

# CHIEF FOIA OFFICER REPORT - AGENCY RECEIVED MORE THAN 50 REQUESTS

## High-Volume Agencies Receiving More Than 50 Requests in FY17

### Content of 2019 Chief FOIA Officer Reports

#### Section 1: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying DOJ's [FOIA Guidelines](#) is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

#### **A. FOIA Leadership**

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. Is your agency's Chief FOIA Officer at or above this level?

*Yes, the CSB's Chief FOIA Officer is at the SES level.*

2. Please provide the name and title of your agency's Chief FOIA Officer.

*Thomas E. Zoeller, Senior Advisor and Acting General Counsel.*

#### **B. FOIA Training**

3. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any substantive FOIA training or conference during the reporting period such as that provided by the Department of Justice?

*On 11/16/2017, the CSB FOIA Officer attended a presentation, sponsored by the American Society of Access Professionals, featuring a speaker associated with the National Security Archive at the George Washington University; however, it was more of a history lesson regarding the National Security Archive than a "substantive" presentation.*

*The CSB FOIA Officer attempted, unsuccessfully, to register for substantive FOIA training provided by the DOJ OIP; early registration was not permitted by OIP's "Eventbrite" system of registration, and the advanced courses filled up quickly.*

4. If yes, please provide a brief description of the type of training attended or conducted and the topics covered.

*N/A.*

5. Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

*0%.*

6. OIP has [directed agencies](#) to "take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year." If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency's plan to

ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

*The CSB FOIA Officer, who performs 90% of FOIA intake, review, and response, is scheduled to attend the 2019 annual National FOIA Training Conference sponsored by the American Society of Access Professionals (ASAP).*

### **C. Outreach**

7. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

*No.*

### **D. Other Initiatives**

8. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In 2016, the Department **publicized** FOIA-related performance standards for employees that have any role in administering the FOIA, including non-FOIA professionals. Please also indicate whether your agency has considered including FOIA-related performance standards in employee work plans for employees who have any role in administering the FOIA.

*FOIA-related performance standards are already in CSB employee work plans for employees who administer the FOIA. Aside from the CSB's demonstration of transparency through its posting of agency regulations, investigation reports, meeting transcripts, etc. (see answer to question 9 below), the agency has not undertaken any additional efforts to inform non-FOIA professionals of their obligations under the FOIA.*

9. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

*The CSB is fully committed to transparency. All of the agency's investigation reports, board action reports, and other materials are publicly available from the agency's website. The agency regularly conducts Sunshine Act meetings at least once every quarter. The Board's regulations and policies permit any Board member to request a notation item to be calendared and discussed in a public meeting. All of the agency's investigative reports, recommendation letters and recommendation status, board action reports, as well as all mandated agency reports, such as the Performance and Accountability reports, are publicly available on the agency's website.*

## **Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests**

DOJ's **FOIA Guidelines** emphasize that "[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." It is essential that agencies effectively manage their FOIA program.

Please answer the following questions to describe the steps your agency has taken to ensure that the management of your FOIA program is effective and efficient. You should also include any additional information that describes your agency's efforts in this area.

1. For Fiscal Year 2018, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2018 Annual FOIA Report.

16 days; there were 7 requests for expedited processing in FY 2018.

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

*The FOIA Officer normally calendars the 10<sup>th</sup> day for the dispatch of the determination on an expedited processing request. Occasionally, however, the FOIA request turns out to be a "no records" response, which renders the request for expedited processing moot. In the future, a letter will go out addressing the request for expedited processing by the 8<sup>th</sup> calendar day, so as to ensure that the 10-day deadline is met. That letter may mention the possibility of a "no records" response.*

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report data, using active workflows and track management, reviewing and updating processing procedures, etc.

- Note: In September 2017, OIP released a FOIA Self-Assessment Toolkit as a resource for agencies conducting a self-assessment of their FOIA program. The Toolkit is available on OIP's website for all agencies to use.

No.

4. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2018 (please provide a total number or an estimate of the number).

*No assistance was sought from the CSB's FOIA Public Liaison in FY 2018.*

5. Please describe the best practices used to ensure that your FOIA system operates efficiently and effectively and any challenges your agency faces in this area.

*Best practices: Upon receipt, FOIA requests are calendared immediately for response within 10 days and disseminated to the appropriate office/s to search for responsive documents.*

*The CSB received no public comments on its updated and streamlined proposed final FOIA rule, which was based, in part, on OIP model language. The CSB issued the final rule on December 8, 2017.*

*In FY18, the CSB increased the FOIA staff by one FTE to conduct document review. These efforts have assisted in timely responses to requesters.*

*Challenges: The FOIA program is currently staffed and maintained by the agency's Office of Chief Counsel. This is one of many legal responsibilities managed by an office of 3 FTE. Prior to August 2018, the agency's Acting General Counsel had shared responsibility in responding to FOIA requests. As noted above, the agency uses the contractual support of one attorney, equivalent to one FTE, to assist in the processing of FOIA requests. The agency's FOIA Officer is a staff attorney in the Office of General Counsel. The FOIA responsibilities are but one of the many duties.*

### **Section III: Steps Taken to Increase Proactive Disclosures**

The Department of Justice has long focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

1. Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.

*Note that most of the information gathered in the course of CSB investigations is exempted from disclosure under FOIA Exemption 4 as Confidential Business Information or trade secrets.*

*Posted in FY 2018:*

*65 Board Action Reports of CSB Board votes, available here: [www.csb.gov/records-details/?Type=1](http://www.csb.gov/records-details/?Type=1)*

*The CSB's 7/20/2018 nine-page letter, which was in response to the U.S. Environmental Protection Agency's May 30, 2018, Proposed Rule, proposing changes to a final rule, the Risk Management Program Amendments Rule, issued on January 13, 2017, available here: [www.csb.gov/assets/1/6/csb\\_comments\\_epa\\_rmp\\_20180720.pdf](http://www.csb.gov/assets/1/6/csb_comments_epa_rmp_20180720.pdf)*

*On April 30, 2018, the CSB released a Factual Investigative Update into the fatal May 31, 2017, Incident at the Didion Milling Facility in Cambria, Wisconsin, available here: [www.csb.gov/chemical-safety-board-releases-factual-investigative-update-into-fatal-may-31-2017-incident-at-the-didion-milling-facility-in-cambria-wisconsin/](http://www.csb.gov/chemical-safety-board-releases-factual-investigative-update-into-fatal-may-31-2017-incident-at-the-didion-milling-facility-in-cambria-wisconsin/)*

*On August 16, 2018, the CSB Released a Factual Update on the 1/22/2018 Blowout and Fire at Pryor Trust Gas Well in Pittsburg County, Oklahoma, available here: [www.csb.gov/csb-releases-factual-update-on-blowout-and-fire-at-pryor-trust-gas-well-in-pittsburg-county-oklahoma-/](http://www.csb.gov/csb-releases-factual-update-on-blowout-and-fire-at-pryor-trust-gas-well-in-pittsburg-county-oklahoma-/)*

Please describe how your agency identifies records that have been requested and released three or more times (and are therefore required to be proactively disclosed pursuant to 5 U.S.C. § 552(a)(2)(D)).

*Because the CSB only receives an average of 44 requests per year, the FOIA Officer periodically reviews all the CSB FOIA requests to identify records that have been requested and released three or more times.*

3. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website?

*The CSB website was revamped in 2017 to make the information posted thereon more easily readable, accessible, and section 508-compliant. Many historical documents are archived on the website. A sizeable portion of the CSB's already modest budget is devoted to maintenance of the website.*

4. If yes, please provide examples of such improvements.

*Please visit the CSB website, [www.csb.gov](http://www.csb.gov), to view the improvements.*

5. Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.

*The following are regularly posted on the CSB website: Board votes; Board Orders; investigation reports, safety videos, and recommendations; and notices and transcripts of CSB Sunshine Act public meetings. Most of the information gathered in the course of CSB investigations is exempted from disclosure under FOIA Exemption 4 as Confidential Business Information or trade secrets.*

#### **Section IV: Steps Taken to Greater Utilize Technology**

A key component of FOIA administration is using technology to make information more accessible. In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that that describes your agency's efforts in this area.

1. Is your agency leveraging technology to facilitate efficiency in conducting searches, including searches for emails? If so, please describe the type of technology used. If not, please explain why and please describe the typical search process used instead.

*Most of the CSB investigation records are on internal databases that are searchable using keywords. The CSB has some individual licenses for software that searches e-mail and attachments.*

2. OIP issued **guidance** in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

Yes.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2018?

Yes. They can be found here: [www.csb.gov/disclaimers/legal-affairs-foia/](http://www.csb.gov/disclaimers/legal-affairs-foia/)

4. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2019.

N/A.

5. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2017 Annual FOIA Report and, if available, for your agency's Fiscal Year 2018 Annual FOIA Report.

[www.csb.gov/disclaimers/legal-affairs-foia/](http://www.csb.gov/disclaimers/legal-affairs-foia/)

6. Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

*The CSB FY 2020 budget requests includes funds for the acquisition of FOIA processing software.*

### **Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs**

The Department of Justice has emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report 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, appeals, and consultations.

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2018 Annual FOIA Report and, when applicable, your agency's 2017 Annual FOIA Report.

#### **A. Simple Track**

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.

1. Does your agency utilize a separate track for simple requests? If your agency uses a multi-track system beyond simple, complex, and expedited to process requests, please describe the tracks you use and how they promote efficiency.

*Yes, the CSB utilizes a separate track for simple requests.*

2. If your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2018?

*The CSB overall average number of days to process simple requests in Fiscal Year 2018 was 23.*

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2018 that were placed in your simple track.

*Approximately 40% (19 simple processed requests out of 48 total processed requests) were simple track requests.*

4. If your agency does not track simple requests separately, was the average number of days to process all non-expedited requests twenty working days or fewer?

*N/A.*

## **B. Backlogs**

Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2016 and Fiscal Year 2017 when completing this section of your Chief FOIA Officer Report.

### **BACKLOGGED REQUESTS**

5. If your agency had a backlog of requests at the close of Fiscal Year 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

*The CSB backlog of requests increased from 20 in FY2017 to 28 in FY2018.*

6. If not, did your agency process more requests during Fiscal Year 2018 than it did during Fiscal Year 2017?

*The CSB processed 46 requests in FY2017 and 48 requests in FY2018.*

7. If your agency's request backlog increased during Fiscal Year 2018, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming requests.
- A loss of staff.

- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

*A majority of the FOIA requests received request the entire contents of CSB investigation files, which often contain thousands of documents. Many of these same requests are submitted for ongoing investigations. Narrowing the scope of the request somewhat lessens the review burden.*

*The agency's electronic record-keeping system is outdated and requires substantial upgrading. The agency's FY19 budget includes funding to make the necessary IT improvements. Until such time as the electronic records system is upgraded, current record retrieval remains challenging.*

*The CSB lost its Acting General Counsel/Chief FOIA Officer/FOIA Public Liaison in August of 2018. The former Acting General Counsel/Chief FOIA Officer/FOIA Public Liaison shared in some FOIA duties, such as responding to some requests.*

*Finally, because of the lack of FOIA processing software, the FOIA Officer must process all requests, and complete all reports, including this one, manually. The CSB FY 2020 budget requests includes funds for the acquisition of FOIA processing software.*

8. If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2018. If your agency has no request backlog, please answer with "N/A."

*The percentage of requests that make up the CSB's backlog out of the total number of requests received in Fiscal Year 2018 is 57%.*

### **BACKLOGGED APPEALS**

9. If your agency had a backlog of appeals at the close of Fiscal Year 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

N/A.

10. If not, did your agency process more appeals during Fiscal Year 2018 than it did during Fiscal Year 2017?

N/A.

11. If your agency's appeal backlog increased during Fiscal Year 2018, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming appeals.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

N/A.

12. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2018. If your agency did not receive any appeals in Fiscal Year 2018 and/or has no appeal backlog, please answer with "N/A."

N/A.

### **C. Backlog Reduction Plans**

13. In the 2018 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2017 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2018?

*Although the agency does not have a backlog at this level, the current backlog is of concern to the agency management. The agency continues its realignment of staffing which is resulting in the addition of 2 new FTE's to the Office of General Counsel. At least one of the FTEs will be have primary responsibility to the FOIA program, with the goal of reducing the agency's backlog of FOIA requests.*

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2018, what is your agency's plan to reduce this backlog during Fiscal Year 2019?

N/A

### **D. Status of Oldest Requests, Appeals, and Consultations**

Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2016 and Fiscal Year 2017 when completing this section of your Chief FOIA Officer Report.

#### **OLDEST REQUESTS**

15. In Fiscal Year 2018, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

No.

16. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2016 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

None.

17. Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?

N/A.

18. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.



*To reduce the overall age of the pending requests, letters will go out to some of the oldest requesters, to whom releases of requested documents have already been made, confirming closure of their requests. As previously noted, the staffing levels of the agency's OGC will be increased as of July 1, 2109 which will result in additional FTE available to support the agency's FOIA program.*

### **TEN OLDEST APPEALS**

19. In Fiscal Year 2018, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

*N/A.*

20. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2017 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

*N/A.*

21. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

*N/A.*

### **TEN OLDEST CONSULTATIONS**

22. In Fiscal Year 2018, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

*N/A.*

23. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2017 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

*N/A.*

### **E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans**

24. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2018.

*Please see response to #7 above.*

25. If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

*N/A.*

26. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2018.

*As Fiscal Year 2018 has passed, and Fiscal Year 2019 is ½ over, the current plan is to: prioritize the oldest pending FOIA requests; confirm what appear to be completed responses; and process the remainder.*

#### **F. Success Stories**

Out of all the activities undertaken by your agency since March 2018 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas. As noted above, OIP will highlight these agency success stories during Sunshine Week. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

*N/A.*

*Updated September 21, 2018*