



2012 Chief FOIA Officer's Report (Reporting Period: March 2011 to March 2012)

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. The agency endured a 15-year hiatus (beginning in 1995) due to a lapse in appropriations; however, the agency resumed operations in April 2010.

ACUS is a "micro" agency with an authorized FTE level of 16 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).

Since the time of last year's report, the agency has finalized and published in the *Federal Register* and on the agency's website its FOIA and Privacy Act regulations (<http://www.acus.gov/wp-content/plugins/download-monitor/download.php?id=171>), and has also finalized and published on its website a FOIA Reference Guide (<http://www.acus.gov/wp-content/plugins/download-monitor/download.php?id=394>).

ACUS received 15 FOIA requests during the reporting period. Timely responses were provided for all.

Section I: Steps Taken to Apply 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?

--No

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

--No

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.

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

--During the reporting period, the agency received no requests for exempt information, and therefore did not make any discretionary releases of exempt information. In some instances, where requests were received for information unrelated to our programs, or where the request was not properly directed to our agency, the agency did voluntarily provide information to requesters on where they could find the information they were seeking.

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

--N/A

5. Describe your agency's process to review records to determine whether discretionary releases are possible.

--This takes place in the normal course of review in every case. Each case is reviewed on its own merits. Generally, if the agency is permitted to release the documents, then the documents are released.

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

--The agency's website encourages the public to contact ACUS FOIA officials prior to making a formal request in order to determine if the information is already publicly available or if the request should properly go to a different agency. The agency also posts current and historical documents which may be of interest to the public. The agency is currently in the process of scanning many of its pre-1996 historical documents in order to make them available to the public.

In Section V.B.(1) of your agency's Annual FOIA Report, entitled "Disposition of FOIA Requests – All Processed Requests" the first two columns list the "Number of Full Grants" and the "Number of Partial Grants/Partial Denials." Compare your agency's 2011 Annual FOIA Report with last year's Annual FOIA Report, and answer the following questions:

7. Did your agency have an increase in the number of responses where records were released in full?

--Yes

8. Did your agency have an increase in the number of responses where records were released in part?

--No

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. Is there regular interaction between agency FOIA professionals and the Chief FOIA Officer?

--There is only one "FOIA professional" besides the Chief FOIA Officer. That individual is the FOIA Liaison (Deputy General Counsel). There is regular interaction between the Chief FOIA Officer and FOIA Liaison. They consult on responses, agency FOIA policy, etc.

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

--Yes

4. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to FOIA administration.

--Given that the agency is very small and receives a small number of FOIA requests annually, and given the fact that the average response time to FOIA requests is less than two business days, staffing appears to be adequate.

5. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.

--An internal tracking system was developed to keep proper records for FOIA reporting purposes.

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 2011 to March 2012). 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. Has your agency added new material to your website since last year?

--Yes

2. Provide examples of the records, datasets, videos, etc., that have been posted this past year.

--FOIA and Privacy Act regulations; 2010 FOIA Annual Report and Chief Officer Report; FOIA Reference Guide; FACA meeting materials such as meeting minutes, agendas, meeting support documents (e.g., reports, recommendations, public comments, etc.), and video archives of meetings; historical recommendations (pre-1996); workshop materials; budget justification; bylaws; authorizing statute; etc.

3. Describe the system your agency uses to routinely identify records that are appropriate for posting.

--For the most part, if we produce it, we post it (assuming no confidential information).

4. Beyond posting new material, is your agency taking steps to make the 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, providing explanatory material, etc.?

--Yes. We contracted with a new provider for more reliable and higher quality webcasting of our public meetings. We now have the capability to search for specific parts of a meeting based on the linked agenda.

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

--As previously mentioned, the agency is in the process of scanning many of its pre-1996 historical documents with the intention of making them available online to both public and government stakeholders.

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 handling FOIA requests. For 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 processes requests on a decentralized basis, do all components of your agency receive requests electronically?

--The agency has no components.

Online tracking of FOIA requests:

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

--No

4. If not, is your agency taking steps to establish this capability?

--No. Since there are a small number of requests, we are able to provide tracking updates upon request.

Use of technology to facilitate processing of requests:

5. 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.

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

--N/A

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 2011 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 2011, was the average number of days to process simple requests twenty working days or fewer?

--Yes

- 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. *All requests received in the reporting period were simple requests.*

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 2011 as compared to Fiscal Year 2010. 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 2010 and Fiscal Year 2011 should be used for this section. **THE AGENCY HAD NO BACKLOGGED REQUESTS OR APPEALS IN FY 2011; THEREFORE THE FOLLOWING QUESTIONS ARE NOT APPLICABLE.**

- a. If your agency had a backlog of requests at the close of Fiscal Year 2011, did that backlog decrease as compared with Fiscal Year 2010?
 - b. If your agency had a backlog of administrative appeals in Fiscal Year 2011, did that backlog decrease as compared to Fiscal Year 2010?
 - c. In Fiscal Year 2011, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2010?
 - d. In Fiscal Year 2011, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2010?
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: **THE AGENCY DID NOT ANSWER “NO” TO ANY OF THE ABOVE QUESTIONS; THEREFORE THE FOLLOWING QUESTIONS ARE NOT APPLICABLE.**

Request Backlog:

- a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?
- b. Was the lack of a reduction in the request backlog caused by a loss of staff?
- c. Was the lack of a reduction in the request 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 backlog?

Administrative Appeal Backlog:

- e. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?
- f. Was the lack of a reduction in the appeal backlog caused by a loss of staff?

- g. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received?
- h. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?

All agencies should strive to both reduce any existing backlogs or requests and appeals and to improve their timeliness in responding to requests and appeals. Describe the steps your agency is taking to make improvements in those areas. In doing so, answer the following questions and then also include any other steps being taken to reduce backlogs and to improve timeliness.

1. Does your agency routinely set goals and monitor the progress of your FOIA caseload?

--The informal goal is to respond to simple requests within one or two business days. The small caseload does not necessitate any type of elaborate monitoring process to ensure that responses are timely.

2. Has your agency increased its FOIA staffing?

--No. An increase in staffing is not necessary given the small volume of requests.

3. Has your agency made IT improvements to increase timeliness?

--No. Timeliness has never been an issue at this agency.

4. If your agency receives consultations from other agencies, has your agency taken steps to improve the efficiency of the handling of such consultations, such as utilizing IT to share the documents, or establishing guidelines or agreements with other agencies on the handling of particular information to speed up or eliminate the need for consultations?

--The agency has not received any FOIA consultations from other agencies.

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 2011?

--No

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

--N/A

Spotlight on Success

Out of all the activities undertaken by your agency since March 2011 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 reconstituted ACUS has been in operation since April 2010. Since that time, the agency has finalized and published in the Federal Register its FOIA and Privacy Act regulations, developed guidance for submitting FOIA requests, created a dedicated Web page for FOIA-related documents and activities, designated its Chief FOIA Officer and FOIA Public Liaison, created an online FOIA request form, and responded to FOIA requests using maximum transparency. Our new video archive system makes content from our public meetings easily searchable. We have posted online the approximately 200 recommendations that were developed during the agency's prior life (between 1968 and 1995). And, we believe that our ongoing effort to digitize and post agency historical materials is a model practice. Overall, the agency's launch of its FOIA program has been highly successful.