



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

FY 2010 Chief FOIA Officer's Report

The Administrative Conference of the United States (ACUS) is a newly reauthorized independent agency that studies federal government procedures and processes to recommend improvements to all three branches of the federal government. ACUS is a public-private partnership that brings together senior government officials and private citizens with diverse views and backgrounds to provide nonpartisan expert advice. After a 15-year hiatus, ACUS resumed operations in April 2010 upon the confirmation of the Chairman by the U.S. Senate.

Since ACUS has been in operation for less than one year, and many of the questions in this report pertain to improvements made to FOIA procedures since the preceding fiscal year, most of the requirements in this report are not applicable to the agency. It bears noting that the agency's FOIA regulations are still in the notice and comment stage of development (76 Fed. Reg. 1542). ACUS is a "micro" agency with a current staff of 14 individuals, and there are no component offices due to the agency's small size. FOIA functions are handled by two individuals—the General Counsel and Deputy General Counsel (who are the Chief FOIA Officer and FOIA Liaison, respectively).

Since the agency resumed operations in April, a great deal of time has been dedicated to developing FOIA and Privacy Act regulations, drafting guidelines for making FOIA requests, and developing a website that includes a dedicated FOIA page. These efforts all reflect a desire to meet the President's objectives relating to transparency and public disclosure.

ACUS received two FOIA requests in FY 2010. Timely responses were provided for both.

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. 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.

a. Describe how the President's FOIA Memorandum and the Attorney General's FOIA Guidelines have been publicized throughout your agency.

--The memorandum and guidelines have not been formally publicized. The two agency FOIA officials recently became aware of these requirements and are confident that current agency practices and procedures already meet the standards set forth in the documents.

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

--No formal training has occurred for the same reasons stated above.

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

--The agency's draft regulations, draft guidelines and website are newly created and adequately reflect the presumption of openness.

d. To what extent has your agency made discretionary releases of otherwise exempt information?

--One of the two FOIA requests received by ACUS was deemed "infirm" because the requester asked for volumes of materials that did not exist, and asked that the request be "continuing" in nature as the documents become available in the future. Moreover, the requester asked for information subject to exemptions. In some cases, information/documentation was actually created in order to be responsive to the requester.

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

--Exemption 5.

f. How does your agency review records to determine whether discretionary releases are possible?

--This takes place in the normal course of review in every case. Each case is reviewed on its own merits. Generally speaking, if the agency is permitted to release the documents, then the documents are released.

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

--The agency's website encourages the public to contact ACUS FOIA officials prior to making a formal request in order to determine if the information is already publicly available or if the request properly goes to a different agency. The agency also posts current and historical documents (e.g., recommendations, reports, etc.) which may be of interest to the public.

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.

--N/A

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

Describe here the steps your agency has taken to ensure that your system for responding to requests is effective and efficient. 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. 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.

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

--Yes.

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

--No Open Government Team exists at ACUS given the small size of the agency. Agency leadership is consulted on FOIA requests and reporting requirements when necessary.

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

--When the agency resumed operation in 2010, and before a permanent FOIA official had been hired at the agency, a consultant was hired to assist in drafting FOIA/Privacy Act regulations and to advise staff on responding to a complex FOIA request. Now that hiring at the agency has been completed, and two employees (General Counsel and Deputy General Counsel) are the designated FOIA officials, staffing seems to be adequate given the low volume of requests to date.

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

--N/A

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 since issuance of the new FOIA Guidelines. In doing so, answer the questions listed below and describe any additional steps taken by your agency to make proactive disclosures of information.

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

--Yes.

b. What types of records have been posted?

--The following types of agency records have been posted: authorizing statute, research agenda, events calendar, historical recommendations (1968-1995), Congressional budget justification, meeting minutes, by-laws, etc. See www.acus.gov/foia.

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.

--N/A

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

--Most employees in the agency have the ability to post documents online. Employees routinely post all information related to the agency's Federal Advisory Committee Act meetings, historical documents (as they become available from various sources such as the Archives, universities, former employees, etc.), and other documents related to the mission and output of the agency. Generally speaking, all documents are posted which may be of interest to the public, our members and our stakeholders. This is not written anywhere; it is part of the agency's culture.

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

--The agency uses various types of social media: Flickr, Facebook, Google Apps, LinkedIn, YouTube and Dipity.

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

--N/A

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?

--N/A. The agency has no components.

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

--N/A. The agency has no components.

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

--FOIA requests may be submitted via email or online form.

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?

--N/A. The agency has no components.

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

--N/A. The agency has no components.

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

--There is no dedicated electronic FOIA tracking system. FOIA requests are maintained in a centralized directory. This is adequate for the low volume of requests received to date.

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?

--N/A. The agency has no components.

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

--N/A. The agency has no components.

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

--There is no FOIA-specific electronic processing mechanism for requests. FOIA responses are centralized and processed through the two agency FOIA officials.

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.

--There is no FOIA-specific technology used to prepare the Annual Report. Generic, commercially-available programs, together with templates provided by DOJ, are used to generate the 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.

--N/A.

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.

--N/A.

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?

--N/A

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

--N/A

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

--N/A

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

--N/A

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?

--No. *There is no caseload currently.*

b. Has your agency increased its FOIA staffing?

--No. *Although two agency employees were designated as FOIA officials, this is not the same as increasing FOIA staffing.*

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

--N/A

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

--Yes.

Spotlight on Success

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

--*The reconstituted ACUS has been in operation since April 2010, with hiring for its current 14-member staff completed in October 2010. In that time, the agency has drafted and published in the Federal Register its FOIA and Privacy Act regulations, developed guidance for submitting FOIA requests, created a dedicated Web page for FOIA-related documents and activities, designated its Chief FOIA Officer and FOIA Public Liaison, created an online FOIA request form, responded to FOIA requests using maximum transparency, and submitted both the annual FOIA report and Annual Chief FOIA Officers report in a timely fashion. Overall, the agency's launch of its FOIA program has been highly successful.*