

**2019 Chief FOIA Officer Report**  
**Office of National Drug Control Policy**  
**Michael Passante, Acting General Counsel**

**A. FOIA Leadership**

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. Is your agency's Chief FOIA Officer at or above this level?

**RESPONSE**

ONDCP does not have Assistant Secretaries. The Chief FOIA Officer is a senior official, our Acting General Counsel.

2. Please provide the name and title of your agency's Chief FOIA Officer.

**RESPONSE**

Michael Passante, Acting General Counsel

**B. FOIA Training**

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

**RESPONSE**

Yes.

4. If yes, please provide a brief description of the type of training attended or conducted and the topics covered.

**RESPONSE**

The Freedom of Information Act for Attorneys and Access Professionals

- An overview of the FOIA's procedural requirements and exemptions,
- workshops on individual FOIA Exemptions,
- basic principles for processing FOIA requests from start to finish,
- the FOIA's proactive disclosure requirements, and
- the interface between the FOIA and the Privacy Act.

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

**RESPONSE**

100%

6. 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.

**RESPONSE**

N/A

**C. Outreach**

7. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency’s FOIA administration.

**RESPONSE**

No.

**D. Other Initiatives**

8. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In 2016, the Department **publicized** FOIA-related performance standards for employees that have any role in administering the FOIA, including non-FOIA professionals. Please also indicate whether your agency has considered including FOIA-related performance standards in employee work plans for employees who have any role in administering the FOIA.

**RESPONSE**

ONDCP’s FOIA officials regularly communicate FOIA standards and expectations to employees throughout the agency who are responsible for locating and providing documents. FOIA-related performance standards have been included in employee work plans where those employees are substantially involved with FOIA.

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

**RESPONSE**

ONDCP tries to release as much information as possible when responding to requests. In the vast majority of ONDCP’s responses to FOIA requests for which ONDCP had documents, the responses contained either no redactions or only minor redactions for personal information. Before responses were provided to requesters, ONDCP FOIA staff reviewed the material to ensure that where an exemption applied, the records were withheld or redacted only where ONDCP was able to articulate the harm that would have resulted from the release of such information.

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

DOJ's **FOIA Guidelines** emphasize 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 describes your agency's efforts in this area.

1. For Fiscal Year 2018, 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 2018 Annual FOIA Report.

### **RESPONSE**

8 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.

### **RESPONSE**

N/A

3. 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.

- Note: In September 2017, OIP released a FOIA Self-Assessment Toolkit as a resource for agencies conducting a self-assessment of their FOIA program. The Toolkit is available on OIP's website for all agencies to use.

### **RESPONSE**

ONDCP assessed its FOIA program as part of our efforts to revise our FOIA regulations.

4. 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 the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2018 (please provide a total number or an estimate of the number).

### **RESPONSE**

0

5. Please describe the best practices used to ensure that your FOIA system operates efficiently and effectively and any challenges your agency faces in this area.

**RESPONSE**

ONDCP has improved communication with its requesters in a spirit of cooperation. If ONDCP receives a request that is unclear, misdirected, or that misunderstands the kind of work that ONDCP does, ONDCP will often call or email the requester to clarify what documents the requester is asking for and explain what kinds of documents ONDCP maintains. For example, one common misconception is that ONDCP has information about particular criminal cases or investigations conducted by our High Intensity Drug Trafficking Area grantees, which we rarely do. Another common misconception is that ONDCP has documents related to the President that have nothing to do with drug issues. But as part of our communication with requesters, ONDCP can sometimes help redirect the requesters to other sources. The greatest challenge ONDCP faces in operating our FOIA system efficiently and effectively is the greatly increased number of requests received during this reporting period and the last one compared to prior years.

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

The Department of Justice has long 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.

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

**RESPONSE**

Visitor Records - <https://www.whitehouse.gov/ondcp/additional-links-resources/foia/>

Authorization Language- <https://www.whitehouse.gov/ondcp/additional-links-resources/authorizations-language/>

Budget and Performance - <https://www.whitehouse.gov/ondcp/additional-links-resources/budget-and-performance/>

2. Please describe how your agency identifies records that have been requested and released three or more times (and are therefore required to be proactively disclosed pursuant to 5 U.S.C. § 552(a)(2)(D)).

**RESPONSE**

ONDCP regularly check the FOIA log to ensure that all records requested three or more times are disclosed proactively.

3. 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?

**RESPONSE**

Yes, ONDCP tries to post material in formats requested by the requester.

4. If yes, please provide examples of such improvements.

**RESPONSE**

ONDCP uses press releases, social media, email, and other means to inform the public about information that may be of interest in formats that are requested.

5. Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.

**RESPONSE**

ONDCP proactively discloses numerous documents on its website whenever members of ONDCP's staff, particularly its Office of Budget and Performance believe that certain documents or data would be helpful to the public. Our Office of Budget and Performance contracts for significant research studies regarding drug use and its consequences and produces a compendium of drug-related data each year, both of which are made available to the public on our website.

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

A key component of FOIA administration is using technology to make information more accessible. 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.

1. Is your agency leveraging technology to facilitate efficiency in conducting searches, including searches for emails? If so, please describe the type of technology used. If not, please explain why and please describe the typical search process used instead.

**RESPONSE**

The EOP has begun to use Ringtail to search for and sort particular kinds of documents such as emails. The analytical tools associated with that program can be useful. We generally do redacting electronically in Adobe.

2. OIP issued **guidance** in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

**RESPONSE**

Yes.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2018?

**RESPONSE**

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 2019.

**RESPONSE**

N/A

5. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2017 Annual FOIA Report and, if available, for your agency's Fiscal Year 2018 Annual FOIA Report.

**RESPONSE - <https://www.whitehouse.gov/ondcp/additional-links-resources/foia/>**

6. Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

**RESPONSE**

The EOP has begun to use Ringtail to search for and sort particular kinds of documents such as emails. When working with a large number of emails, Ringtail has reduced the time to locate, manage and review those documents. Ringtail provides various search options and coding to narrow your documents down and code with responsiveness labels, speeding up the document review process. One challenge is that it is difficult to redact in Ringtail.

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

The Department of Justice has 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 2018 Annual FOIA Report and, when applicable, your agency's 2017 Annual FOIA Report.

### **A. 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? If your agency uses a multi-track system beyond simple, complex, and expedited to process requests, please describe the tracks you use and how they promote efficiency.

#### **RESPONSE**

Yes.

2. If your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2018?

#### **RESPONSE**

Yes.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2018 that were placed in your simple track.

#### **RESPONSE**

**79%**

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?

#### **RESPONSE**

N/A

### **B. 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 2016 and Fiscal Year 2017 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 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

### **RESPONSE**

No

6. If not, did your agency process more requests during Fiscal Year 2018 than it did during Fiscal Year 2017?

### **RESPONSE**

Yes.

7. If your agency's request backlog increased during Fiscal Year 2018, please 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:

- An increase in the number of incoming requests.
- A loss of staff.
- 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.
- Any other reasons – please briefly describe or provide examples when possible.

### **RESPONSE**

The number and complexity of the more advanced requests that ONDCP receives has gone up significantly, particularly those involving searching a large volume of emails. ONDCP's Office of Legal Counsel has been short staffed, sometimes with one attorney for the whole agency on numerous issues (not just FOIA).

8. 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 2018. If your agency has no request backlog, please answer with "N/A."

### **RESPONSE**

18.75%

## **BACKLOGGED APPEALS**

9. If your agency had a backlog of appeals at the close of Fiscal Year 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

### **RESPONSE**

N/A

10. If not, did your agency process more appeals during Fiscal Year 2018 than it did during Fiscal Year 2017?

**RESPONSE**

N/A

11. If your agency's appeal backlog increased during Fiscal Year 2018, please 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:

- An increase in the number of incoming appeals.
- A loss of staff.
- 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.
- Any other reasons – please briefly describe or provide examples when possible.

**RESPONSE**

N/A

12. 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 2018. If your agency did not receive any appeals in Fiscal Year 2018 and/or has no appeal backlog, please answer with "N/A."

**RESPONSE**

N/A

**C. Backlog Reduction Plans**

13. In the 2018 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2017 was asked to provide a plan for achieving backlog reduction in the year ahead. Did you agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2018?

**RESPONSE**

N/A

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2018, what is your agency's plan to reduce this backlog during Fiscal Year 2019?

**RESPONSE**

N/A

## **D. Status of 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 2016 and Fiscal Year 2017 when completing this section of your Chief FOIA Officer Report.

### **OLDEST REQUESTS**

15. In Fiscal Year 2018, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

#### **Response**

No

16. 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 2016 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

#### **RESPONSE**

9

17. 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?

#### **RESPONSE**

Two withdrawn requests. Several attempts were made to contact the requesters to narrow/clarify the FOIA request, and we did not receive a response. Communications were sent to the requesters informing them we were closing our files.

18. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

#### **RESPONSE**

Each request is generally handled on a first-in, first-out basis within that particular category.

## **TEN OLDEST APPEALS**

19. In Fiscal Year 2018, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

### **RESPONSE**

None pending in 2017.

20. 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 2017 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

### **RESPONSE**

N/A

21. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

### **RESPONSE**

N/A

## **TEN OLDEST CONSULTATIONS**

22. In Fiscal Year 2018, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

### **RESPONSE**

ONDCP received a consultation on September 28, 2017 and it was closed on October 19, 2017.

23. 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 2017 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

### **RESPONSE**

N/A

## **E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans**

4. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2018.

### **RESPONSE**

The number and complexity of the more advanced requests that ONDCP receives has gone up significantly. ONDCP did not have personnel assigned full time to administration of its FOIA program.

25. 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.

**RESPONSE**

N/A

26. 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 2018.

**RESPONSE**

We only have one outstanding request and we are currently working on reviewing the documents.

**F. Success Stories**

Out of all the activities undertaken by your agency since March 2018 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, OIP will highlight these agency success stories during Sunshine Week. 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.

**RESPONSE**

President Trump created the President’s Commission on Combating Drug Addiction and the Opioid Crisis by Executive Order on March 29, 2017. ONDCP funded and served as staff for the Commission. We received several FOIA requests, requesting, “all public comments submitted to the President’s Opioid Commission”. ONDCP received more than 13,000 pieces of correspondence, and we reviewed, redacted and made available many of them to requesters.