

**ANNUAL REPORT  
OF THE CHIEF FREEDOM OF INFORMATION ACT (FOIA) OFFICER  
FOR THE U.S. OFFICE OF SPECIAL COUNSEL (OSC)  
ON  
FOIA OPERATIONS AND ADMINISTRATION**

In accordance with the Attorney General's memorandum dated March 19, 2009, the Chief FOIA Officer for OSC hereby submits a report on steps taken to improve FOIA operations and to facilitate information disclosure. Any questions about the content of this report may be directed to the office of:

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Following review of this draft report by the Office of Information and Privacy at the Department of Justice, it will be posted on OSC's website at: [www.osc.gov/RR-FOIA.htm](http://www.osc.gov/RR-FOIA.htm).

I. Steps Taken to Apply the Presumption of Openness

OSC has acted in several ways to implement a presumption of openness with regard to agency activities. A new directive developed by the FOIA unit was issued and sent to all agency personnel in July 2009 by the Chief FOIA Officer. The directive was largely procedural in nature, but agency employees were advised that, consistent with the presidential memorandum to agency heads on FOIA issued in January of that year and implementing guidance issued by the Attorney General, all employees are responsible for assisting with OSC's implementation of its responsibilities under the FOIA. FOIA program personnel have periodically informed agency personnel that a presumption of openness applies to all agency records, and that this presumption is applied to the extent possible in the processing of FOIA requests.

The effects of applying a presumption of openness are reflected in the totals of partial grants and full denials for fiscal years (FYs) 2008 and 2009. In FY 2008, the number of full denials based on exemptions was 42; in FY 2009, the number of full denials based on exemptions decreased to 26. Conversely the number of partial grants increased from 29 to 43 between FY 2008 and 2009, reflecting OSC's decreased use of discretionary exemptions.

OSC also greatly reduced its use of exemption 2 between FYs 2008 and 2009. In FY 2008, exemption 2 was applied 39 times to withhold records reflecting internal or

administrative information. In FY 2009, exemption 2 was only invoked by OSC 11 times to withhold such material.

OSC has taken these actions with careful consideration of the harms that may ensue from disclosure of sensitive information in its investigatory records. OSC is an investigative and prosecutorial agency, responsible for safeguarding the merit system in federal employment by protecting covered employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. OSC also receives and acts on whistleblower disclosures by covered federal employees and applicants alleging wrongdoing in government agencies; enforces and provides advice on Hatch Act restrictions on political activity by government employees; and enforces employment rights secured by the Uniformed Services Employment and Reemployment Rights Act for federal employees who serve in the National Guard or Reserves. In carrying out these responsibilities, it is important that legitimate privacy interests of complainants, whistleblowers, and others be protected. To address these concerns, OSC uses redaction techniques to protect identities and privacy interests, while making partial releases that further the FOIA's purpose of ensuring an informed citizenry.

## II. Steps Taken to Ensure an Effective Agency System for Responding to Requests

During the last year, OSC has added resources to support FOIA processing operations. Administrative support was obtained to assist the FOIA Officer with data entry and preparation of letters acknowledging receipt of incoming requests and appeals, in an effort to enable the FOIA Officer to devote more time to processing requests. OSC's Legal Counsel and Policy Division (LCPD), to which the FOIA Officer is assigned, also hired an attorney with FOIA expertise in efforts to enhance the efficiency and effectiveness of FOIA operations overall, and to assist in the processing of FOIA appeals.<sup>1</sup>

In addition, LCPD has conducted regular meetings at which program operations have been discussed. These weekly meetings have provided the FOIA Officer with an opportunity to confer at one time with unit attorneys on questions about the construction and scope of FOIA requests, and unusual processing or legal issues.

LCPD personnel have also been coordinating with OSC information technology personnel on their unit's revamping of the agency's 10-year old case-tracking system, in hopes that the new system might be more efficient in responding to increasing numbers of FOIA requests for database information in electronic form. Such requests have been extremely time-consuming, as they frequently require reprogramming efforts to redact specific electronic fields, exempt for privacy reasons, from electronic databases. LCPD, in coordination with the agency's information technology unit, has also been exploring improvement of the current FOIA tracking system, and/or purchase of a commercial FOIA

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<sup>1</sup> Recent vacancies in both the administrative support and legal position are expected to be filled again soon.

tracking system, to increase automation of request and processing functions. In either case, LCPD continues to work with the information technology unit on improvements needed in the current tracking system to support program operations.

### III. Steps Taken To Increase Proactive Disclosure

In 2009, OSC totally redesigned its external website to make it more user-friendly and accessible to the public. The redesign included simplified links and a format better organized by subject matter. With the launch of the site, OSC has increased the number of reports available online to better inform the public about agency operations and compliance with statutory and other requirements applicable to agency activities. New postings include all OSC annual reports since 1979 (which detail the agency's processing and results of prohibited personnel practice complaints, whistleblower disclosures, Hatch Act complaints, and USERRA claims); the agency's annual Human Capital Survey, and reports on e-government, information quality, procurement, and the No FEAR Act. OSC will continue to explore ways in which to enhance proactive disclosure, particularly through electronic means.

With respect to FOIA program activities, OSC will be posting its next annual report in a more readable format, one that will allow users to "mash" the data to provide meaningful comparisons. OSC will continue to explore ways in which to enhance proactive disclosure, particularly through electronic means.

### IV. Steps Taken To Greater Utilize Technology

#### 1. Does your agency currently receive requests electronically?

Other than by acceptance of requests by fax, OSC does not currently receive requests electronically.

#### 2. If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically?

There do not appear to be serious impediments to some form of electronic receipt of requests. Staff engaged in FOIA program operations, in coordination with agency information technology and other management support personnel, are beginning to look into the most feasible, effective, and efficient mechanism among several possible options.

#### 3. Does your agency track requests electronically?

Yes.

4. If not, what are the current impediments to your agency utilizing a system to track requests electronically?

Not applicable (see answer to 3, above).

5. Does your agency use technology to process requests?

Yes. OSC's FOIA tracking system currently links to a relational database that, in most cases, enables identification for FOIA staff of past or current case files related to a request, facilitating location of the responsive files and documents. The FOIA tracking system is also used to track receipt of and basic status information about requests, and to generate the data needed for annual FOIA reports.

6. If not, what are the current impediments to your agency utilizing technology to process requests?

Not applicable (see answer to 5, above).

7. Does your agency utilize technology to prepare your agency annual FOIA report?

Yes.

8. If not, what are the current impediments to your agency utilizing technology in preparing your annual FOIA report?

Not applicable (see answer to 7, above).

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

One measure undertaken to date to reduce backlogs in responding to requests has been the convening of a working group comprised of the FOIA Officer, a field office investigator, and all LCPD attorneys, for periods ranging between 10-30 days at least once a year, to work on a concerted basis on processing FOIA requests and appeals. In spite of increased numbers of requests over the past two years, OSC managed to significantly reduce the number of backlogged requests from prior years. OSC received 121 FOIA requests during FY 2008 and at the end of the FY, had fewer than 10 backlogged requests. In FY 2009, the number of FOIA requests received increased to 152; despite this 26% increase in the number of requests received over the previous FY, at the end of FY 2009, there were still fewer than 10 backlogged requests. OSC also decreased the number of backlogged appeals between FY 2008 and FY 2009. At the end of FY 2008, OSC had 13 backlogged appeals; this number had been reduced at end of FY 2009.

Given the increased numbers and complexity of requests, among other factors, OSC was not as successful with respect to response times or ages of pending requests. The median response time for all FOIA responses processed increased from FY 2008 to FY 2009 in all categories except one – *i.e.*, increases occurred in the median number of days to process simple requests, complex requests, and expedited requests; the decline occurred in the median number of days for processing more complex requests. The highest number of days pending for FOIA requests also increased between FY 2008 and FY 2009 in all categories except one – *i.e.*, increases occurred in the highest number of days pending for simple and complex requests; the one category showing a decrease in highest number of days pending was expedited requests.

Due to the recent identification of three matters that had not been processed to completion in prior years, OSC's oldest request at the end of both FY 2008 and FY 2009 was one received in January of 2005; the oldest appeal at the end of those two fiscal years was one received in December of 2003 (an interim appeal response was sent in March of 2005). All three matters have now been processed and closed.

LCPD is and will continue to be engaged this year in a comprehensive review of FOIA processing protocols, operations, and staffing to identify and implement improvements in program procedures, particularly with a view towards improvements in response times, backlog reduction, and processing procedures as a whole.