2017 Chief FOIA Officer Report to the Attorney General

Office of Science and Technology Policy

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I.   Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's FOIA Memorandum and the DOJ's 2009 FOIA Guidelines is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

FOIA Training:

1. **Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any FOIA training or conference during the reporting period such as that provided by the Department of Justice?**

    Yes.

2. **If yes, please provide a brief description of the type of training attended and the topics covered.**

    OSTP FOIA Professionals implemented OSTP's 2016 plan to ensure that core, substantive FOIA training is offered to all of our FOIA professionals at least once each year. OSTP ensures that all FOIA professionals have adequate training resources available to them so that they maintain FOIA knowledge current with the state of the law. OSTP's FOIA professionals subscribe to the Department of Justice, Office of Information Policy email list, which provides notice of substantive FOIA training so that all FOIA professionals are made aware of FOIA training opportunities. OSTP FOIA professionals attend trainings relevant to their work. OSTP also ensures that all agency FOIA professionals receive internal training on electronic document processing and administrative systems.

3. **Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.**

    100% of OSTP FOIA professionals attended substantive FOIA training during the reporting period.

4. **OIP has directed agencies to "take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year." If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.**

N/A.

5. *OPTIONAL***: Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA?**

Yes. OSTP routinely engages with requesters regarding their requests and how to provide quality customer service when processing and responding to requests. In addition, OSTP has dedicated Open Government staff who engage with open government and transparency groups.

6. **Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA.**

To ensure that all OSTP personnel are knowledgeable of the presumption of openness, every OSTP employee receives a basic overview of relevant FOIA responsibilities and their roles and responsibilities as records custodians under the Federal Records Act (FRA) and the Freedom of Information Act (FOIA) as part of their orientation training upon beginning official duty with OSTP. In Fiscal Year 2016, OSTP continued to distribute OIP's FOIA infographic into the agency's onboarding materials for new employees. OSTP now provides this one-page infographic as a resource on FOIA basics for all new employees upon their arrival at OSTP. OSTP and its dedicated open government team also continue to lead by example in supporting Federal open government and transparency efforts. OSTP's open government staff helps to coordinate the Administration's participation in the global Open Government Partnership (OGP), a platform where nearly 70 countries promote transparency, accountability and citizen engagement.

7. **If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.**

OSTP also co-hosted a series of roundtables with the Center for Open Data Enterprise, bringing together government, non-profit, and academic experts to discuss privacy, data quality, sharing and applying research data, and public-private collaboration over the course of four months in 2016. In conjunction with OMB, OSTP engaged agency and civil society stakeholders to solicit input for its updated open government plan guidance released in July 2016.

II.   Steps Taken to Ensure that OSTP has an Efficient and Effective System in Place for Responding to Requests

The DOJ's 2009 FOIA Guidelines emphasized that "[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.

Please answer the following questions to describe the steps your agency has taken to ensure that the management of your FOIA program is effective and efficient. You should also include any additional information that that describes your agency's efforts in this area.

Processing Procedures:

1. **For Fiscal Year 2016, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2016 Annual FOIA Report.**

   In Fiscal Year 2016, the average number of days for adjudicating requests for expedited processing was 57.5 days.

2. **If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.**

   OSTP will separate requests for expedited processing for those that do not request such processing to ensure that the agency considers expedited requests in a timely fashion.

3. *OPTIONAL:* **During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report data, using active workflows and track management, reviewing and updating processing procedures, etc.**

4. **Please provide an estimate of how many requests your agency processed in Fiscal Year 2016 that were from commercial use requesters. If your agency is decentralized, please identify any components within your agency that received a majority of their requests from commercial use requesters.**

   A very small minority of OSTP's FOIA requesters were commercial use requesters.

Requester Services:

5. *OPTIONAL:* **Does your agency provide a mechanism for requesters to provide feedback about their experience with the FOIA process at your agency? If so, please describe the methods used, such as making the FOIA Public Liaison available to receive feedback, using surveys posted on the agency's website, etc.**

   FOIA requesters are welcome to submit comments to OSTP's FOIA mailbox, ostpfoia@ostp.eop.gov.

6. **The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of how often requesters sought assistance from your agency's FOIA Public Liaison.**

   Requesters almost never sought assistance from OSTP's FOIA Public Liaison.

7. **The FOIA Improvement Act of 2016 requires agencies to make their reference material or guide for requesting records or information from the agency electronically available to the public. Please provide a link to your agency's FOIA reference guide.**

   OSTP's guide for requesting records or information is available here:
   https://www.whitehouse.gov/ostp/foia

Other Initiatives:

8. **If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as improving search processes, eliminating redundancy, etc., please describe them here.**

   Every FOIA request is logged when received and reviewed for requests for expedited processing. The relevant employees who may have records are contacted expeditiously and notified of when they must provide potentially responsive records. The records are sorted and reviewed for responsiveness and applicable exceptions. Responsive, non-exempt records are then provided to the requestor.

   In Fiscal Year 2016, OSTP reviewed and updated its standard FOIA correspondence and revised templates to comply with the FOIA Improvement Act of 2016. OSTP also made further improvements to its FOIA status log to improve the collection of information necessary to process FOIA requests, coordinate responsibilities among FOIA professionals in OSTP, and monitor the progress of every FOIA request.

III. Steps Taken to Increase Proactive Disclosures.

Both the President's and DOJ's FOIA memoranda focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

Posting Material:

1. **Describe your agency's process or system for identifying "frequently requested" records that should be posted online.**

   OSTP is a small agency and does not frequently receive multiple requests for the same or similar records. Should records become "frequently requested," the FOIA professionals will post those records online. Additionally, as described below, OSTP endeavors to proactively disclose records whenever possible.

2. **Does your agency have a distinct process or system in place to identify other records for proactive disclosure? If so, please describe your agency's process or system.**

   Yes. OSTP continues to proactively post information on its website and frequently evaluates whether records that would be of public interest can be proactively disclosed. As new records, reports, and testimony become available, the materials undergo a standard clearance process, which includes a review by OSTP staff for potential posting on OSTP's website. OSTP's FOIA professionals work with OSTP's legislative affairs director to identify testimony and other communications to Congress that could be proactively disclosed. OSTP posts new material such as records, reports, and testimony to our website as they become available, usually soon after they are issued. FOIA professionals also work with OSTP's communications staff to review fact sheets, press releases, and other records that can be posted online at ostp.gov. OSTP has also provided links to many of the reports issued by the various committees and subgroups of the National Science and Technology Council (NSTC), an interagency council, and to the reports issued by the President's Council of Advisors on Science and Technology (PCAST), a Federal advisory committee.

   Additionally, the FOIA Reference Guide includes pertinent information such as relevant FOIA memoranda and OSTP's FOIA regulations.

3. **Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?**

   Yes.

4. **If so, briefly explain those challenges and how your agency is working to overcome them.**

   Staff resources limit the frequency with which OSTP is able to identify and post new content to its website. OSTP is working with its communications and information technology staff to identify ways to streamline the online posting process; this will help OSTP post more content to its website, and in a more timely fashion.

5. **Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.**

OSTP proactively disclosed the following testimony, press releases, and other material at ostp.gov.

6. **Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe these efforts.**

   OSTP has a robust social media presence. Proactively disclosed records are frequently featured on the OSTP blog and social media accounts (e.g., Facebook, Twitter).

Other Initiatives:

7. **If there are any other steps your agency has taken to improve proactive disclosures, please describe them here. For example, has your agency engaged requesters in determining how and what to post? Has your agency used web analytics to inform your proactive disclosures?**

   OSTP has expanded its efforts to proactively provide the public with information about Administration initiatives though robust use of the OSTP website. OSTP's website now includes descriptions and links for much of OSTP's current work, including timely information about current initiatives. OSTP continues to proactively post more information to its website and does so in ways that will be most useful to the public, as described further in Section IV.

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.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that that describes your agency's efforts in this area.

Making Posted Material More Useful:

1. **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?**

   Yes.

2. **If yes, please provide examples of such improvements.**

   OSTP uses its website to offer the public a variety of information that might otherwise be requested through FOIA. As described above, the agency has placed various documents,

memoranda, testimony, federal charters, and R&D budgets on its website for the public to view at its convenience, as well as its Open Government Plan. OSTP maintains a blog, Twitter account, and a virtual Press Room, each of which offers the public a window into the different initiatives and activities spearheaded by the agency. Through these new media outlets, OSTP can reach a larger audience than is possible through a FOIA request or through posting in OSTP's FOIA library online.

OSTP also provides materials to the public to improve ease of use. For instance, OSTP has posted helpful documents for the public related to its FOIA process, including a handbook that compiled existing FOIA information into a single, handy reference document. This FOIA Reference Guide includes pertinent information such as the President's FOIA Memorandum, the Attorney General's FOIA Guidelines, the Chief of Staff's FOIA Memorandum, OSTP's FOIA regulations, and a link to the Department of Justice, Office of Information Policy's guidelines. These documents aid the staff and the public and provide additional information on Federal activities and FOIA policies.

Other Initiatives:

3. **Did your agency successfully post all four quarterly reports for Fiscal Year 2016?**

   Yes.

4. **If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2017.**

   N/A.

V. Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs

The President's FOIA Memorandum and the DOJ's 2009 FOIA Guidelines have emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report 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 the numbers contained in the specified sections of your agency's 2016 Annual FOIA Report and, when applicable, your agency's 2015 Annual FOIA Report.

Simple Track:

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.

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

    Yes, OSTP uses a separate track for simple requests. Requests in this track are processed in chronological order based on the date on which the request was received by the agency.

2. **If so, for your agency overall in Fiscal Year 2016, was the average number of days to process simple requests twenty working days or fewer?**

    [Yes], the average number of days to process simple requests in FY2016 was [13.13] days.

3. **Please provide the percentage of requests processed by your agency in Fiscal Year 2016 that were placed in your simple track.**

    [81]% of requests were placed in OSTP's simple track.

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

    N/A.

Backlogs:

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. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2015 and Fiscal Year 2016 when completing this section of your Chief FOIA Officer Report.

BACKLOGGED REQUESTS

5. **If your agency had a backlog of requests at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015?**

    OSTP had 17 backlogged requests at the close of Fiscal Year 2016. This reflects only a minor increase in the overall number of backlogged requests, from a total of seven backlogged requests at the close of Fiscal Year 2015.

6. **If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:**
    a. **An increase in the number of incoming requests.**
    b. **A loss of staff.**
    c. **An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.**
    d. **Any other reasons – please briefly describe or provide examples when possible.**

In Fiscal Year 2016, OSTP saw an increase in the complexity of requests received. A number of complex cases involved large volumes of records and multiple agency equities, requiring additional time to process the records and consult with other agencies, as appropriate. OSTP made every effort to respond to the requesters and process complex requests in a timely manner. Improvement to timeliness in responding to pending FOIA requests and reduction in backlogs remain ongoing agency priorities.

7. **If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2016.**
    24% of requests were backlogged at the close of Fiscal Year 2016.

BACKLOGGED APPEALS

8. **If your agency had a backlog of appeals at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015? If not, explain why and describe the causes that contributed to your agency not being able reduce backlog.**

    N/A. OSTP had no administrative appeals pending at the end of Fiscal Year 2016.

9. **If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:**
    a. **An increase in the number of incoming appeals.**
    b. **A loss of staff.**
    c. **An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.**
    d. **Any other reasons – please briefly describe or provide examples when possible.**

    N/A.

10. **If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2016.**

If your agency did not receive any appeals in Fiscal Year 2016 and/or has no appeal backlog, please answer with "N/A."

N/A.

Status of Ten Oldest Requests, Appeals, and Consultations:

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 2015 and Fiscal Year 2016 when completing this section of your Chief FOIA Officer Report.

<u>**Ten Oldest Requests**</u>

11. **In Fiscal Year 2016, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2015 Annual FOIA Report?**

    No.

12. **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 2015 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.**
    In Fiscal Year 2016, OSTP was able to close five of its ten oldest requests pending from Fiscal Year 2015.

13. **Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?**

    None.

<u>**Ten Oldest Appeals**</u>

14. **In Fiscal Year 2016, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2015 Annual FOIA Report?**

    OSTP had no pending appeals at the close of Fiscal Year 2015.

15. **If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2015 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.**

N/A.

Ten Oldest Consultations

16. In Fiscal Year 2016, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

OSTP had no pending consultations at the close of Fiscal Year 2015.

17. **If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2015 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.**

N/A.

Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans:

18. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2015.

OSTP's major obstacles in closing the ten oldest requests were the complexity of the requests, the volume of records requested, and limited staff resources.

19. If your agency was unable to close any of its ten oldest requests 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.

N/A.

20. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2017.

OSTP will continue to prioritize its oldest pending requests and communicate with requesters frequently regarding the status of the request and whether they are still interested.

Success Stories:

OPTIONAL: Out of all the activities undertaken by your agency since March 2016 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 key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.