

United States Section
International Boundary and Water Commission
United States and Mexico (USIBWC)

Chief FOIA Officer Report: 2012
Steven Fitten, Chief Counsel

Part 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.

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.

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

In FY 2011-12, the Agency did not hold a FOIA conference or otherwise conduct or attend training during such period.

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

The Agency's FOIA professionals did not attend any FOIA training in 2011. Due in part to its location in the southwestern U.S., the Agency did not partake in any of the periodic DOJ trainings offered in Wash. DC. In 2012-13, the Agency intends to send its professional(s) to such training, or other related FOIA training. Further, the Agency intends to inquire on the possibility of participating in such conferences via tele or video conference.

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 Agency made discretionary releases of documents which otherwise may have been determined as exempt

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

Specifically, exemption b(2) relating to internal personnel rules and practices, and exemption b(5) relating to deliberative inter-agency or intra-agency memorandums or letters.

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

Responsive documents are forwarded to the FOIA Office (request center), where FOIA personnel review documents, review past practice, perform legal research, and/or consult DOJ/OIP for guidance where further updated feedback is sought.

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

FOIA personnel regularly self-evaluate, review past and current practice, periodically consult fellow Agencies, and refer to DOJ guidance provided on the OIP website.

In Section V.B.(1) of your agency's Annual FOIA Report, entitled "Disposition of FOIA Requests – All Processed Requests" the first two columns list the "Number of Full Grants" and the "Number of Partial Grants/Partial Denials." Compare your agency's 2011 Annual FOIA Report with last year's Annual FOIA Report, and answer the following questions:

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

There was not an increase. (Majority due to responsive records not located by rsbl search)

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

There was not an increase. (Majority due to responsive records not located by rsbl search)

Part II: Steps taken to ensure that Agency has Effective System 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 its 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.

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

Answer: The Agency receives sufficient and valuable assistance from its IT Division. The Agency nevertheless intends in 2012 to explore purchase of technology services specific to assisting with FOIA.

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

Answer: There is regular interaction between the Chief Officer and FOIA professionals.

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

Answer: They are part of the OGT.

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

Answer: The Agency has conducted self-assessment in 2011-12, determining that additional personnel will be of assistance to the FOIA function. The FOIA office is adding 2 personnel, who will assist with FOIA as part of their duties.

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

Answer: As per #1 above, the Agency is exploring the purchase of up to date technology to better assist with the FOIA function. The Agency has better organized its database to better track processing, and responses to requests and appeals.

Part 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 both 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 (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 website since last year?

Answer: No

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

Answer: n/a

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

Answer: The Agency routinely evaluates its Frequently Request Records section and requests received to determine whether new data sets would be of assistance; none were determined for 2011-12. The Agency continued to monitor to ensure that already existing data sets were supplemented with new information.

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.?

Answer: The Agency has received positive feedback regarding the navigability, search and presentation of posted materials. The Agency shall continue to seek feedback and evaluate how and where information can be presented more clearly or be more accessible.

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

Answer: The Agency's recent addition of needed personnel to assist with FOIA as partial responsibilities will assist to bolster the FOIA system and the Agency's ability to better evaluate proactive disclosures. The Agency will continue to evaluate, including research of DOJ and fellow agency examples, regarding proactive steps.

Part 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 innovative aspects of technology use.

Electronic receipt of FOIA requests:

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

Yes, via email and through the Agency website.

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?

The Agency presently does not have such capability or system in place.

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

The Agency is exploring the possibility of online tracking, in addition to adding FOIA based software.

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?

The Agency is presently considering FOIA based software for improving record search, and other related capabilities.

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

As per #5, the Agency is presently considering FOIA based software for improving FOIA related capabilities.

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

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 requests 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. 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, the Agency categorizes requests as general or as expedited.

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?

n/a

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?

No: 27.3. (4.4 for expedited)

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 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?

Backlog decrease - no backlog at close of 2011.

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, same as previous year.

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?

n/a, none.

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:

Request Backlog:

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

n/a (though there has been such an increase)

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

n/a

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

n/a (though there has been such an increase)

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

n/a

Administrative Appeal Backlog:

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

n/a (backlog reduced)

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

n/a

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

n/a (though there has been such increase)

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

n/a

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.

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

Yes, particularly since there has been an increase in the complexity of requests.

2. Has your agency increased its FOIA staffing?

Currently in process is the addition of FOIA personnel to assist as partial duties.

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

The Agency strives to increase timeliness by providing temporary ftp sites to assist with complex requests. Further the Agency is presently considering the addition of FOIA software to better assist with searches and related functions.

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?

The Agency utilizes IT assistance where feasible, and is exploring understandings or agreements with the agencies which are most likely to present consultation scenarios.

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

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 agency's efforts.

The Agency's plans for additional personnel to better assist in the overall efficiency and transparency of its FOIA program, combined with the current purchasing considerations for added technology to enhance search and response capability, combined with plans for FOIA related training in 2012, reflects the appreciation of the administration's emphasis on the FOIA and open government. The Agency shall continue to strive to build upon or improve its program with each passing year.