



U.S. DEPARTMENT OF STATE

CHIEF FREEDOM OF INFORMATION ACT OFFICER ANNUAL REPORT

MARCH 12, 2012

Background

The Department of State (Department) has a centralized FOIA Program, with one office receiving and coordinating the processing of all requests made to the Department. The Office of Inspector General is the only exception, processing requests independently and providing input into the Department's annual report.

The Department is responsible for formulating and executing U.S. foreign policy and maintains records dealing with U.S. foreign relations, in addition to the programs and activities that support it. However, not only is the substance of the Department's records of a global nature, but the records themselves also are maintained globally - the Department of State maintains records domestically, and also at hundreds of posts located throughout the world. FOIA requests made to the Department vary in size from very narrow requests for a single document to voluminous in size and complex in scope, requiring the review of thousands of documents, frequently retrieved from multiple sources both domestically and at posts overseas. Many of the Department's records contain sensitive national security information and are classified pursuant to executive orders. The review of responsive records often requires coordination with other Federal agencies, and with other governments, before an appropriate release determination can be made. FOIA requests are processed incrementally, with interim responses made to requesters as segments are completed, instead of at the conclusion of processing.

Due to its global structure and the nature of its record holdings, the Department faces great challenges in achieving full compliance with the time limits of the FOIA. However, it remains committed to achieving the fullest possible compliance, with the greatest level of customer service.

Name and Title of Agency Chief FOIA Officer:
Assistant Secretary Joyce A. Barr, Bureau of Administration

Section I: Steps Taken to Apply the Presumption of Openness

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

Comprehensive quarterly training is provided to employees who review documents in response to FOIA requests. FOIA case analysts are also encouraged to attend the training. All training sessions emphasize the implementation of the new Guidelines and changes in the FOIA.

The Department maintains a network of FOIA contacts in all bureaus to liaise with the central FOIA office. Refresher training sessions were held for these contacts, and the importance of Department-wide compliance with the Guidelines was stressed. These sessions also provided a forum for contacts to discuss issues encountered in their individual bureaus and to engage in a dialog with their colleagues to identify best practices to improve the Department's processing of FOIA requests, and to further the overall principles of transparency. The FOIA Program Manager conducts weekly training for new Information Management Officers, who are sent to overseas posts and are responsible for FOIA duties. Extensive training was provided on the new electronic case processing system for FOIA. Alternative Dispute Resolution training was provided twice during this year for the Department by the Office of Government Information Services and the Department's FOIA Program Manager.

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

Department personnel attended external training sessions provided by the Department of Justice including, FOIA for Attorneys and Access Professionals, FOIA Act Administrative Forum, FOIA Fee Summit and Exemption b2, Advanced FOIA, Annual Report training, Consultation Guidelines training, and the FOIA Litigation Seminar. Personnel also attended training provided by the American Society of Access Professionals (ASAP) concerning the latest in FOIA, Privacy, and records at the ASAP Annual Symposium & Training Conference and at multiple 2011 ASAP Luncheon trainings. FOIA professionals attended alternative dispute resolution training provided by the Office of Government Information Services. FOIA professionals attended "The Twenty-First Conference on Computers, Freedom, and Privacy" in Washington, DC, sponsored by the Association of Computing Machinery. FOIA personnel received records training through the Department of Treasury's Records and Information Management Month (RIMM) 2011 Training and privacy training through the Department's own Protecting Personally Identifiable Information course. FOIA professionals also attended NARA's RACO 2011 Conference, "Forging Ahead: Meeting the Challenges of Electronic Records in an Open Government".

3. Did your agency make any discretionary releases of otherwise exempt information?

The Department has long sought to comply with the spirit of the FOIA and to always release as much information as possible. A two-tiered review process at the initial level and an independent review by a formal Appeals Review Panel at the appeal level ensure that information is repeatedly scrutinized for the greatest possible release.

The Department's practice is to release all material reviewed under the FOIA unless withholding is required by a FOIA exemption or there is an identifiable harm which requires that it be withheld. All reviewers are trained to conduct FOIA reviews accordingly. Thus, the Department routinely makes discretionary releases under FOIA, particularly as regards exemptions b5 (deliberative process privilege) and b2 (internal personnel rules and practices), although the use of b2 has sharply decreased since the Supreme Court's decision in *Milner v. Department of the Navy*, 131 S. Ct. 1259 (2011). The Department also declassifies material, which would have been exempt under b1, by determining that such material is no longer classified. The essence of the Department's review efforts is to release as much as it can without endangering individuals and/or U.S. government policies and activities.

As a general indicator, it is useful to examine the relative number of withholdings made under exemptions b5. While the actual number of withholdings increased from fiscal year 2010 (240 for b5) to 2011 (361 for b5), the percentage of times the exemptions were claimed stayed the same. In fiscal year 2011, the Department processed 26,836 cases. The number of cases processed is 8,450 (about 46% more) than were processed in 2010. The percentage increase in exemption usage is comparable to the overall increase in cases processed. Using exemption b5 361 times out of 26,836 cases processed equates to b5 being used 1.3% of the time, the same as in 2010.

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

FOIA exemption b5 is generally the exemption that allows room for discretionary releases.

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

As stated above, the Department operates under the fundamental principle that information reviewed under FOIA is releasable, unless it must be withheld. To implement this principle, the Department conducts FOIA reviews in a structure designed to ensure maximum release of information. As described previously, this structure employs a two-tiered review process at the initial level and an independent review by a formal Appeals Review Panel at the appeal level, thereby ensuring that information is repeatedly scrutinized for additional releases.

It should be noted that the Department's Annual FOIA Report for FY 2011 shows that most frequently cited exemptions are non-discretionary - exemptions b1, b3, and b6.

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

The Department maintains a public webpage that contains a rich collection of information, including a collection of documents released under FOIA.

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

No, the number of responses where records were released in full decreased from 8,710 to 4,090. The reduction in full releases is due to the increased use of non-discretionary exemptions.

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

Yes, the number of responses where records were released in part increased from 1,365 to 11,929.

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

1. Do FOIA professionals within your agency have sufficient IT support?

Yes. FOIA professionals at the Department have sufficient IT support for tracking and processing FOIA requests. Although the Department faces some technological challenges due to its structure (records are maintained worldwide) and the complexity of its records (e.g., many are classified), it remains committed to leveraging technology to the greatest extent possible to facilitate FOIA responses.

The FOIA professionals have IT support located within their department. The IT Support is always available to assist with FOIA electronic processing system questions and concerns, and is constantly looking at matching and growing the right skill sets to continually improve in meeting the needs of the FOIA users. The IT support also assists with adding new documents to the FOIA public website. In addition, FOIA professionals received extensive training for a new FOIA case processing system.

The Office of Inspector General (OIG) has an IT specialist specifically assigned to resolve any problems that may arise with the FOIA database.

2. Is there regular interaction between agency FOIA professionals and the Chief FOIA Officer?

Yes. The Chief FOIA Officer is involved in overseeing the program and has committed resources to ensure its success.

3. Do your FOIA professionals work with your agency's Open Government Team?

Yes, the FOIA Program Manager/FOIA Public Liaison is part of the Department's Open Government Working Group. As such, she regularly attends Open Government meetings, coordinates input for the Department's Open Government Plan vis-à-vis FOIA, records management, and systematic declassification programs, reports progress towards FOIA backlog reduction goals, and assists with scoring of OMB and non-governmental organizations (such as Open the Government) self-assessment surveys on agency openness. In addition, the FOIA Program Manager provides a monthly report to the working group on steps taken to improve transparency, accountability, and openness. The FOIA office continually updates its public website with newly released FOIA documents, and the Department's Open Government website provides a link to this material.

4. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to FOIA administration.

The Department continuously evaluates its FOIA program, and modifies the structure and process to promote increased efficiency. As reported in last year's Chief FOIA Officer Report, a number of initiatives were made permanent since they continue to improve the FOIA process. These initiatives included a permanent and expanding litigation team to process FOIA requests in litigation; a Rapid Response Team to handle the most pressing work and to continue to reduce the backlog of FOIA referrals; and a team dedicated to processing the 250 oldest FOIA requests. The purpose of the restructuring was to not only address specific problem areas by devoting resources to them, but also to alleviate the burden on the core FOIA workforce, freeing them up to process more backlogged cases. All of these initiatives continue to provide relief to case processing branches.

The Department is currently examining additional initiatives that would restructure the flow of work within the core FOIA workforce. The Department is still transitioning to a new electronic case tracking and processing system. The initiatives currently under review leverage technological capabilities of the new FOIA case tracking and processing system to streamline the flow of the work.

5. Describe any other the steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.

The Department is currently deploying a new, more robust IT system to its FOIA professionals, designed to more efficiently and effectively perform case processing functions. This new system will not only provide the Department with the tools necessary to meet its FOIA case processing needs of today, but will also be agile enough to help streamline FOIA processes in the future.

Section III: Steps Taken to Increase Proactive Disclosures

1. Has your agency added new material to your website since last year?

Yes. From March 2011 through March 2012, the Department has added 2,263 documents for the Rwandan Declassification Collection, the FY 2010 FOIA Logs (274 pages) were also posted during this time period, and three contracts (a total of 46 documents) have been posted to the Frequently Requested Contracts Collection. In the future, an additional 178 documents on Rwanda will be posted, the FY 2011 FOIA Logs will be posted and 213 documents will be added to a Uruguayan Declassification Collection.

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

Every kind of record, including video and datasets are being posted almost daily by various offices/bureaus within the Department. To name a few datasets found on the www.state.gov/open website, there is the Foreign Assistance Dashboard and U.S. Passport issuance data. On the main page of the Department's website, (www.state.gov), there is a variety of social media, such as Twitter, Facebook, and the DipNote Blog. At <http://video.state.gov/>, the public can review all of the latest videos which the Department has posted. The records collections, such as the Rwandan and Chilean collections uploaded by the FOIA office, can be found at www.foia.state.gov.

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

The FOIA website content manager uses the FOIA tracking system to identify topics of continuing public interest and then establishes declassification collections around those topics. In addition, FOIA analysts often provide topics for consideration to the FOIA website content manager when they are processing multiple requests on the same topic.

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.?

The Department reaches out to interested parties when posting new materials to make them aware of the recent release and solicit their feedback on the materials. For example, three requesters were contacted directly after posting the Rwandan Declassification Collection to make them aware of the recent release. The Department also occasionally solicits the public for suggestions on future collections.

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

The Department tries to focus on subjects of continuing public interest as well as frequently requested documents. Our Collections on the FOIA website not only include material released to the public but additional material processed without specific requests,

proactively releasing material on the website. For example, in the Rwandan Declassification Collection there are over 200 newly released documents, many of which had never been reviewed for release because of a prior FOIA request.

The Department established a FOIA website content manager position whose duties include posting material online and reaching out to the offices and bureaus within the Department to learn of newly posted materials on those individual public websites to which the FOIA website can then link if appropriate. In this manner, the Department leverages proactive releases Department-wide.

Since specifying the goal to annually post 3,000 documents on the FOIA website, there is increased cooperation and coordination between the Branches within IPS and between IPS and other Offices and Bureaus within the Department. For the Rwandan Declassification Collection, having a publicly stated milestone convinced the FOIA case processing Branches to share limited resources to process the posting of the Collection. Further, the Offices/Bureaus within the Department were more focused and cooperative in providing additional information for inclusion in the Collection; for example, for the Rwandan Declassification Collection, most of the situation reports were provided by the Bureau of African Affairs and the United States Mission to the United Nations provided an entire CD worth of material for consideration.

Section IV: Steps Taken to Greater Utilize Technology

Electronic receipt of FOIA requests:

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

Yes. Requesters can make a FOIA request electronically on the Department's public facing web page, <http://foia.state.gov>, with the exception of the OIG. For cases received by the OIG, requests can be emailed directly to their FOIA coordinator on their website, <http://oig.state.gov/>.

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

N/A

Online tracking of FOIA requests:

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

No. However, requesters can send an email to the FOIAStatus@state.gov email address for case status inquiries.

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

Yes. Since the Department's FOIA cases reside in a classified environment, it is not possible to link the FOIA systems to a public facing portal, which would allow requesters to electronically track the status of their cases. Despite this challenge, the Department continues to explore ways to facilitate the tracking of status requests electronically. The Department has been participating in interagency initiatives led by the Department of Justice's Office of Information Policy (OIP), as well as those led by the Office of Government Information Services (OGIS) and are continuously evaluating emerging technologies for applicability within the Department of State.

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.

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

Search – The Department already has a robust search capability in our electronic FOIA Library (<http://foia.state.gov>), the State Archiving Systems, and the FOIA case management systems. The Department is also examining the applicability of leveraging the enhanced search capabilities afforded by eDiscovery and cyber security tools.

Document Sharing Platforms for Consultations/Referrals – The Department is not only co-chairing the OGIS IT working group, but it is also participating in a working group formed by OIP that is focused on searching for a common solution designed to facilitate the electronic exchange of consultation and referral documents.

De-duplication – While the Department currently utilizes the duplicate detection capabilities in its new FOIA case management systems that it is implementing, it is examining the efficiencies inherent in add-on de-duplication applications as well, and how they might be integrated with its electronic review/redaction system.

In addition, the Department is currently examining ways of leveraging the existing technological capabilities, inherent in its new case processing and document review/redaction system, to push indexed, searchable documents (and collections of documents) to our electronic reading room. The Department is also exploring the possibility of retooling one of the built-in utilities to securely, and easily burn searchable documents to CD/DVDs.

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

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

Yes.

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.

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. 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.

If your agency had a backlog of administrative appeals in Fiscal Year 2011, did that backlog decrease as compared to Fiscal Year 2010?

Yes.

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

No. One of the ten remains open.

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. One of the ten remains open.

3. If you answered “no” to any of the above questions, describe why that has occurred.

Request Backlog:

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

No, it was not. It was the oldest and an extremely complex request.

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

No, it was not. It was the oldest and an extremely complex request.

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

The inability to close one of the ten oldest cases is related to the complexity of the request. The office involved is still conducting searches and coordinating the final response to this request.

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

There were no other causes.

Administrative Appeal Backlog:

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

This was not a factor.

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

This was not a factor.

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

The inability to close one of the ten oldest appeals is related to the complexity of the request. The office involved is still coordinating the final response on this request. This case is projected to be closed by the due date of this report and this report will be updated accordingly to reflect its status.

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

There were no other causes.

Steps Taken to Reduce any Existing Backlogs of Requests and Appeals and to Improve Timeliness in Responding to Requests and Appeals:

1. Does your agency routinely set goals and monitor the progress of your FOIA caseload?

Yes. The Department routinely sets goals and monitors the progress of the processing of FOIA requests and appeals. The Department uses a variety of management reports and tools to monitor the processing of FOIA requests and appeals, to identify bottlenecks and to assist in targeting areas for improvement. The FOIA case processing managers rely on monthly productivity reports that are used to manage the backlog.

2. Has your agency increased its FOIA staffing?

Staffing has remained the same. Any vacant positions were filled during the year.

3. Has your agency made IT improvements to increase timeliness?

Yes. In addition to infrastructure hardware upgrades focused on everything from faster data processing capabilities to automating previously manual operations, the Department is currently implementing a new case processing and document review/redaction system which affords it the ability to design and implement new automated workflows, the purpose of which is to increase the efficiency and rate at which it responds to the needs of requesters. In addition, the Department is looking into a secure electronic means of delivering documents to its requesters, thereby reducing the amount of time required to actually “mail” responses to its requesters.

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?

In order to reduce the flow of incoming referrals, the Department initiated a dialog with the Department of Homeland Security (DHS) to explore the possibility of negotiating a policy agreement covering the handling of similar referred documents. The end result was a successful formalized agreement which set forth the guidelines for handling the various categories of documents. This agreement clearly established the roles of the agencies, and the guidelines for future referrals. As a result of this agreement, there has been a dramatic reduction in the number of referrals of documents to the Department for review – a drop from approximately 4,000 per month at its highest to approximately 430 per month. The backlog of these referrals dropped from 4,121 in March 2011 to 1,456, as of March 1, 2012. Not only has this agreement established a process that is more efficient for both agencies, it also increases customer satisfaction by providing quicker responses to requesters.

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

Achieving 60% Reduction in Backlog at the Department of State

In last year's Spotlight on Success, the Department showcased an agreement made with DHS on how to handle referrals. The Memo to DHS's United States Citizen and Immigration Services (USCIS) requested that they stop sending documents that do not need to be reviewed by the Department in the future. The Department attached a chart entitled "Future USCIS Referrals" clearly instructing DHS on the types of documents that needed to be reviewed and those that should not be sent to the Department. As a result of this agreement and streamlining the process, the Department was able to achieve an overall 60% backlog reduction by the end of FY 2011.

As these referrals did not require searches to be conducted and were very similar in terms of subject matter and exemptions applied, these streamlining techniques were employed to more quickly reduce the backlog:

- The documents were sorted and placed into categories, those that required Department line-by-line review and those easily recognized as being able to be released in full or denied in full that did not require extensive review. Different branches worked together, including reviewers and other staff for sorting, reviewing, and mailing out Denied in Full and Released in Full letters.
- Documents that did not need to be reviewed by the Department were released to the Requester with a Form Letter. An electronic signature was used on form letters.
- The cases were quickly closed out in the electronic system, placing comment "No Review Required by the Department of State, All Documents Released to Requester". The FOIA IT staff assisted with closing out the cases in the system in large quantities as opposed to one at a time.
- All of the documents that were denied in full or released in full were processed manually as paper.
- The documents that needed Department review and were released in part were processed electronically as they required excisions.

By January 2011, the main group assigned to respond to these referrals, the Rapid Response Team, utilized solely the staff they had on board to complete the last of the backlog and any new cases. This staff included four full-time staff, approximately 20 part-time students, one Senior Reviewer, three reviewers, and one contractor.

In calendar year 2011, the team processed and closed 15,842 cases. Because of their organization, training and dedication, this team is ready to quickly handle any FOIA referral cases sent their way in the future.