Department of Veterans Affairs (VA)

Chief FOIA Officer Report

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.

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.**

Shortly after the President's January 21, 2009 Freedom of Information Act (FOIA) Memorandum and the Attorney General's March 19, 2009 FOIA Guidelines were issued, VA publicized and implemented them both throughout the agency by prominently publishing links to them on the VA's FOIA website at http://www.foia.va.gov/.

In an effort to further publicize the Memorandum and guidelines, VA's Chief Information Officer and VA's Under Secretary for Health appeared in a video directed to all VA FOIA Officers to discuss the importance of FOIA and the implementation of the President's FOIA guidelines at VA.

Furthermore, the VA Under Secretary for Health has highlighted VA's commitment to public transparency by encouraging all Veterans Health Administration employees to proactively post significant amounts of records online.

The Veterans Health Administration, Veterans Benefits Administration, and VA Privacy Steering Committee have held conference calls in which the content of these documents was discussed. The audience for these calls included all VA FOIA and Privacy Act Officers.

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

The Veterans Health Administration FOIA Office has provided face-to-face training programs, with focus on transparency and the presumption of openness to its field FOIA Officers for the past two fiscal years. The Veterans Health Administration FOIA Office conducted four (4) training sessions in fiscal year 2009 and five (5) training sessions in fiscal year 2010, which contained a focus on openness and government transparency. Additionally, when President Obama initially issued his memorandum on FOIA, the Veterans Health Administration FOIA Office conducted a national conference call with the Veterans Health Administration field offices outlining the expectations contained in the President's memorandum.

In addition to its department-wide distribution, the Veterans Health Administration and the Veterans Benefits Administration have disseminated the FOIA memorandum issued by the President on January 21, 2009, and the FOIA Guidelines issued by the Attorney General on March 19, 2009 to their field offices. These documents are also redistributed periodically as a

reminder to the field FOIA Officers. Veterans Benefits Administration VACO staff have also developed training materials that will be used to deliver FOIA training in FY 2011 that will highlight the new FOIA guidelines.

Furthermore, members of the VA FOIA community attended the Department of Justice's (DOJ's) FOIA Public Liaisons Training, which emphasized the appropriate implementation of the Memorandum and Guidelines and focused on assisting in reducing delays, increasing transparency, and assisting in the resolution of disputes.

Training has also been conducted through the Office of Government Information Services (OGIS). OGIS holds regular briefings for the VA FOIA community. The first such briefing was held in March 2010, at which the OGIS Director outlined the new FOIA amendments and her office's role in resolving FOIA complaints through mediation. The Director also emphasized the importance of heeding the President's Memorandum and Attorney General's guidelines to ensure proper requester service.

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

VA has recently issued agency-wide guidance to VA FOIA Officers setting up a standard protocol to make discretionary releases.

VA is in the process of updating its FOIA Regulations to ensure that the presumption of openness is applied in all FOIA release determinations.

VA FOIA Service is also in the process of updating its department-wide FOIA Handbook to reflect the upcoming changes to the VA's FOIA regulations. The Handbook will allow the VA FOIA community to better understand the implementation of FOIA and the presumption of openness.

Furthermore, in an effort to create a Department-wide culture of openness, VA has created and provides FOIA pamphlets to all new VA employees as part of their orientation package. These pamphlets provide a brief overview of the importance of FOIA and the need to collaborate with agency FOIA officials when records are requested.

In addition, the Veterans Health Administration FOIA Office has provided verbal guidance and email guidance on a number of occasions to Veterans Health Administration field FOIA Officers to emphasize the presumption of openness. The Veterans Health Administration FOIA Office provided copies of President Obama's Memorandum and Attorney General Holder's Guidelines to Veterans Health Administration field staff, as well as a number of presentations outlining the Veterans Health Administration's expectations regarding those documents.

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

VA has very recently issued policy on discretionary releases and has instructed the field offices to always evaluate its use of discretionary exemptions based on the likelihood of "foreseeable harm." This policy guidance was based on the Department of Justice's (DOJ's) Office of Information Policy (OIP) guidance concerning discretionary releases in reference to the Attorney General's FOIA Guidelines.

Veterans Benefits Administration has made discretionary disclosures which include internal training letters and guidelines concerning claims processing, benefits statistics, performance

information, budget allocations, workload statistics, processing times, staffing levels, and contact information for key members of the leadership team.

In an effort to quantify and document the extent to which discretionary releases have been made , VA FOIA Service is working with its FOIA tracking system vendor to examine ways for the system to track discretionary releases.

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

VA FOIA offices release information on a discretionary basis if the requested records fall under Exemption 2, which protects records "related solely to the internal personnel rules and practices of an agency," and Exemption 5, which covers inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency."

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

VA FOIA Service has recently issued policy guidance setting up a standard protocol for making discretionary releases pursuant to DOJ guidelines.

The Veterans Benefits Administration FOIA Office has issued templates to its field facilities that contain procedural requirements that are to be used in determining whether discretionary releases of records are possible. Discretionary disclosure of records is reiterated during monthly FOIA-Privacy teleconferences. Guidance is also provided via emails and in response to telephone inquiries from the field.

The Veterans Health Administration FOIA Office has issued formal guidance to its field facilities encouraging discretionary releases of information. The Veterans Health Administration FOIA Office is currently revising all Veterans Health Administration FOIA policies, directives and handbooks to reflect the guidance on discretionary releases.

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

The Secretary has accepted and issued an Open Government Plan which is being spearheaded by the Office of Public and Intergovernmental Affairs. VA FOIA Service has prepared portions of that plan which include implementing automated aids for Veterans to obtain information in lieu of submitting a FOIA request.

VA FOIA Service has been working closely with VA's Office of Information & Technology (OI&T) staff to proactively release patches and packages related VA's Computerized Patient Record System (CPRS). The CPRS system is electronic heal8th record software used by all VA Medical facilities to track the treatment of Veterans. VA OI&T staff have established a process to ensure distribution of patches and packages is available to the public online.

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.

In FY2009, 23,792 requests were granted in full. In FY 2010, 11,808 requests were granted in full. The decrease in the number of full releases can be partly attributed to the fact that the

number of requests received between the two fiscal years decreased by relatively similar percentage (42% versus 50% respectively).

	FY 2009	FY 2010	Percent decrease
Requests Received	69,432	29,127	42%
Requests Granted in Full	23,792	11,808	50%

While the number of requests granted in full decreased between FY 2009 and FY 2010, it is important to point out that the percentage of FOIA requests processed that were granted in full actually increased during that timeframe from 33% to 41% as indicated by the chart below.

	FY 2009	FY 2010
Requests Processed	71,487	28,857
Requests Granted in Full	23,792	11,808
Percentage Granted in Full	**33%**	**41%**

In FY2009, 4,570 requests were granted in part. In FY 2010, 7,031 requests were granted in part. The percentage of FOIA requests processed that were granted in part increased during that timeframe from 6% to 24% as indicated by the chart below.

	FY 2009	FY 2010
Requests Processed	71,487	28,857
Requests Granted in Part	4,570	7,031
Percentage Granted in Part	**6%**	**24%**

In FY2009, 28,362 requests were granted both in full and in part. In FY 2010, 18,839 requests were granted both in full and in part. The percentage of FOIA requests processed that were granted both in full and in part increased during that timeframe from 40% to 65% as indicated by the chart below.

	FY 2009	FY 2010
Requests Processed	71,487	28,857
Total Grants (Full + Partial)	28,362	18,839
Percentage Grants (Full + Partial)	**40%**	**65%**

II. Steps Taken to Ensure that Your Agency has an Effective System in Place 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."

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?**

VA FOIA Service is located within the Chief Information Officer's office and coordinates its responses with Information technologists. IT support is generally good and responsive. The software vendor for VA's FOIA tracking system has created a helpdesk technical support hotline to assist users with any questions or technical difficulties they may have while processing FOIA requests. Additionally, a Department-wide VA Helpdesk number is available to assist users with any IT technical difficulties that may arise.

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

The Open Government Team developed an Open Government Plan which was signed by the Secretary of Veterans Affairs in April 2010. VA FOIA Service was involved in helping to develop the plan which includes implementing automated aids for Veterans to obtain information. VA FOIA Service was approached by the Open Government Team to help identify ways to proactively release documents. As a result of contact between VA FOIA Service and the Open Government Team, the Open Government Plan contains a section on ways to increase discretionary disclosures.

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

Several components of the Department have increased the number of their FOIA staff in an effort to improve their FOIA response time. Additionally, some offices have hired contractors to assist in processing FOIA requests. VA's initiatives to increase staffing have reduced the average number of days to process a request from 36 to 14 between FY2009 and FY2010.

The Veterans Health Administration FOIA and Privacy Offices are addressing their field staffing by developing a full-time Privacy and FOIA Officer Implementation Plan, which will require a full-time Privacy/FOIA Officer in each VA Medical Center. Over the past two years, the Veterans Health Administration FOIA Office has expanded from having only one full-time FOIA Officer to three full-time FOIA Officers.

The Veterans Benefits Administration staffing model has identified the need for additional staffing both within Veterans Benefits Administration Central Office and its field offices. Due to budgetary constraints, they are unable to hire additional FOIA staff at this time. Though the budget process, Veterans Benefits Administration is planning, where possible, to provide additional resources in the future to address this issue.

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

VA uses an electronic FOIA tracking system to eliminate errors and enhance the effectiveness of its FOIA operations.

Additionally, during their orientation, all new VA employees receive a FOIA pamphlet which provides a brief overview of the importance of effectively collaborating with agency FOIA staff in processing FOIA requests.

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 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, VA's FOIA website has been periodically updated with additional material. For example, VA routinely adds information about VA Data Breaches to that site.

b. **What types of records have been posted?**

VA's Office of the Inspector General (OIG) publishes reports of investigations, audits and inspections on its public website.

VA's Office of Information & Technology reviews records related to VA's computerized patient medical record software to determine whether there is sufficient public interest to warrant publishing the records online.

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.**

VA Office of Finance posts information regarding VA purchase card holders (credit card) transaction data. Additional information posted includes First Class and Business Class Travel Reports, VA Civil Service Employee holiday pay data, and Unclaimed Moneys Accounts data.

VA Office of Acquisition and Logistics posts high level contract award data to its public website.

VA Office of Information and Technology posts information about VA data breaches.

VA's Aspire for Quality Initiative, a VA-wide program designed to document key measures of health care quality also posts information on its public website. The information posted includes outcome information for acute care services, intensive care units, outpatient services, safety and process measures, and indicators of how successful each VA Medical Center has been in meeting its quality goals.

Records within the Office of Information & Technology that only used to be accessible by making a FOIA request included software documentation, source code, training manuals, and demos of the computerized patient medical records software. The requester community may now access these records without having to make a FOIA request. VA has been applauded by several members of the FOIA community for having posted these records online without requiring a formal FOIA request.

As mentioned in Section III b. above, VA Office of the Inspector General posts numerous reports on its website. Examples include: "Administrative Investigation Prohibited Personnel Practices, Abuse of Authority, Misuse of Position, And False Statements, Office of Human

Resources And Administration, VA Central Office", and "Administrative Investigation Improper Salary Supplementation Veterans Health Care System Of The Ozarks, Fayetteville, Arkansas".

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

VA has recently issued policy setting up a protocol requiring each of its organizational components' FOIA offices to routinely conduct a review to identify records appropriate for proactively posting online.

Whenever a FOIA request is submitted to VA Office of the Inspector General, it conducts an analysis to determine whether the requested records would be appropriate for posting on its public website.

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

VA uses the most popular social media to disseminate information both at the headquarters level as well as the regional office/medical center level. Since the start of the Department-wide initiative of disseminating information through social media, VA now has over 100,000 people following VA on several social media sites.

In an effort to provide meaningful news to Veterans at their local medical facilities, VA has undertaken the task to create at least one social media site per medical center. Over 70 of the 153 VA medical centers have created and maintain social media sites. Information disseminated via those social media sites includes VA press releases and relevant news articles about VA that may be of interest to Veterans.

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

In order to increase proactive disclosures, VA FOIA Service held a meeting to initiate a data call to collect information regarding the most common types of requests received by all components of the Department. An index of the most frequently requested records has been posted on VA's FOIA website.

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% of our FOIA components have the capability to receive requests electronically (i.e. via e-mail). However, VA's FOIA implementing regulations require that a proper FOIA request must contain the signature of the requester.

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

   As mentioned in IV.1.a. above, 100% of VA's FOIA components have the capability of receiving FOIA requests electronically. So, there is no capacity to increase the number of components doing so. VA's electronic FOIA tracking system indicates that since the last filing of our Chief FOIA Officer Report, VA actually received over 1,100 FOIA requests via e-mail. In the preceding year, VA received only one FOIA request via e-mail, even though all VA FOIA components had the capacity of doing so.

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

All VA components have the capability of receiving FOIA requests electronically and via fax. However, a few VA components have established FOIA-specific group mailboxes to allow FOIA requesters to submit their requests via these FOIA-specific group mailboxes.

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?

VA uses an electronic FOIA tracking system that allows all VA FOIA Offices that receive FOIA requests to track them electronically. The system also has the capability to transfer requests from one component to another within the Department electronically.

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

All VA components that receive FOIA requests have been able to track their assigned requests electronically since VA deployed its FOIA tracking system in 2009. VA FOIA Service has been closely monitoring the use of the FOIA tracking system to ensure that all FOIA requests are tracked in the electronic system.

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

VA uses an electronic FOIA-specific tracking system to track all requests. The system allows Department-wide collaboration in responding to any FOIA request. The tracking system is compliant with OPEN Government Act requirements, including the requirement that each FOIA request requiring more than 10 working days to provide a determination must be assigned a unique FOIA tracking number. The VA's electronic FOIA-specific tracking system also helps FOIA public liaisons provide the status of requests to FOIA requesters when asked.

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?

VA uses an electronic FOIA tracking system that allows all VA FOIA Offices that receive FOIA requests to process them electronically.

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

The number of components within VA that have the capability to process requests electronically has remained the same.

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

In June 2009, VA deployed a Department-wide electronic FOIA-specific tracking and processing system which performs many of the functions required in processing FOIA requests, such as assigning and transferring FOIA requests to the proper FOIA officer within the agency, calculating and tracking FOIA fees and fee payments, generating billing statements, and generating FOIA response letters.

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 electronic FOIA tracking system that VA began using in June 2009 is used to generate the Annual FOIA Report. It is a FOIA-specific system.

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.**

VA is satisfied with its existing system.

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

Improvements to timeliness in responding to pending FOIA requests and reductions in backlogs are both ongoing agency efforts. The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. Section XII of your Annual FOIA Report includes figures that show your agency's backlog of pending requests and administrative appeals for the past two fiscal years. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In this section you should address the following elements.

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.

At the close of FY 2009, VA reported 503 backlogged requests. At the close of FY 2010, VA reported 648 backlogged requests.

At the close of FY2009, VA reported 72 backlogged administrative appeals. At the close of FY 2010, VA reported 185 backlogged administrative appeals.

Although these numbers indicate that there was an increase of 145 backlogged FOIA requests and 113 administrative appeals, it is important to note that the percentage of backlogged requests has increased by a nominal amount.

In FY 2009, VA received 69,432 of which 503 (0.72%) were backlogged. In FY 2010, VA received 29,127 requests of which 648 (2.22%) were backlogged. This amounts to a 1.5% increase in the percentage of the backlogged FOIA requests from FY F2009 to FY 2010. A backlog of just over 2% is a notable accomplishment.

In FY 2010, VA closed all of its ten oldest pending requests and closed nine of the ten oldest pending administrative appeals reported in the FY 2009 Annual FOIA Report.

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?**

No, the backlog did not increase as a result of the number of incoming requests or appeals.

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

No, the backlog did not increase due to a loss of staff.

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

We are unable to determine whether or not the backlog has increased due to the complexity of the requests received. To make this determination would require a quantification of the complexity of each request received, and no such metric is currently available.

VA is in the process of putting together a FOIA Backlog Working Group to address these issues and determine whether or not we can establish a methodology with a set of metrics to determine the complexity level of FOIA requests that were received, processed, and backlogged. The mission of the FOIA Backlog Working Group is to identify new approaches to reducing the FOIA backlog.

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

We are currently unable to determine the root causes for the increase in the FOIA backlog in FY 2010. As mentioned in the previous response, VA is in the process of setting up a FOIA Backlog Working Group to address this issue.

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. VA FOIA Service Backlog reports are provided to the Administrations and Staff Offices FOIA Offices on a weekly basis. FOIA Officers as well as Department executives are very well aware of the VA's backlog status. The backlog is also reviewed by leadership during the standing Executive Leadership Board (ELB) and the Monthly Program Review (MPR) meetings, which are attended by department-level managers. The backlog is ultimately reported to the Deputy Secretary.

A communication has been issued by Veterans Health Administration FOIA Office informing its FOIA Officers in the field that Veterans Health Administration leadership is placing renewed emphasis on reducing its FOIA backlog over the next few months.

The VA FOIA Backlog Working Group will be focusing on the same goals at the Department-wide level.

b. Has your agency increased its FOIA staffing?

Yes. Over the past two years, Veterans Health Administration has expanded from having only one full-time FOIA Officer to three full-time FOIA Officers and is currently recruiting for two additional Veterans Health Administration FOIA Office staff.

The Veterans Benefits Administration has determined that its current staffing levels should be increased to fully address its FOIA workload. However, budgetary constraints prevent additional hiring of staff at this time.

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

Yes. VA has deployed a department-wide electronic FOIA tracking and processing system that allows its FOIA Officers to more expeditiously process a request from start to finish. Many of the facets of this system enhance timeliness. Some examples are:

- FOIA response template letters are generated within a few seconds, as opposed to manual preparation which takes a significantly longer amount of time.

- The electronic FOIA tracking system calculates estimated FOIA fees, final FOIA fees, and generates electronic invoices.

- The electronic FOIA tracking system allows FOIA Officers to attach administrative notes at any point in processing a FOIA request.

- The electronic FOIA tracking system allows all agency FOIA Officers to instantly transfer a request to the appropriate VA FOIA office of jurisdiction.

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

Yes. He appeared in a video to the FOIA Officers on the importance of processing requests timely and proactively providing information to the public. He is routinely briefed on FOIA progress and issues and provides leadership on a regular basis.

Spotlight on Success

VA has recently been successful in proactively releasing certain records that are of public interest. Records within the Office of Information & Technology that only used to be accessible by making a FOIA request included software documentation, source code, training manuals, and demos of the computerized patient medical records software. The requester community may now access these records without having to make a FOIA request. VA has been applauded by several members of the FOIA community for having posted these records online without requiring a formal FOIA request.