Office of the Director of National Intelligence

2012 Chief FOIA Officer Report

This report covers the period beginning with March 1, 2011 through February 28, 2012 and outlines the steps the ODNI has taken to "improve FOIA operations and facilitate information disclosure." The ODNI is deeply committed to transparency to the best of our abilities without harming national security.

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.

1. **Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?** Yes. A FOIA PowerPoint presentation continues to be available through our internal website. In addition, we teamed up with other agencies within the Intelligence Community to provide FOIA process and equity recognition training to a wider audience.

2. **Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?** Yes. ODNI FOIA professionals attended FOIA training provided by the Department of Justice and American Society of Access Professionals.

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?** Yes. The ODNI has chosen to release unclassified but otherwise exempt information in several cases.

4. **What exemptions would have covered the information that was released as a matter of discretion?** Exemption 5 would have covered the material that was released as a matter of discretion.

5. **Describe your agency's process to review records to determine whether discretionary releases are possible.** Under the FOIA, ODNI conducts a line by line review of all responsive records to determine what information may be reasonably segregated and released. In addition, many documents are proactively reviewed prior to receipt of a FOIA request and are made available to the public through posting to our public website

6. **Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.** ODNI continues to routinely review and post records to our public website.

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. ODNI increased from 18 cases released in full in FY10 to 30 cases release in full in FY11.

8. **Did your agency have an increase in the number of responses where records were released in part?** Yes. ODNI increased from 42 cases released in part in FY10 to 237 cases released in part in FY11.

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."

Describe here the steps your agency has taken to ensure that its system for responding to requests is effective and efficient.

1. **Do FOIA professionals within your agency have sufficient IT support?** Yes. ODNI utilizes a FOIA case management system that allows the staff to open and track cases electronically. In addition, the ODNI FOIA office began applying all redactions electronically this year. This has enabled the staff to work more efficiently by promoting electronic review and recommendations by the subject matter experts. The FOIA program office has also partnered with the agency's IT support to ensure efficient interaction and support.
2. **Is there regular interaction between agency FOIA professionals and the Chief FOIA Officer?** Yes. Our Chief FOIA Officer also serves as our appellate authority for the FOIA so there is regular interaction on FOIA matters.

3. **Do your FOIA professionals work with your agency's Open Government Team?** ODNI's FOIA program and Open Government Team are aligned to the same directorate within the ODNI. ODNI's FOIA professionals work directly with the ODNI Open Government Team by providing input to Open Government releases and also by working with the Open Government team to shape policy and guidance.

4. **Describe the steps your agency has taken to assess whether adequate staffing is being devoted to FOIA administration.** The Chief, Information and Data Management Group routinely reviews the FOIA workload to determine if staff should be re-allocated to the

FOIA program.   In addition, non-FOIA professionals in the Information Management Office are frequently cross-trained to provide backup support to the FOIA office when necessary

5. **Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.** As a relatively new agency, ODNI has been building its FOIA program since its inception in 2005. The FOIA office currently has a full-time individual solely dedicated to processing FOIA requests. In addition, staff members from other review and release programs are cross-trained to assist with FOIA processing as needed.

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. Since its inception, ODNI has maintained a robust public website. Documents expected to be of public interest are routinely posted by various agency components.   The FOIA webpage is frequently updated as new Intelligence Community policy documents are published. In addition, records released via the FOIA are often posted to the public website.

2. **Provide examples of the records, datasets, videos, etc., that have been posted this past year.** The National Intelligence Council (NIC) and the National Counterproliferation Center routinely publish unclassified reports to their respective public web pages. Records relating to ODNI's records management program have also been posted to the ODNI's Electronic Reading Room.

3. **Describe the system your agency uses to routinely identify records that are appropriate for posting.** All ODNI directorates as well as the FOIA office and public affairs office review records to determine what can be proactively posted.

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.?** While we have not actively solicited feedback, etc. we are proactive with individuals who regularly access our website when new information is posted, or when a periodic report is posted that we know an individual or organization is interested in. We also respond to all inquiries to our dni-pao public email address, which is identified on our dni.gov public website.

   Additionally, we use a commercial digital communication management system, which allows the ODNI to provide citizens with better service and access to relevant information by proactively

communicating official content through an RSS feed. This system supports the OMB's open government directive and offers transparency through the monitoring of the ODNI's website for updates and automatically created email alerts, proactively communicating new information to citizens. The ODNI currently has more than 48,000 subscribers to its website and generates on average of 250,000 messages monthly to those subscribers.

5. **Describe any other steps taken to increase proactive disclosures at your agency.** ODNI's public website is continually under review to determine what improvements can be made in order to achieve greater transparency.

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?** ODNI has a centralized FOIA program.

Online tracking of FOIA requests:

3**. 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

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?** Yes. ODNI is participating in a technology working group hosted by the Office of Government Information Services (OGIS) to find better ways to use technology to make the FOIA process more efficient.

6. **If so, describe the technological improvements being made.** This is still being determined.

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?** No

    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

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.

    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?** Yes

    b. **If your agency had a backlog of administrative appeals in Fiscal Year 2011, did that backlog decrease as compared to Fiscal Year 2010?** No

    c. **In Fiscal Year 2011, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2010?** No

    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?** Yes

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:

Request Backlog: ODNI's backlog decreased for FY11.

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?** Yes. FOIA appeals to the ODNI doubled in FY11.

f. **Was the lack of a reduction in the appeal backlog caused by a loss of staff?** No

g. **Was the lack of a reduction in the appeal backlog caused by in increase in the complexity of the appeals received?** Yes. FOIA requests overall have become increasingly complex, often requiring extensive coordination with other agencies.

h. **What other causes, if any, contributed to the lack of a decrease in the appeal backlog?** N/A

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.

1. **Does your agency routinely set goals and monitor the progress of your FOIA caseload?** Yes. ODNI strives to release its backlog by at least 10% per year. The FOIA office regularly reviews our FOIA logs to look for ways to improve response times and operate more efficiently.
2. **Has your agency increased its FOIA staffing?** No

3. **Has your agency made IT improvements to increase timeliness?** Yes. ODNI continues to make improvements to its specially-developed FOIA tracking and processing system.
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? Yes. ODNI frequently works with other agencies to informally handle particular types of information in order to speed up or eliminate the need for formal consultations. In addition, we utilize IT solutions to share documents whenever possible.

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

ODNI put together a one-day Intelligence Community equity recognition training for FOIA professionals. We brought in our FOIA counterparts from across the IC to brief on their agency's equities, as well as provide an overarching community perspective from the ODNI. So far we have taken this to FBI and DOJ-NSD. Both events were very successful, and allowed FOIA professionals from those agencies to ask many great questions about how to handle FOIA processing when IC equities are involved. We are hoping to continue this for FY12.