

2011 Chief FOIA Officer Report for the Overseas Private Investment Corporation

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.

1. 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.

- a. Did your agency hold an agency FOIA conference, or otherwise conduct training during this period?**

OPIC provides individual training to liaisons within each department who are responsible for coordinating FOIA searches and comments. Departmental training is also available upon request.

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

Staff attended OIP's FOIA Fee Summit and Exemption 2 training.

- c. Did your agency make any discretionary releases of otherwise exempt information?**

It is OPIC's policy to release information when no harm will result, regardless of the information's ability to qualify for an exemption.

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

Because discretionary releases are a part of normal OPIC processing, OPIC does not keep track of releases that qualified for exemption but were not withheld. Due to the types of exemptions available, it is likely that they would have qualified under exemptions b(2) or b(5).

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

OPIC's regular review process begins with a review for harmful information. When harmful information is located, OPIC determines whether the information qualifies for withholding under an exemption and applies the exemptions appropriately. Information that is not harmful is therefore not reviewed for withholding, even if it qualifies for exemption.

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

OPIC makes every effort to release partial records when practical. OPIC denied only two requests in full using exemptions during Fiscal Year 2011.

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

Yes, from four to twelve.

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

Yes, from nineteen to twenty.

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 your 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.

- a. Do FOIA professionals within your agency have sufficient IT support?**

Yes.

- b. Is there regular interaction between agency FOIA professionals and the Chief FOIA officer?**

As OPIC is a small agency, all FOIA staff work together closely.

- c. Do your FOIA professionals work with your agency's Open Government Team.**

The Chief FOIA Officer coordinates with other departments and teams, including the Open Government Team.

- d. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to responding to FOIA requests.**

FOIA requests are responded to effectively, therefore adequate staffing exists with respect to the small volume of requests.

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

All steps are described above.

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 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. In doing so, answer the questions listed below and describe any additional steps taken by your agency to make proactive disclosures of information.

- a. Has your agency added new material to your agency website since last year?**

Yes.

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

New arbitral awards, board resolutions, annual reports, handbooks, Office of Accountability reviews, and similar information have been posted.

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

The Chief FOIA Officer serves as part of the task force that is continuing to identify information that will be made available in the future.

d. 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 posted material, improving search capabilities, providing explanatory material, etc.?

OPIC recently hired new website and social media staff who is reviewing, among other duties, ways to make public information more accessible.

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

OPIC has harnessed social media to increase agency transparency and visibility. When new information is proactively made available, it is posted to our webpage and blog and announced through OPIC's Twitter and Facebook feeds.

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 innovated aspects of technology use:

1. Electronic receipt of FOIA requests:

a. Can FOIA requests be made electronically to your agency?

Yes.

b. If your agency processes requests on a decentralized basis, do all components of your agency receive requests electronically?

OPIC has no components.

2. Online tracking of FOIA requests:

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

Yes. Requesters may e-mail the general FOIA mailbox or the FOIA officer in charge of the request for an update on the request's status at any time.

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

Not applicable.

3. Use of technology to facilitate processing of requests:

a. 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.

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

OPIC has created a tracking and reporting system using shared server technology that allows the attorney handling FOIA requests to enter information for each request and track its progress. The system operates on agency servers with technical support provided by the IT department. It uses a minimal amount of resources and requires little maintenance. The attorneys who deal with FOIA matters review the information on a daily basis. OPIC is transitioning to a fully electronic records system which will enable electronic search of all significant agency documents.

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

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 request 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. 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?

No.

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?

Not applicable.

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. Section VII.A, 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?**

No backlog.

- 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 backlog.

- c. **In Fiscal Year 2011, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2010?**

Yes.

- 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?**

No administrative appeals were pending.

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:**

- a. **Request Backlog:**

- i. **Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?**

Not applicable.

- ii. **Was the lack of a reduction in the request backlog caused by a loss of staff?**

Not applicable.

- iii. **Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?**

Not applicable.

- iv. **What other causes, if any, contributed to the lack of a decrease in the request backlog?**

Not applicable.

- b. **Administrative Appeal Backlog:**

- i. **Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?**

Not applicable.

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

Not applicable.

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

Not applicable.

- iv. **What other causes, if any, contributed to the lack of a decrease in the appeal backlog?**

Not applicable.

4. 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.
- a. Does your agency routinely set goals and monitor the progress of your FOIA caseload?
Yes.
 - b. Has your agency increased its FOIA staffing?
No.
 - c. Has your agency made IT improvements to increase timeliness?
No, IT support is sufficient to ensure timeliness as evidenced by the lack of a backlog in 2011 and a minor “backlog” not attributable to the agency in 2010.
 - d. 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?
No, OPIC already responds to all consultations in a timely manner.

VII. 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?
Not applicable.

VII. 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 efforts.

For the first time, OPIC had a requester file a request for mediation with the Office of Government Information Services (OGIS). Ultimately, OPIC’s willingness to cooperate and go beyond the bare minimums of the FOIA resulted in OGIS declining mediation because OPIC’s determination appeared to be grounded in a thorough review and proper exemption application.

To address the OGIS complaint, OPIC voluntarily completed a full re-review of a collection of documents selected by the requester. By the end of the OGIS review, these documents had been reviewed by five

different OPIC officers for a total of nine reviews and had been reviewed by two different business submitters two times each. OPIC also provided a more in depth description of the type of information withheld in each case and an explanation of why that information was withheld. None of the extra time and effort is reflected on OPIC's annual FOIA reports, however OPIC made every reasonable effort to strike a balance between addressing the requester's concerns and continuing to timely respond to FOIA requests.