Chief FOIA Officer Report

Central Intelligence Agency

March 9, 2012

I.   **Steps Taken to Apply the Presumption of Openness**

Describe below 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.

1. **Did your agency hold an agency FOIA conference or otherwise conduct training during this reporting period?** During this reporting period, new FOIA case managers received on the job training and attended other external training opportunities. All FOIA professionals received refresher training in topics related to the FOIA and other public programs such as the Privacy Act, as well as specific training in information review and release topics.

2. **Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?** During this time frame, FOIA professionals attended several training opportunities provided by the Department of Justice as well as other related conferences such as the American Society of Access Professionals (ASAP). Additionally, several staff members attended Agency-sponsored discretionary release events at both the National Archives and the Ronald Reagan Presidential Library.

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?** The Central Intelligence Agency (CIA) has worked diligently to release information to the public that no longer requires protection, including discretionary releases not mandated under FOIA.

    Under the CIA's Historical Review Program, six historically significant collections were released during the reporting period. The releases were based on criteria including historical significance, public interest, and the input of Agency historians and the Historical Review Panel. These

discretionary releases involved 1,627 unique documents and provided 15,508 pages of declassified material. Topics included: The Warsaw Pact and the Wartime Statutes; Stories of Sacrifice and Dedication: Civil Air Transport, Air America and the CIA; Penetrating the Iron Curtain: Resolving the Missile Gap with Technology; A City Torn Apart: Building the Berlin Wall; Ronald Reagan: Intelligence and the End of the Cold War; and CIA's Clandestine Services History of the Civil Air Transport (CAT). During this reporting period over 25 hours of video was also declassified and released. The CIA also provided a collection of documents on the Bay of Pigs and six of the oldest documents in the U.S. Government collection relating to secret writing techniques.

4. **What exemptions would have covered the information that was released as a matter of discretion?** Each released document would have been covered by a unique configuration of exemptions. Overall, across all of the released collections, the exemptions include the operational files exemption, file series exemption for automatic review, and FOIA exemptions b(1), b(3), b(4), and b(5).

5. **Describe your agency's process to review records to determine whether discretionary releases are possible.** The CIA's Historical Review Program conducts an objective annual planning process each year to identify potential collections for discretionary release. This process involves Agency historians and members of the academic community to identify potential collections of historical significance. In addition, public interest in specific topics and issues, as measured by number of searches on the FOIA web site, number of requests from the public, and interest from professional and academic associations is considered. The program office then reviews and evaluates the potential collections of material. The documents are compared with officially released information previously declassified by all government agencies, and careful consideration is given to potential risks to national security that would arise from declassification, versus the benefits of disclosure. Based on this evaluation and the availability of resources, the Agency makes a determination on processing a collection for discretionary release.

6. **Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.** In addition to the discretionary releases highlighted above, the CIA added the "Best of CREST" to its eFOIA Reading Room. "CREST" stands for the CIA Records Search Tool. The CREST system is a tool that allows the public to search documents released through the Executive Order Mandatory release programs for documents 25 years old or older at the National Archives and Records Administration. The "Best of CREST" collection includes metadata, and in some instances, PDF images for documents of interest to the public. Adding these new PDF images to the eFOIA

reading room allows the public access to these documents without having to visit the National Archives or request them via FOIA.

7. **Did your agency have an increase in the number of responses where records were released in full?** No. In FY11, the CIA responded to 413 requests with documents that were released in full as compared to FY10 when 443 requests were released in full.

8. **Did your agency have an increase in the number of responses where records were released in part?** Yes. In FY11, the CIA responded to 890 requests with documents that were released in part as compared to FY10 when 864 requests were released in part. More requests were satisfied with partial releases in FY11 as compared to FY10.

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

1. **Do FOIA professionals within your agency have sufficient IT support?** The FOIA program office involves IT support in every aspect of the FOIA/PA process and has partnered with it to further advance the common goal to use technology to improve responsiveness. IT support personnel are located within close proximity of the FOIA program office, fostering greater interaction and support, and are proactive in their trouble-shooting efforts and in looking ahead for system enhancements. The FOIA program falls under the Chief Information Officer (CIO) at CIA.

2. **Is there regular interaction between agency FOIA professionals and the Chief FOIA Officer?** The Chief FOIA Officer also serves as the CIA's CIO. She is kept apprised of all significant events in the FOIA program and has provided resources and executive level support for all public programs, including FOIA.

3. **Describe how your agency's FOIA professionals interact with your Open Government team.** Our FOIA professionals interact almost daily with our Open Government Team since there is a significant overlap in staffing for the two functions.

4. **Describe the steps your agency has taken to assess whether adequate staffing is being devoted to responding to FOIA requests.** The organizational element that contains the FOIA program continues to monitor available resources and workflow in order to improve efficiency and productivity.

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

organizational element that contains the FOIA program is collaborating with other partners and stakeholders to discuss possible efficiency gains.

III.   **Steps Taken to Increase Proactive Disclosures**

Describe here the steps your agency has taken to increase the amount of material that is available on your agency website, 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 agency website since last year?** Yes. The CIA routinely provides new material to its public web site and the Freedom of Information Act Electronic Reading Room throughout the year. Our public web site contains access to frequently requested records, special collections, a 25 Year Program Archive, as well as press releases, speeches, featured stories and other items of public interest.

2. **Provide examples of the records, datasets, videos, etc., that have been posted this past year.** In addition to posting some documents frequently requested from closed FOIA cases, the eFOIA Reading Room website also provides public access to documents released through the discretionary Historical Review Program (see Section I above for details) and other discretionary releases of high interest to the public. During 2011, CIA also released a collection of documents on the Bay of Pigs and six previously classified and very old documents on secret writing techniques mentioned earlier in this report.

    Web site statistics show that many visitors to the CIA FOIA Reading Room website are most interested in the historically significant document releases. Additionally, the CIA added a video channel on www.youtube.com. This platform provides videos of different historic events such as those related to President Reagan's use of intelligence information as well as a film entitled "Extraordinary Fidelity" which depicts the imprisonment of two CIA officers in China.

3. **Describe the system your agency uses to routinely identify records that are appropriate for posting.** FOIA professionals use statistical reports that identify which released documents are candidates for the eFOIA reading room. FOIA professionals also partner with other CIA Review and Release programs to include their released materials in the eFOIA reading room.

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.?** Yes. The CIA website permits visitors of the site the opportunity to "Contact Us" with feedback and questions. Additionally, the CIA holds semi-annual meetings with the Historical Review Panel—a group of outside academics—who propose topics of public interest, and provide feedback from the academic community. We carefully consider the feedback and suggestions received throughout the year and incorporate them into our work planning processes. In October, the "Best of CREST" document collection was added to the Electronic Reading Room based on feedback from website visitors and the Historical Review Panel who don't have easy access to the CREST system located at the National Archives and Records Administration build in Washington, D.C.

5. **Describe any other steps taken to increase proactive disclosures at your agency.** In 2011, with public interest increasing and internal resources limited, we focused more strategically on balancing existing resources with public interest. We integrate proactive disclosures within our current programs to the extent possible.

IV.   **Steps Taken to Greater Utilize Technology**

Electronic receipt of FOIA requests:

1. **Can FOIA requests be made electronically to your Agency?** Not at this time. This option is being considered as part of ongoing business process improvement discussion.

2. **If your agency processes requests on a decentralized basis, do all components of your agency receive requests electronically?** This question is not applicable because the CIA processes requests centrally.

Online tracking of FOIA requests:

3. **Can a FOIA requester track the status of his/her request electronically?** Not at this time.

4. **If not, is your agency taking steps to establish this capability?** This option is being considered as part of a business process improvement discussion.

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, as part of our business process improvement discussions.

6. **If so, describe the technological improvements being made.** Efforts are underway to improve our system's functionality including improved search and the capability to handle additional document types.

V. <u>**Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs**</u>

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 time for processing 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 your non-expected 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 20 working days or fewer?** The average number of days was 24, but this is a poor representation of normal processing time since a very small number of simple cases are cross-referenced to a complex case. Thus, the median number of days to complete a request—10 days for FY2011—is a better performance measure.

   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?** Not applicable.

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 from Fiscal Year 2011 as compared to Fiscal Year 2010.

a. **If your agency had a backlog at the close of FY 2011, did the backlog decrease as compared with FY 2010?** No.

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

c. **In Fiscal Year 2011, did your agency close the ten oldest requests that were pending at the end of Fiscal Year 2010?** No, but we successfully closed six of the ten oldest complex cases pending at the end of FY10.

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, we closed two of the oldest administrative appeals cases pending at the end of FY10.

3. **If you answered "no" to any of the above questions, describe why that has occurred. In doing so, answer the following questions and then include any additional explanation:**

   Request Backlog:

   a. **Is the backlog increase a result of an increase in the number of incoming requests and appeals?** Yes.

   b. **Is the backlog increase caused by a loss of staff?** No.

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

   d. **What other causes, if any, contributed to the increase in backlog?** We've had increases in cases, increases in litigation, and increases in competing requests under EO MDR due to changes in law and policy that have changed the economics of making costly and complex requests (and which have greatly increased the time spent in litigation). An increase in FOIA, non-FOIA litigations, and other competing priorities means we must depend on the same staff resources to get work done.

   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?** Yes.

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

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

d. **What other causes, if any, contributed to the lack of a decrease in the appeal backlog?** Increases in cases, increases in litigation, and increases in competing requests under Executive Order 13526 that have changed the economics of making costly and complex requests (and which have greatly increased the time spent in litigation) have had a significant impact on our ability to aggressively reduce the backlog. An increase in FOIA, non-FOIA litigations, and other competing priorities means we must depend on the same staff resources to get work done.

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 improve timeliness.

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

2. **Has your agency increased its FOIA Staffing?** No.

3. **Has you agency made IT improvements to increase timeliness?** Yes.

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?** To improve the efficiency of processing consultations, CIA has begun meeting and coordinating with other government agencies, upfront, to assess the need for

consultations. This has created a more efficient process because questions and issues can be addressed prior to processing. We do not currently have a streamlined process for sharing documents electronically with all government agencies, but we are investigating options and opportunities for improvement in this area.

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]," 5U.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.

Spotlight on Success

Out of all of the activities undertaken by your agency in the last year to increase transparency, describe here one success story that you would like to highlight as emblematic of your efforts.

CIA, unlike any other agency in the Intelligence Community, much less Federal Government, makes discretionary releases of historically significant documents available to the public, journalists, and academicians in a purposefully organized manner. CIA makes releases to the public through a variety of programs. CIA's Historical Review Program, for example, partners with a variety of public organizations and institutions to provide public release events at Presidential Libraries like the 2011 events held at the Reagan and Kennedy Libraries, at other venues including The National Museum of the Air Force in Dayton, Ohio, the National Archives auditorium, and at universities and other locations across the country. These organized release events, often covered by C-SPAN and Associated Press, provide in person access to the material, historians, and contemporary policy makers and analysts. In FY11, CIA also released an additional 940,000 pages of material not mentioned elsewhere in this report, which was unrelated to FOIA and would have otherwise been denied.

CIA continues to inform record numbers of citizens, demonstrating our commitment to the Open Government Initiative and its three goals of transparency, participation, and collaboration.