

# **2014 Chief FOIA Officer's Report**

## **National Archives and Records Administration**

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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).

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

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

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

### *FOIA Training:*

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

**Answer:** Yes.

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

**Answer:** The Presidential Materials Division conducted training for 17 archival staff of the George W. Bush Presidential Library on March 4 - 8 and again on August 19 -23, 2013. The training in March focused on focused on the proper application of FOIA exemptions, as well as Presidential Records Act (PRA) restrictions. While the training in August was specifically aimed at the administrative and regulatory requirements of FOIA. This included case files, search strategies, setting up queues, appeal rights, and fee waivers.

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

**Answer:** Yes.

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

**Answer:** 30%

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

**Answer:** Within the limits of available funding for training and travel, NARA will attempt to make FOIA training available to all FOIA professionals.

*Outreach:*

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

**Answer:** Yes. The Office of Government Information Services (OGIS), along with the Office of Information Policy (OIP), co-hosts a series of roundtable discussions with FOIA professionals and the FOIA requester community. These regular sessions focus on issues surrounding requests made for various types of records, such as law enforcement records, records about third parties, and contractor and other business-related records, as well as the procedural issue of document referrals and consultations. These sessions provide an opportunity to participate in the exchange of ideas and help increase understanding of the issues surrounding these various topical areas.

The Archivist of the United States and the General Counsel/Chief FOIA Officer have regular meetings with representatives of NARA's requester community to discuss issues related to access to records at the National Archives, including through the FOIA.

*Discretionary Disclosures:*

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

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

**Answer:** NARA does not have a formal process for making discretionary disclosures due to the fact that 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, and in the processing of any access request. The NARA FOIA Office does make discretionary releases of NARA's operational files after conducting balancing tests regarding information that can be properly exempted.

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

**Answer:** Yes

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

**Answer:** (b)(5)

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

**Answer:**

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).

Examples of operational files that have been released as a matter of discretion are the [Deed of Gift](#) for the Pink Chanel Dress worn by Mrs. Kennedy on November 22, 1963 and architectural drawings of the [Presidential Libraries](#).

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

**Answer:** N/A

*Other Initiatives:*

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

**Answer:** Yes

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

**Answer:** The National Declassification Center's completion of E.O. 13526 declassification review; [OGIS case logs](#); and posting of Federal Bureau of Investigation Classification 100 [case files](#).

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

As the Attorney General emphasized in his FOIA Guidelines, "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." It is essential that agencies effectively manage their FOIA program.

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

*Personnel:*

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

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

**Answer:** No

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

**Answer:** There is only one NARA employee who is in the Government Information Series. This equates to approximately 0.3% of NARA employees.

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

**Answer:** NARA does not have plans to convert to the new Government Information Series. Most NARA employees are within the Series 1420 (Archivist) or 1421 (Archives Specialist/Technician), because their core work product involves archival activities, and is not comprised of wholly FOIA.

*Processing Procedures:*

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

**Answer:** Yes. NARA averaged 3 days

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

**Answer:** Yes. NARA, through the National Declassification Center, has entered into agreements with the Department of State and the National Security Staff regarding National Security Information that should be sent for consultation. NARA also an agreement with NASA, State, and Commerce, put in place in 2013, to allow for limited public access to permanent NASA records that may contain export-controlled technical data (including information subject to the International Traffic in Arms Regulations (ITAR)).

*Requester Services:*

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

**Answer:** Yes.

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

**Answer:** yes.

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

**Answer:** Quarterly NARA FOIA Council meetings to share Best Practices within NARA offices.

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

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

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

#### *Posting Material:*

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

**Answer:** Yes

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

**Answer:** NARA assesses the historical holdings, and operational records, with our various customers' research in mind. Based on researcher request volume, NARA can proactively process records that are of interest to the public. The records are screened for any sensitive information, redacted if necessary, and then scanned and placed in an online repository.

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

**Answer:** [U.S. Navy Deck Logs](#); [Presidential Library Architectural Drawings](#)

#### *Making Posted Material More Useful:*

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

**Answer:** Yes.

5. If so, provide examples of such improvements.

**Answer:** 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 huge volume of records that NARA holds as the repository for all permanently valuable government records, it is not currently possible to

place everything online, but we have put online our finding aids, record group descriptions, and currently digitized records in order to assist our customers.

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

**Answer:** Yes. 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.

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

**Answer:** Yes. Before we can post archival records online, we try to make sure that they include the appropriate metadata to provide the archival context of the records.

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

**Answer:** N/A

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

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

### *Online tracking of FOIA requests:*

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

**Answer:** Yes, 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.

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

**Answer:** The FOIAonline Program is an online portal, while the NARA Queue is a monthly updated log on NARA's web page.

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

**Answer:** 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.

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

**Answer:** FOIAonline provides an automated date based on the statutory deadline. The FOIA Queue does not; however, the NARA office that handles FOIAs for accessioned records in the Washington, DC area gives an estimated date in their initial response letters.

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

**Answer:** NARA is in the process of expanding the data that can be found on our FOIA Queue, and preparing for the move of all of our offices to an online portal.

*Use of technology to facilitate processing of requests:*

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

**Answer:** Yes.

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

**Answer:** NARA has an intra-office team looking at multiple advanced search and processing products to improve efficiencies in de-duplication, record search, and sorting.

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

**Answer:** No.

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

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations. *For the figures required in this Section, please use those contained in the specified sections of your agency's 2013 Annual FOIA Report and, when applicable, your agency's 2012 Annual FOIA Report.*

*Simple Track Requests:*

1. Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a

category for “simple” requests, which are those requests that are placed in the agency’s fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

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

**Answer:** Yes.

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

**Answer:** No.

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

**Answer:** N/A

*Backlogs and “Ten Oldest” Requests, Appeals and Consultations:*

2. Section XII.A of your agency’s Annual FOIA Report, entitled “Backlogs of FOIA Requests and Administrative Appeals” shows the numbers of any backlogged requests or appeals from the fiscal year. Section VII.E, entitled “Pending Requests – Ten Oldest Pending Requests,” Section VI.C.(5), entitled “Ten Oldest Pending Administrative Appeals,” and Section XII.C., entitled “Consultations on FOIA Requests –Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency,” show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.

Backlogs

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

**Answer:** Yes. NARA was able to reduce our FOIA backlog by 1,010 cases.

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

**Answer:** No. NARA’s appeal backlog increased by seven cases.

Ten Oldest Requests

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

**Answer:** No

- d. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your “ten oldest” in Section VII.E. and you closed two of them, you should note that you closed two out of seven “oldest” requests.

**Answer:** NARA was able to close five of the ten oldest requests.

### Ten Oldest Appeals

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

**Answer:** No

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

**Answer:** NARA was able to close five of our oldest appeals. Only two carry over from FY 2012.

### Ten Oldest Consultations

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

**Answer:** Yes. NARA has no pending consultations.

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

**Answer:** N/A

### *Reasons for Any Backlogs:*

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

#### Request and/or Appeal Backlog

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

**Answer:** No.

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

**Answer:** No

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

**Answer:** Yes, in regards to the appeal backlog.

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

**Answer:** The appeal backlog has increased because NARA has now become the appeal authority for FOIA requests that contain national security information (NSI), instead of the agency with the classification equity in the documents. NARA is not an Original Classification Authority (OCA), and therefore does not have authority to declassify the information

contained in our classified holdings. All NSI FOIA requests require consultation with, at minimum, the creating agency. This process inevitably adds to the number of days needed for processing of classified appeals.

“Ten oldest” Not Closed

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

**Answer:** While NARA has been able to reduce our backlog by 1010 cases, NARA is constrained in reducing the ten oldest FOIAs because almost all of them contain classified information that require referrals to the agencies with Original Classification Authority (OCA) for declassification decisions. It is important to note that for most of these oldest cases, NARA has been able to complete the FOIA processing of most of the records responsive to the request, and only a very few documents remain pending with the originating agency.

- f. If your agency was unable to close any of its ten oldest requests or appeals because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

**Answer:** NARA was able to close five of its ten oldest cases. NARA is awaiting returns from various agencies for the remaining five cases. The remaining case information is:

1. Oldest request received on 08/31/1993; most recent and last consultation date of 08/17/2012.
2. 2<sup>nd</sup> oldest request received on 09/09/1993; in negotiation with requester regarding closing of case.
3. 3<sup>rd</sup> oldest request received on 10/01/1993; consultations are back and case is being processed
4. 4<sup>th</sup> oldest request received on 10/01/1993; most recent and last consultation date of 04/09/2010.
5. 5<sup>th</sup> oldest request received on 10/01/1993; most recent and last consultation date of 03/30/2013

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

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

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

**Answer:** NARA will increase its efforts to contact the agencies that control the classification equity and press them to complete the declassification review of the remaining records responsive to each request, including by contacting the Chief FOIA Officer of each agency. As noted in response to question 3.e, for most of these oldest cases, NARA has been able to complete the FOIA processing of most of the records responsive to the request, and only a very few documents remain pending with the originating agency.

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

**Answer:** N/A. NARA reduced its FOIA backlog by 1,010 cases.

### *Interim Responses:*

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

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

**Answer:** Yes. The process is tracked only at the case level, and in a paper format.

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

**Answer:** 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 tracking data for older cases are 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 2013?

**Answer:** No

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

**Answer:** N/A

## **Spotlight on Success**

Out of all the activities undertaken by your agency since March 2013 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas. As noted above, these agency **success stories** will be highlighted during Sunshine Week by OIP. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

**Answer:**

- Completion of the processing of the [Attorney General Files](#) from the Papers of Robert F. Kennedy at the John F. Kennedy Presidential Library
- Scanning of the [U.S. Navy Deck Logs](#)
- The successful interagency effort led by the National Declassification Center to address problems in approximately 352 million pages of permanent records at NARA previously reviewed for declassification, thus meeting the goal of the President's memorandum of December 29, 2009.