA Report.

**A. 13**

5. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2023 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

**A. The National Archives and Records Administration, Office of General Counsel has set up Tasks within the Google Chat system to assign FOIA staff work including cases where requester's request expedited processing.**

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

**A. Yes**

7. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2023?

**A. No**

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

**A. Yes, NARA's simple track decreased from 141 to 17 days.**

9. Please provide the percentage of requests processed by your agency in Fiscal Year 2023 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100.

**A. 94.6%**

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

**A. N/A**

## **C. Backlogs**

### **Backlogged Requests**

11. If your agency had a backlog of requests at the close of Fiscal Year 2023, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2022?

Answer: **Yes, NARA's backlog decreased from 9969 to 6410.**

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

Answer: **N/A**

13. If your agency's request backlog increased during Fiscal Year 2023, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming requests
- A loss of staff
- An increase in the complexity of the requests received (if possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase)
- Litigation
- Any other reasons – please briefly describe or provide examples when possible

Answer: **N/A**

14. If you had a request backlog, please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2023. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A."

Answer: **Backlog is 10.25% of total FOIA requests recieved.**

### **Backlogged Appeals**

15. If your agency had a backlog of appeals at the close of Fiscal Year 2023, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2022?

Answer: **No, NARA's appeal backlog increased from 155 to 224.**

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

Answer: **Yes, NARA processed 22 appeals in FY 2022 and 64 appeals in FY 2023.**

17. If your agency's appeal backlog increased during Fiscal Year 2023, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming appeals
- A loss of staff
- An increase in the complexity of the requests received (if possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase)
- Litigation
- Any other reasons – please briefly describe or provide examples when possible

**Answer: NARA received 121 FOIA appeals in FY 2023, which is an increase of 40 from FY 2022. 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. Because FOIA staff were required to meet a record number of court mandated production schedules stemming from increased FOIA litigation, the backlog of complex cases grew.**

18. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2023. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2023 and/or has no appeal backlog, please answer with "N/A."

**Answer: Backlog is 185% of total FOIA appeals recieved.**

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

19. In the 2023 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2022 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2023?

**Answer: NARA was unable to fully 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. NARA FOIA units did assess their backlog and identified simple and ready to close cases within its backlog to more complex cases. Some NARA units were able to hire new staff who assisted in closing older cases.**

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

**Answer: NARA FOIA units will continue assessing their backlog and identify simple and ready to close cases within its backlog to more complex cases.**

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

##### **Ten Oldest Requests**

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

Answer: **No**

22. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2022 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

Answer: **NARA closed 6 of the 10 oldest FOIA requests.**

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

Answer: **NARA has been able to reduce its backlog from 9969 to 6410. NARA FOIA units assessed their backlog and identified simple and ready to close cases within its backlog to more complex cases. Some NARA units were able to hire new staff who assisted in closing older cases. NARA's Office of General Counsel added a cross-training staff member in FY 2023 who concentrated on reviewing and closing NARA's older FOIA cases.**

#### **Ten Oldest Appeals**

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

Answer: **No**

25. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2022 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

Answer: **NARA closed one of the 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 on consultation with these agencies. The agencies have not yet responded.**

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

Answer: **Due to an increase in the number of litigation and special access requests, NARA has not been able to make much progress in reducing the overall age of our pending FOIA appeals.**

#### **Ten Oldest Consultations**

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

Answer: **Yes**

28. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2022 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Answer: **N/A**

#### **Additional Information Regarding Ten Oldest**

29. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2024.

Answer: **Several 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. There are still lingering effects of the pandemic NARA and other agencies are dealing with that contribute to delay in responding to the older requests.**

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

30. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency’s overall FOIA request processing and backlog. If possible, please indicate:

- The number and nature of requests subject to litigation
- Common causes leading to litigation
- Any other information to illustrate the impact of litigation on your overall FOIA administration

Answer: **Yes, NARA had 44 FOIA litigation cases in FY 2023 that took approximately 5,048 total staff hours. Seven (the 15 boxes that were located at former President Donald Trump’s Mar-a-Lago residence and Vice-President Biden records that were located at the Penn Biden Center and in a garage at private residence) were large and complex and were a priority for NARA staff to complete. Furthermore, the number of special access requests to the Legislative Archives, Presidential Libraries, and Museum Services; Archival Operations Division overwhelmed their FOIA processing capabilities. As a result, NARA staff were not able to work the FOIA complex backlog cases or appeals.**