



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

ACUS 2014 Chief FOIA Officer Report

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(Reporting Period: March 2013 to March 2014)

The Administrative Conference of the United States (ACUS) is an independent executive branch agency that studies federal government procedures and processes and recommends improvements to all three branches of the federal government. ACUS is a public-private partnership that brings together senior government officials and private citizens with diverse views and backgrounds to provide nonpartisan expert advice.

ACUS is a “micro” agency with an authorized FTE level of 15 individuals, and there are no component offices due to the agency’s small size. FOIA functions are handled by two individuals—the General Counsel and Deputy General Counsel (who are the Chief FOIA Officer and FOIA Liaison, respectively).

ACUS received 20 FOIA requests during the reporting period (12 in FY 2013 and 8 so far in FY 2014). Timely responses were provided for all of these requests. In most cases, responses to FOIA requests are sent the same day they are received, or the next business day. Thus there is no need, and therefore no plans, for improvement on the agency’s response time. More than half of the FOIA requests received by the agency are from federal or state prison inmates who are seeking information related to their incarceration. The agency never had and never will have any such records.

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?

--No.

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.

-- N/A

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



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--Yes. The agency's Chief FOIA Officer attended in-person training at DOJ. In addition, both the Chief FOIA Officer and FOIA Public Liaison utilized training materials (in electronic format) provided by DOJ.

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

--100%

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.

--As stated in the introductory section above, this micro-agency has two FOIA professionals, who will again utilize FOIA training materials from the Department of Justice during the coming year. They will also be monitoring any new FOIA-related issuances from the White House and/or the Department of Justice.

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.

--We do not have authority to promulgate regulations (other than FOIA/Privacy Act) and we do not have any kind of enforcement authority. As such we don't have an easily identifiable "requester community." Much of what we do is guided by the Federal Advisory Committee Act which requires that meetings and documents be made available to the public. We do not believe that general outreach would be the best use of our limited resources given the very small size of our agency and the minimal number of requests we receive each year. For whatever reason, the outside group that sends the most requests is primarily composed of federal prisoners for whom outreach is neither possible nor desirable. Instead of general outreach, we post information proactively, and we encourage potential requesters (on the FOIA Page of our website) to contact us directly if they cannot find what they are looking for on our website.

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.

--Yes. ACUS has a general policy of releasing as much information as possible even without a formal FOIA request. Our website clearly states that requesters should simply ask for



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information rather than file a formal FOIA request. The agency has 15 FTEs, all in a single location, and there are no separate components.

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

--Not applicable, because the agency released all information in the agency's possession, and did not use any exemptions as the basis to withhold information.

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

--N/A

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

--N/A

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

--The agency did not use any exemptions and released all information requested (provided the information was in the possession of the agency).

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.

--Yes, although the 4th quarter report was posted after the deadline set by DOJ.

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.

*--Requesters ask for information, and we provide it in a timely fashion—often in less than one day. Our budget documents, meeting minutes, historical documents, etc., are available on our website in a searchable format, for anyone who wants to access them:
<http://www.acus.gov/documents/advanced-search>. Moreover, the website encourages users to contact us directly if they cannot find what they are looking for.*

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.



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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?

--No. We have 15 FTEs at ACUS and none of them have full-time FOIA responsibilities. There are two individuals with FOIA responsibilities at ACUS (13.3% of the staff). The General Counsel (SES level) is the Designated Agency Ethics Official (DAEO), Chief FOIA Officer, etc. The agency's Deputy General Counsel (GS-15) is the Alternate DAEO, FOIA Liaison, FACA Committee Management Officer, etc. It would be highly inappropriate for these senior government lawyers to convert to the Government Information Specialist job series.

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

--Zero. This will not change. Both of our FOIA professionals are classified as Attorneys, which is the most appropriate classification for their full range of responsibilities.

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

--There is no plan to convert. It is not appropriate for our agency.

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.

--N/A. There were no such adjudications in FY 2013. As noted several times previously, most responses are sent within one business day.

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.

--N/A. No consultations or referrals have occurred in the last 3 years of our existence.

Requester Services:



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

--Yes.

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

--No. *Since the agency began operations in 2010, the only information we have not provided is information that is not in the possession of the agency—either because the requested information predated the agency's re-establishment in 2010, or because the agency does not have and never will have certain records (e.g., prison records). There is no need for mediation.*

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.

--Again, *we have a very small agency and a very small FOIA program. Our program is already extremely efficient, as previously noted. Most responses are made in less than one day. There are no redundancies since only two individuals manage the program and they communicate with each other frequently to determine the most efficient and effective way to respond to any non-routine FOIA request.*

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?

--Yes.

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

--*We post on our website most, if not all, information in which our stakeholders and the public might have an interest, including: our budget, operating procedures, committee meeting minutes and agendas, video archives of important meetings, research reports, audit reports, historical documents, required reports (e.g. FOIA reports), as a matter of practice.*

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



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--See answer above. Search for these documents here:

<http://www.acus.gov/documents/advanced-search>

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.?

--Yes.

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

-- The agency redesigned and updated its website in FY 2013 to improve its functionality and make it more user friendly. The changes were based on user feedback. The website is now more secure and easier to navigate for both novices and advanced users. We hired an intern who was studying for a doctorate in library sciences. She helped the agency tag and organize over 1,000 historical documents that were produced during the ACUS prior period of existence (from 1968 until the agency ceased operations in 1995 due to a lapse in appropriations). We do not have the budget for mobile apps. Our entire budget is approximately \$3 million annually (including salaries and benefits).

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

--We publicized on social media, by electronic newsletter, blog posts and elsewhere, using the new functionality of our website.

7. 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.

--The agency has too many historical documents to post and maintain. We therefore entered into an arrangement with HEIN Online which will enable ACUS to make these documents available to the public free of charge on their server, using our website as an entry portal. HEIN Online is a paid subscription service that provides access to legal opinions and other legal resources. When this project is completed, users will be able to access ACUS documents for free through the generosity of HEIN Online.

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

--See above.

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



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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?

--No. There is no need for this type of investment or capability at our agency. As previously indicated, most responses are sent in less than one day. Moreover, over 50% of our requesters were from federal or state prisoners requesting their records (for reasons unknown to us). Prisoners do not have access to email or other electronic media.

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?

--N/A

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.

--N/A

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

--N/A

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.

--No. See answer to #1 in this section.

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?

--No. There is no need for more advanced technology at ACUS. There would be no benefit to such investments given the small number of requests and the size of our agency and budget. However, our arrangement with HEIN Online, described above, will utilize that company's technological facilities to increase the accessibility of our historical documents.

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

--N/A



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

--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?

--Yes; however, all were simple requests in FY 2013.

- 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?

--Yes. The average was 1.2 days.

- 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

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



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- 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?

--N/A. No backlogs in either FY 2012 or FY 2013.

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

--N/A. No administrative appeals in FY 2012 or FY 2013, and therefore no backlogs.

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?

--N/A. There were no requests pending as of the end of FY 2012.

- 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.

--N/A.

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?

--N/A. There were no administrative appeals in either year.

- 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.

--N/A.

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?

--N/A. There were no consultations in either year.

- 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.



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--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: ***[The questions a. through f. below are N/A because ther has never been a backlog.]***

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?
- b. Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff?
- 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?
- d. What other causes, if any, contributed to the lack of a decrease in the request and/or appeal backlog?

“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.
- 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.

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.

--N/A.

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.

--N/A.

Interim Responses:



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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?

--Yes.

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.

--N/A. *There was no backlog.*

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?

--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 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.

- *The agency had no backlogs.*
- *The average number of days for a full response was 1.2 days in FY 2013. The median number was 1 day. The highest number of days it took to respond to a FOIA request was 3 days.*
- *The agency has used its very limited resources to make information as accessible and transparent as possible to its stakeholders and the public in general. The redesigned website, document tagging project, and arrangement with HEIN Online to post our historical documents at no cost were major successes.*