

## **CHIEF FOIA OFFICER'S REPORT**

### **NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)**

**February 13, 2013**

This report has been prepared by Gary M. Stern, NARA's General Counsel and Chief FOIA Officer, in compliance with the "Guidelines for Chief FOIA Officer Reports to the Department of Justice Pursuant to Attorney General Holder's FOIA Guidelines," published by the Office of Information Policy on September 30, 2009. Questions concerning this report can be addressed to my attention by phone at 301-837-1750 or by e-mail at [garym.stern@nara.gov](mailto:garym.stern@nara.gov).

NARA's 2013 Chief FOIA Officer Report addresses the agency's activities that have occurred since the filing of last year's Report, which was March 12, 2012, up until the filing of the 2013 Report, which will be March 11, 2013.

#### **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.**

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

The National Archives' Special Access and FOIA Staff, the Presidential Materials Staff, and the Office of the General Counsel have initiated FOIA/Privacy training with staff at various Presidential Libraries, all of the regional archives, and the Washington, DC Reference Staff who have initial interaction with the public.

**Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?**

Staff has taken advantage of training opportunities given by the Department of Justice's Office of Information Policy (DOJ/OIP), the Department of Education's FOIA Symposium, and the American Society of Access Professionals (ASAP).

**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.**

**2. Did your agency make any discretionary releases of otherwise exempt information?**

The National Archives and Records Administration (NARA) was established in 1934, and the largest percentage of our holdings is housed in the National Archives buildings in Washington, DC and College Park, Md. In 1939, with the creation of the Franklin D. Roosevelt Presidential Library, the Presidential Library system was launched, and it now holds the donated Presidential papers and Presidential records from President Hoover forward in thirteen Presidential Libraries managed by NARA throughout the country. Since 1969, NARA has managed a system of regional archives that hold the permanent Federal records of regional origin and significance. Most, but not all, of these massive holdings are executive branch agency records and Presidential records that are now subject to the Freedom of Information Act (FOIA). However, NARA has been responding to public access requests for government information since long before the FOIA was enacted. Through its core statutory mission, NARA has been making the vast majority of its records available to the public without the use of or need for the FOIA. Furthermore, due to the age of most of the records in the National Archives, NARA routinely makes discretionary releases in the processing of our archival holdings. The NARA FOIA Office does make discretionary releases of NARA's operational files after conducting balancing tests regarding information in.

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

(b)(5)

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

Because of their age or subject matter, most records in the National Archives' holdings are unrestricted and are available for research without filing a FOIA request. These include, for example:

- genealogical and family history materials
- records that do not contain any national security classified material or other information that may be withheld under a FOIA exemption
- formerly classified records properly declassified under an Executive Order
- records comprising the John F. Kennedy Assassination Records Collection

Two examples of historical discretionary release criteria are: 1) the fact that (b)(5) information decreases in sensitivity over time; and 2) a maximum 12 year limit for some privacy material (old home addresses and phone numbers).

**5. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.**

The Open Government Initiative has focused NARA's efforts in the reduction of the FOIA backlog through many tactics, one of which is the Chief FOIA Officer's active involvement in an audit of our oldest FOIA case files, and the closing of the agency's twenty oldest FOIA's. NARA also describes recently declassified series on the National Declassification Center's blog.

## **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."**

**This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support.**

**Describe here the steps your agency has taken to ensure that its system for responding to requests 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.**

**1. Do FOIA professionals within your agency have sufficient IT support?**

Yes.

**2. Do your FOIA professionals work with your agency's Open Government Team?**

Yes. Multiple FOIA professionals across NARA work with the Open Government Team in selecting records for publishing on NARA's multiple social applications. Suggestions are sought in order to improve, enhance, and validate the material on NARA's Open Government webpage (<http://www.archives.gov/open/>).

**3. Has your agency assessed whether adequate staffing is being devoted to FOIA administration?**

NARA's core mission is to provide access to the archival records in the National Archives, and we have hundreds of archivists and related staff throughout all of our archival facilities, including 13 Presidential Libraries, who service researchers and respond to FOIA requests. Because the size of our collections is always increasing, with agencies transferring permanent records into the National Archives on an ongoing basis, and the size of our staff has not increased at a corresponding rate, it is not possible for NARA to assert that we have adequate staffing to respond to FOIA requests.

**4. 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, streamlining consultations, eliminating redundancy, etc.**

The National Declassification Center's (NDC) FOIA staff continues to monitor and improve its FOIA processes that had undergone a Six Sigma Green Belt initiative the previous year. In particular the NDC is refining their triage process to include negotiating with requesters to narrow the scope of their cases. Enhanced queue management allows those requesters with focused requests to be moved into a simple queue and out of a complex queue. NDC FOIA is also using extensive metrics to quality check their data and discover choke points in their process.

NARA's Presidential Materials Division and the Office of the General Counsel continue to work with the Presidential Records Act Libraries that hold records subject to FOIA to analyze the possibility for improved efficiencies in the FOIA review process. These Libraries negotiate with researchers to narrow their FOIA requests and to improve search strings for electronic records resulting in more accurate results.

NARA's Special Access and FOIA Office has retooled its procedures to include a comprehensive Triage process, where requests are evaluated within the first 20 days to determine: 1. If NARA has the records requested. 2. If the records are responsive to the research request. 3. How much time it will take to review the request and 4. If the request cannot be completed within 20 days, estimate a time of completion. This minimizes the number of requests that are placed in queues, improves the number of requests resolved within 20 days and opens the door to negotiation for those cases that are of a broad nature.

NARA has joined with a number of other federal agencies in the use of the FOIAonline Program for NARA's operational records (<https://foiaonline.regulations.gov/foia/action/public/home>). The use of the FOIAonline Program is twofold: first, to grant requesters the ability to submit, track, and receive communication regarding their FOIA requests for NARA operational records in an easy to use interface; and second, in order to test the feasibility of FOIAonline as a single FOIA tracking system for all of NARA's facilities. Currently most offices use OTS database software that captures all of the statistical information required by DOJ concerning incoming FOIA requests. NARA's FOIA processing staff that deals with archival records in the Washington, DC area has upgraded their customized database that

serves as a FOIA tracking system, document repository, as well as an electronic redaction system. Regardless of the tracking methodology, each system provides a monthly feed to NARA's Performance Measurement and Reporting System (PMRS). The PMRS monitors the timely processing of FOIA request against the goals outlined in NARA's FY 2011 Performance Plan. NARA's current goal for processing all FOIA requests (for operational, archival and presidential records) is 89% of requests processed within 20 work days. The Chief FOIA Officer and NARA Office heads use this data to monitor FOIA processing, assess the backlog, set priorities and determine areas for improvement in the process.

### **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 2012 to March 2013). 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.**

#### **1. Provide examples of material that your agency has posted this past year.**

The following select items can also be found on NARA's webpage at:

<http://www.archives.gov/press/press-releases/>

January 2013 - In an effort to provide information on recently declassified motion pictures and sound recordings, the Motion Picture, Sound and Video Branch will publish a quarterly list of newly declassified records. See:

<http://blogs.archives.gov/mediamatters/2013/01/11/declassified-motion-pictures-and-sound-recordings/>

December 2012 - The NDC released 300 separate record entries, consisting primarily of military records, which have completed declassification processing and are now available for researcher request.

November 2012 - The National Archives and Records Administration released records that have been sealed under court order since the 1970s Watergate criminal trial of seven men involved in the Watergate burglary, *U.S. v. Liddy, et al.* The release includes 36 folders of documents totaling approximately 950 pages (in whole or in part), and is in accordance with the order from Chief Judge Royce Lamberth of the District Court for the District of Columbia.

October 2012 - Declassified documents from the Interagency Security Classification Appeals Panel (ISCAP) are made available on [Archives.gov](http://Archives.gov).

October 2012 - The National Archives launched a [new declassification portal](#) to provide a single point of access for declassification actions at the agency. Users can find information about the National Declassification Center, the Public Interest Declassification Board, the Presidential Libraries, and the Interagency Security Classification Appeals Panel.

October 10, 2012 - The National Archives and Records Administration and the John F. Kennedy Presidential Library released an additional seven boxes of material (more than 2,700 pages) from the Robert F. Kennedy Papers, housed at the Kennedy Library in Boston, including documents relating primarily to the Cuban Missile Crisis. The records are available both [online](#) and in the Research Room at the Kennedy Library in Boston.

September 11, 2012 - The National Declassification Center released more than 1,000 pages of records related to the Katyn Forest Massacre. The NDC has also created a [web page](#) that contains a summary of the events in the massacre, aerial and map images, links to other agencies web pages, and additional NARA resources, including a request to the researcher community for [help in transcribing](#) the records.

July 20, 2012 - The NDC released 237 separate record entries that have completed declassification processing and are now available for researcher request.

May 2012 - The National Archives at San Francisco officially opened to the public over 40,000 case files on immigrants to the United States, and dedicated its research room to the late U.S. Representative Tom Lantos who was a leading force in having these files re-designated as records of permanent historical value.

**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 the posted material, improving search capabilities on the site, creating mobile applications, providing explanatory material, etc.?**

NARA has two criteria for records that are placed on our web site: first, those records that are believed to be of interest to the public, and second those records that are frequently requested under the FOIA in compliance with the statute. Because of the unique mission of NARA as the repository for all permanently valuable federal records it would not be possible to place everything online, but it is possible to place finding aids, record group descriptions, and the search engine ([Online Public Access](#)) in order to assist our customers.

NARA's web presence has changed dramatically with increased social media tools, such as blogs, twitter, and numerous YouTube channels. The agency web site has been

redesigned with feedback from the staff and the public on its appearance and functionality, and with the ultimate goal to continually add content for the public.

**2. If so, provide examples of such improvements.**

The Special Access and FOIA Staff is currently piloting the scanning, review, redaction and posting of small Federal Bureau of Investigation case files that have been requested under the FOIA. An electronic copy of the documents in the file is then linked to NARA's Archival Research Catalog (ARC) making the file available to the public.

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

NARA's FOIA professionals have instituted a close working relationship with the Office of Government Information Services with the goals of better understanding the needs of the requester community and learning how to enhance NARA's ability to communicate with the public.

## **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. In 2010 and 2011, agencies reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2013, as we did in 2012, the questions have been further refined and now also address different, more innovative aspects of technology use.**

***Electronic receipt of FOIA requests:***

**1. Can FOIA requests be made electronically to your agency?**

Yes.

**2. If your agency is decentralized, can FOIA requests be made electronically to *all* components of your agency?**

Yes.

***Online tracking of FOIA requests:***

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

Yes, in part. The NARA FOIA Officer is using the FOIAonline Program to track FOIA requests for operational records. All other components of NARA allow a requester to examine, via our website, their place in the overall NARA queue. The requester will need to communicate with the individual FOIA component to determine where the request resides in that offices specific queue.

- 4. If so, 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.**

The FOIAonline Program allows the public to see the following fields: Tracking Number, Type of request, Phase of request, Requester, Requester Organization, Date Submitted, Due Date, and Detail of request. The NARA Queue that can be found on our webpage lists the case number and the date of the request.

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

The FOIAonline Program allows the requester to see an estimated date of completion, but the systems in place throughout the rest of NARA do not currently have the capability.

- 6. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability?**

Yes. NARA's Office of the General Counsel is researching the FOIAonline program for use across all of NARA.

*Use of technology to facilitate processing of requests:*

- 7. 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?**

Yes.

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

The FOIA tracking software that is used by NARA is also capable of searches in document metadata, text of OCR documents, across case files and other uploaded data. The software provider, in conjunction with select NARA staff, is actively engaged in

improving work flow management, efficiency, and elimination of redundant processes. All referrals are being processed paperless.

## **Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reduce 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 and appeals. *For the figures required in this Section, please use those contained in the specified sections of your agency's 2012 Annual FOIA Report.***

- 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. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.**

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

Yes.

**b. If so, for your agency overall, for Fiscal Year 2012, was the average number of days to process simple requests twenty working days or fewer?**

No. The average number of days was greater.

**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?**

N/A

- 2. Sections XII.D.(2) and XII.E.(2) of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report – Backlogged Requests/Appeals," show the numbers of any backlog of pending requests or pending appeals from Fiscal Year 2012 as compared to Fiscal Year 2011. You should refer to those numbers when completing this section of your**

**Chief FOIA Officer Report. In addition, Section VII.E, entitled “Pending Requests – Ten Oldest Pending Requests,” and Section VI.C.(5), entitled “Ten Oldest Pending Administrative Appeals,” from both Fiscal Year 2011 and Fiscal Year 2012 should be used for this section.**

**a. If your agency had a backlog of requests at the close of Fiscal Year 2012, did that backlog decrease as compared with Fiscal Year 2011?**

Yes. NARA’s backlog decreased by 401 cases.

**b. If your agency had a backlog of administrative appeals in Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011?**

Yes. NARA’s appeal backlog decreased by three cases.

**c. In Fiscal Year 2012, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2011?**

No. However NARA staff closed five of the oldest FOIAs reported in FY 2011.

**d. In Fiscal Year 2012, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2011?**

N/A

**3. If you answered “no” to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation:**

**Request Backlog:**

**a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?**

N/A. NARA reduced its FOIA backlog by 401 cases.

**b. Was the lack of a reduction in the request backlog caused by a loss of staff?**

N/A

**c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?**

N/A.

**d. What other causes, if any, contributed to the lack of a decrease in the request backlog?**

While NARA has made strides in the reduction of our backlog by 401 cases, the ten oldest FOIAs represent one of the unique challenges regarding cases that require referrals to agencies with Original Classification Authority (OCA) for declassification decisions. Additionally, like many government agencies, NARA faces budgetary and staffing limitations that impede our ability to meet FOIA goals. There are also factors unique to NARA that contribute to NARA's inability to fully comply with the FOIA's statutory time limits: reconstruction of Official Military Personnel Files, requested under FOIA, that were burned in the fire of 1973; the recent accessioning of sensitive Federal Bureau of Investigation case files; and, the notification period required prior to the release of Presidential records subject to the provisions of the Presidential Records Act and FOIA.

**Administrative Appeal Backlog:**

**a. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?**

N/A. NARA succeeded in reducing the appeal backlog.

**b. Was the lack of a reduction in the appeal backlog caused by a loss of staff?**

N/A

**c. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received?**

N/A

**d. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?**

N/A

4. 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. If your agency had a backlog in Fiscal Year 2012, please provide an estimate of the number of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

NARA has determined that over 2,000 documents from about 150 cases have been acted on regarding an interim response to FOIA requesters. Furthermore, NARA's General Counsel's Office, the National Declassification Center, and the Special Access and FOIA Staff are undertaking an extensive review of the oldest FOIA requests still outstanding. These requests pre-date our current electronic tracking system. The older system's tracking data is contained in individual paper case folders. NARA is in the midst of this process and therefore cannot answer this question accurately at this time.

### **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 2012?

No

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

N/A

### **Spotlight on Success**

**Out of all the activities undertaken by your agency since March 2012 to increase transparency and improve FOIA administration, describe here 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 part of NARA's continuous efforts to increase transparency concerning access to its archival records, a declassification portal was unveiled [online](#) to provide a single point of access for declassification actions at the agency. Users can find information about the National Declassification Center, the Public Interest Declassification Board, the Presidential Libraries, Information Security Oversight Office (ISOO) and the Interagency Security Classification Appeals Panel.

Some of the highlights for the declassification portal are:

In January 2013 the National Declassification Center released its [Sixth Bi-Annual Progress Report](#). In The Strategic Plan of the National Archives and Records Administration, 2006 – 2016 (revised 2009), the Archivist singled out the National Declassification Center as reflecting "the ongoing challenge to balance the needs of national security and the right of citizens to have access to the records of their Government." Additional highlights of the work of the NDC can be seen on their blog at: <http://blogs.archives.gov/ndc/>

The Public Interest Declassification Board's (PIDB) activities and their most recent report to the President can be found [online](#), along with their blog, [Transforming Classification](#).

Recent releases at various Presidential Libraries have been [listed](#).

The Information Security Oversight Office (ISOO) is responsible to the President for policy and oversight of the Government-wide security classification system and the National Industrial Security Program. ISOO has created links to ISOO [Notices](#) and [Reports](#) as part of the Declassification Portal.

The Interagency Security Classification Appeals Panel (ISCAP) has posted a significant [online collection](#) which includes documents decided upon by Panel starting in Fiscal Year 2012. The documents include records from the Presidential Library system of the National Archives, the Central Intelligence Agency, National Security Agency, the Department of Defense, and other agencies.