



U.S. DEPARTMENT OF STATE

CHIEF FREEDOM OF INFORMATION ACT OFFICER

ANNUAL REPORT

MARCH 2011

Background

The Department of State 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.

I. Steps Taken to Apply 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.
 - a. Describe how the President's FOIA Memorandum and the Attorney General's Guidelines have been publicized throughout your agency.

Copies of the President's FOIA Memorandum and the Attorney General's Guidelines are posted on the Department's intranet, where they are readily available to employees worldwide.

- b. What training has been attended and/or conducted on the new FOIA Guidelines?

Comprehensive quarterly training is provided to employees who review documents in response to FOIA requests. All training sessions emphasize the implementation of the new Guidelines.

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.

Department personnel attended external training sessions provided by the Department of Justice and the American Society of Access Professionals concerning the new FOIA Guidelines.

- c. How has your agency created or modified your internal guidance to reflect the presumption of openness?

The Department has updated its training materials for FOIA reviewers and FOIA bureau contacts to include the latest changes to the FOIA and the Attorney General's FOIA Guidelines. The Department's Foreign Affairs Manual (a set of policy documents defining the Department's structure and operations) is currently being updated. In addition, the Department is in the process of establishing an internal SharePoint website devoted to FOIA issues which will contain a wide range of information and will be available to all Department employees worldwide.

Additionally, the Department is updating pertinent sections of the Code of Federal Regulations.

- d. To what extent has your agency made 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 matters of a relatively trivial nature/low b2).

As a general indicator, it is useful to examine the relative number of withholdings made under exemptions b2 and b5. While the actual number of withholdings increased from fiscal year 2009 (111 for b2; 203 for b5) to 2010 (162 for b2; 240 for b5), the percentage of times the exemptions were claimed decreased. In fiscal year 2010, the Department processed approximately 300% more cases than were processed in 2009. Therefore, the Department withheld information under exemptions b2 and b5 considerably fewer times on a relative basis in fiscal year 2010.

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

FOIA exemptions b2 and b5 are generally the exemptions that allow room for discretionary releases. As noted above, the Department decreased on a relative basis its use of these two exemptions in fiscal year 2010.

- f. How does your agency 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 2010 shows that most frequently cited exemptions are non-discretionary - exemptions b1, b3, and b6.

- g. 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.

- 2. Report the extent to which the numbers of requests where records have been released in full and the numbers of requests where records have been released in part has changed from those numbers as reported in your previous year's Annual FOIA Report.

The number of requests for both categories rose in fiscal year 2010. The number of requests where records were released in full rose significantly, from 370 in fiscal year 2009 to 8,710 in fiscal year 2010. The number of requests where records were released in part also rose, from 834 in fiscal year 2009 to 1,365 in fiscal year 2010.

II. Steps Taken to Ensure that Your Agency has an Effective System In Place for Responding to Requests.

- a. 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.

- b. Describe how your agency's FOIA professionals interact with your Open Government Team.

Representatives from the centralized FOIA office are assigned to liaise with the Open Government Team. These FOIA representatives collaborate with the Open Government Team on pertinent issues concerning the Open Government Initiative. For example, FOIA personnel were involved in drafting the Open Government Plan. Also, the FOIA office continually updates its public website

with newly released FOIA documents and other material, and the Open Government website provides a link to this material. FOIA representatives continue to participate in meetings with the Open Government Team to seek new ways to increase transparency through the Open Government Initiative.

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

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 identified to improve the FOIA process. These initiatives included a pilot of a litigation team to process FOIA requests in litigation; a Rapid Response Team to handle the most pressing work; and a task force 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 were successful, and these three teams have been permanently established.

The Department is currently examining additional initiatives that would restructure the flow of work within the core FOIA workforce. As stated in last year's Report, the Department is 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. In addition, the Department has partnered with the Office of Government Information Services to explore additional ideas for improvement.

Although the Department continuously modifies its structure and streamlines its processes, the FOIA backlog has remained above required levels. Therefore, during this reporting period, the Department invested additional resources in the FOIA program, including allocating FTE (full time equivalent) positions as well as additional funding. This influx of resources will help the Department meet its goals for the FOIA program.

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

The Department continues to employ retired senior Foreign Service Officers to review documents requested under FOIA. This cadre of expert reviewers relieves Department personnel who are responsible for the day-to-day functioning of the Department from also having to conduct FOIA reviews. This greatly reduces the amount of time needed to conduct FOIA reviews.

The Department has always been at the forefront in utilizing technology to support the FOIA program. As reported previously, the Department is transitioning to a new, more advanced electronic case tracking and processing system.

The Department's Office of Inspector General conducted an inquiry with positive results for the FOIA Program, "Response to Congressional Inquiry on Department of State Leadership's Role in Freedom of Information Act Processes" in October of 2010.

III. Steps Taken To Increase Proactive Disclosures.

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

Yes

- b. What types of records have been posted?

The two primary mechanisms for the Department to make proactive disclosures of information are through the website www.state.gov and www.state.gov/open. The Department's main website, www.state.gov, contains a wealth of information, and highlights current information in sections entitled "In Other News" and "Stay Connected With State.gov" with links to various social media tools available. The website www.state.gov/open is the Department's Open Government Initiative site, and contains a variety of information identified as furthering transparency, participation and collaboration, including a "Public Engagement Activity" section.

In addition to these websites, the Department strives to post proactive disclosures on its FOIA website. The site includes links to numerous publications and reference materials.

- c. Give examples of the types of records your agency now posts that used to be available only by making a FOIA request for them.

The Department's main website, www.state.gov, posts current, changing information, including Daily Appointments Schedules for the Secretary and other "latest news" information. Material available at www.state.gov/open includes the Foreign Assistance Dashboard, various Records and Reports, a "News and Updates" section, and datasets of information.

- d. What system do you have in place to routinely identify records that are appropriate for posting?

The Department's Open Government Team has a process for identifying materials to add to the Open Government website, which is linked to the FOIA website.

Bureaus throughout the Department designate representatives to serve on the Team. The Team meets at least quarterly to discuss ways to increase transparency, participation and collaboration, including assessing which datasets and initiatives are suitable for the website. The representatives work within their bureaus to identify datasets or assess bureau record holdings that can be used as a dataset, and prepare them for internal clearance and external review from OMB. All issues regarding the dataset are coordinated, both internally and externally, before submitting the dataset to the Open Government website.

- e. How do you utilize social media in disseminating information?

The Department uses all forms of social media to disseminate information about activities of the agency, including Facebook, Twitter, Flickr, Blogs, and YouTube. DipNote, the official State Department blog where State Department employees post entries daily on critical issues, gives the public context, clarity, and behind-the-scenes insights on U.S. foreign policy from State Department employees who are directly engaged in the work of diplomacy. The Secretary's daily schedule is posted on the website as well as an interactive map entitled, "Where in the world is the Secretary."

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

The Department as a whole has embraced transparency, and is aggressively engaged in proactively making available as much information as possible. This effort is most clearly evidenced on www.state.gov. Among the information included on www.state.gov are links to websites created by bureaus throughout the Department (under "Countries and Regions") which contain a wide range of information, including very current material. Also included are options for the public to interact and receive email updates.

IV. Steps Taken To Greater Utilize Technology.

- 1. Electronic receipt of FOIA requests:

- a. What proportion of the components within your agency which receive FOIA requests have the capability to receive such requests electronically?

100%

- b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

There has been no change.

- c. What methods does your agency use to receive requests electronically?

The Department has an electronic FOIA request generator on its website which can be used to submit requests electronically, with the exception of those requests for personal information which must be submitted by mail. Requests may also be submitted by fax. In addition, the Office of Inspector General accepts requests by email.

2. Electronic tracking of FOIA requests:

- a. What proportion of components within your agency which receive FOIA requests have the capability to track such requests electronically?

100%

- b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

There has been no change.

- c. What methods does your agency use to track requests electronically?

The Department's centralized FOIA office uses a custom built case tracking and processing system to track and process requests. As reported earlier, the Department is also in the process of transitioning to a new electronic case tracking and processing system. The Office of Inspector General tracks FOIA requests with an off-the-shelf FOIA tracking system.

3. Electronic processing of FOIA requests:

- a. What proportion of components within your agency which receive FOIA requests have the capability to process such requests electronically?

100%

- b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

There has been no change.

- c. What methods does your agency use to process requests electronically?

The Department's centralized FOIA office uses a custom built case tracking and processing system to process every aspect of a request, including reviewing and redacting. As reported earlier, the Department is also in the process of transitioning to a new electronic case tracking and processing system. The Office

of Inspector General processes FOIA requests with an off-the-shelf FOIA tracking system.

4. Electronic preparation of your Annual FOIA Report:

- a. What type of technology does your agency use to prepare your agency Annual FOIA Report, i.e., specify whether the technology is FOIA-specific or a generic data-processing system?

The Department programs Oracle Database queries to extract data from the custom built case tracking and processing system. While FOIA-specific in focus, it does utilize generic data processing techniques. The Office of Inspector General's off-the-shelf FOIA tracking system has a report generating function which extracts data for the Annual FOIA Report.

- b. If you are not satisfied with your existing system to prepare your Annual FOIA Report, describe the steps you have taken to increase your use of technology for next year.

As indicated, the Department is transitioning to a new FOIA case tracking and processing system, which will incorporate turn-key Annual FOIA Report generation capabilities, making preparation of the Report much simpler.

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

1. If your agency has a backlog, report here whether that backlog is decreasing. That reduction should be measured in two ways. First, report whether the number of backlogged requests and backlogged administrative appeals that remain pending at the end of the fiscal year decreased or increased, and by how many, when compared with last fiscal year. Second, report whether your agency closed in Fiscal Year 2010 the ten oldest of those pending requests and appeals from Fiscal Year 2009, and if not, report how many of them your agency did close.

The number of backlogged requests pending at the end of fiscal year 2010 increased by 11,735 compared to fiscal year 2009.* The backlog at the end of fiscal year 2009 was 8,784 and at the end of fiscal year 2010 was 20,519. As of March 1, 2011, however, the Department has made significant progress and has decreased the backlog by over 6,900 additional cases, bringing the backlog to 13,579.

Although the Department was unable to complete all of the ten oldest requests, it did complete four of the oldest requests in fiscal year 2010. By the end of the calendar year, two additional requests were completed, totaling six of the ten oldest completed.

* The rise in backlog is due primarily to a marked increase in the receipt of consultations from other agencies (see 2 below).

The number of backlogged administrative appeals pending at the end of fiscal year 2010 decreased by 112 compared to fiscal year 2009. The backlog at the end of fiscal year 2009 was 458 and at the end of fiscal year 2010 was 346. All of the ten oldest administrative appeals pending at the end of fiscal year 2009 were completed.

2. If there has not been a reduction in the backlog as measured by either of these metrics, describe why that has occurred. In doing so, answer the following questions and then include any other additional explanation:

a. Is the backlog increase a result of an increase in the number of incoming requests or appeals?

Yes. The rise in backlog of requests is due in large part to an influx of referrals of documents from other agencies for Department review. The Department reported 4,451 referrals of documents (“consultations”) pending at the end of fiscal year 2009, with 6,014 received during the fiscal year. At the end of fiscal year 2010, the Department reported 15,279 pending referrals of documents from other agencies, receiving 24,673 during the fiscal year. The overall number of requests received by the Department rose from 10,717 in 2009 (consisting of 6,014 consultations and 4,703 direct requests to the Department) to 30,206 in 2010 (consisting of 24,673 consultations and 5,533 direct requests to the Department).

b. Is the backlog increase caused by a loss of staff?

Yes. In the last year, the Department experienced a turnover in staff, with several senior analysts retiring or taking jobs elsewhere, resulting in a loss of expertise and institutional knowledge. While some new employees have been hired, there will be a transition period until they are fully trained.

c. Is the backlog increase caused by an increase in the complexity of the requests received?

No. The Department consistently receives requests that are complex in nature.

d. What other causes, if any, contributed to the increase in backlog?

During this reporting period, the Department invested a substantial amount of time in transitioning to a new electronic case tracking and processing system. Some senior staff members who would otherwise process cases full time were required to split their time to participate in training and piloting the new system.

3. Describe the steps your agency is taking to reduce any backlogs and to improve timeliness in responding to requests and administrative appeals. In doing so answer the following questions and then also include any other steps being taken to improve timeliness.

a. 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.

b. Has your agency increased its FOIA staffing?

Yes. The Department committed additional FTE (full time equivalent) positions and funding to the FOIA program.

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

Yes. The Department strives to leverage technology to the greatest extent possible. As reported, we are currently transitioning to a new electronic case tracking and processing system.

d. Has your agency Chief FOIA Officer been involved in overseeing your agency's capacity to process requests?

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

Additional Steps Being Taken to Reduce Backlog and Improve Timeliness

The Department is committed to reducing its FOIA backlog and improving timeliness of responses through continuous process improvement, including modifying the structure and procedures to promote increased efficiency.

Below is a summary of some of the steps taken to reduce the backlog and improve timeliness, along with additional information and initiatives:

- After a successful pilot, a permanent litigation team has been established to process cases in litigation and draft declarations for submission in court. Removing this time consuming function from the duties of the core FOIA workforce enables them to focus on processing more backlogged FOIA cases.

- A Rapid Response Team has also been established to handle the most pressing work of the office and to support other divisions, as needed. This group continues to process thousands of FOIA referrals sent by other agencies to the Department for coordination.
- The Department established a permanent team dedicated to the processing of the 250 oldest FOIA cases and referrals.
- The Department hired area students, who are trained in FOIA casework. This program is in its eleventh year and has proven to be an investment in building a corps of FOIA experts. Currently, there are 38 students working in FOIA. The students work full time over the summer and part time the rest of the year, assisting in the backlog reduction effort.
- The Department is partnering with the Office of Government Information Services (OGIS) to explore ways to reduce the FOIA backlog and improve customer service.
- The Department is also partnering with the Department of Justice to obtain training for FOIA staff on specific issues, including fees and fee waivers.
- The FOIA Website Content Manager, with assistance from the Office of Language Services, posted a Spanish Language version of the U.S. Department of State Information Access Guide. This Guide will benefit the Department's increasing number of Spanish-speaking customers interested in requesting information from the Department. The Department of State is one of the few government agencies to offer a fully comprehensive FOIA access guide in Spanish.
- The Department has set goals to increase the amount of material posted on its FOIA website, including a goal to post 3,000 documents per year.
- As indicated previously, the Department is currently examining additional initiatives to restructure the flow of work within the core FOIA workforce, including leveraging technological capabilities of the new FOIA case tracking and processing system to streamline the flow of the work.
- The Department increased resources to the FOIA program during this reporting period, both in terms of staff and funds.
- The Department's FOIA website was completely updated and redesigned to make the site more user-friendly and to conform more closely to other agencies' FOIA websites. An expanded page was posted that includes more information on the

organizational structure of FOIA at the Department, a requirement of the Open Government Directive.

- Instructions to assist requesters in contacting the Public Liaison were posted on the FOIA website.
- The appeals program continues to streamline processes, cross-train employees, develop management reports to facilitate the monitoring of the processing of appeals, initiate negotiations with requesters to clarify scope and ensure responsiveness, and to hold frequent Appeals Review Panel sessions.

Spotlight on Success

The Department's greatest challenge during this rating period was also its greatest success. The driving factor behind the skyrocketing FOIA backlog at the Department was the avalanche of referrals of documents sent for review by the United States Citizen and Immigration Services (USCIS) of the Department of Homeland Security. In mid 2009, USCIS began sending a large quantity of referrals of documents (about 4,000 cases per month) to the Department for review. At that rate, the Department's backlog climbed steeply and steadily. As the backlog grew to almost 30,000 cases, the Department was faced with two issues: how to process the referrals already received from USCIS, and how to reduce the flow of incoming referrals from USCIS.

To develop a strategy, the Department analyzed the referred documents to identify trends in both the type of documents being referred, and the review determinations made concerning them. It was found that the documents generally fell into one of several categories, and that the review determinations within each category were generally consistent. With this knowledge, the Department was able to develop strategies to resolve both issues.

In order to process the referrals received from USCIS, the Department created a streamlined review and administrative processing structure, including form letters to reply to requesters. The referrals were assigned primarily to the newly established Rapid Response Team and staff was trained on implementing the new procedures. As the streamlined process was implemented and a fast rhythm developed to the processing of the referrals, additional staff from other divisions was also assigned to process the referrals. To date, over 22,000 referral cases from USCIS have been processed.

In order to reduce the flow of incoming referrals, the Department initiated a dialog with USCIS to explore the possibility of negotiating a policy agreement covering the handling of these types of documents. USCIS was amenable to working with the Department on this issue, and a series of conversations ensued. 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 4,000 per month to fewer than 300 per month. 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.