



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

ACUS 2013 Chief FOIA Officer Report

(Reporting Period: March 2012 to March 2013)

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 11 FOIA requests during the reporting period. Prompt responses were provided for all. In most cases, responses to FOIA requests are sent the same day they are received, or the next business day. More than half of the FOIA requests received by the agency during the reporting period are from federal prison inmates 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

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. There are two FOIA professionals at ACUS who manage all FOIA responsibilities and requests for our 15-person agency.

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

--No. However, ACUS has requested a copy of OIP’s Training DVD for the coming reporting period.

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?

--No. The agency had no responsive records in 7 of the 11 requests received. There were two full grants and two partial grants/denials. The partial grants/denials were based on the fact that the agency began operations in 2010, and the requests were for information prior to that date. Therefore, the issue of whether to make a discretionary release of requested information never arose.

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

--N/A

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

--N/A

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

--The agency's general policy is that all information is released where permitted by law.

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

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

--Yes; no increase in FOIA administration staff is needed.

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 existing manual tracking system is adequate to meet the agency's needs and ensure timely responses.

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.

--Revised bylaws, Federal Advisory Committee Act meeting materials (e.g., reports, recommendations, public comments, etc.), video archives of meetings, best practices from other agencies, budget justification, publications, workshop and symposia materials.

2. 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.?

--Yes

3. If so, provide examples of such improvements.

-- The agency's redesigned, user-friendly website will be launched by Feb. 1, 2013. Among the many improvements, website content—including FOIA-specific documents—will be more easily searchable.

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

--None at this time.

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. Electronic FOIA requests can be submitted by using a simple online form located on the agency's website (and by email).

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

--The agency has no components.

Online tracking of FOIA requests:

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

--No. The requester can call, write a letter, or send an email to inquire about the status of his/her request.

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.

--N/A

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

--N/A.

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

--No. The small number of requests received annually does not warrant expending the resources to create an electronic system.

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?

--No. The small number of requests received annually does not warrant expending the resources to employ sophisticated technologies. The existing manual systems are adequate as evidenced by the extremely short response times.

8. 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 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?

--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?

--Yes

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.

NOTE: THE AGENCY HAD NO BACKLOGGED REQUESTS, SO THE QUESTIONS BELOW ARE NOT APPLICABLE

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?

--N/A

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

--N/A

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

--N/A

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:

NOTE: THE AGENCY DID NOT ANSWER “NO” TO ANY OF THE ABOVE QUESTIONS BECAUSE THERE WAS NO BACKLOG; THEREFORE THE QUESTIONS BELOW 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?

--N/A

- 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?

--N/A

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?

--N/A

- f. Was the lack of a reduction in the appeal backlog caused by a loss of staff?

--N/A

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

--N/A

- h. 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.

--N/A. *The agency had no backlogged cases.*

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.

The policies and procedures put in place during our agency's start-up phase (2010-2011) are functioning properly and continue to demonstrate positive results. FOIA responses are prompt and timely. Generally, if a request is denied, in full or in part, it is simply because the information does not exist at the agency.