

2023 CHIEF FOIA OFFICER REPORT GUIDELINES - AGENCIES RECEIVING MORE THAN 50 REQUESTS FISCAL YEAR 2021

2023 Chief FOIA Officer Report Guidelines Agencies Receiving More Than 50 Requests in Fiscal Year 2021

SECTION I: FOIA LEADERSHIP AND APPLYING THE PRESUMPTION OF OPENNESS

The guiding principle underlying the Attorney General's [FOIA Guidelines](#) is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

A. Leadership Support for FOIA

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. See 5 U.S.C. § 552(j)(1) (2018). Is your agency's Chief FOIA Officer at or above this level?

The CSB's Chief FOIA Officer was, until his departure from the agency in January of 2023, a member of the Senior Executive Service (SES). The CSB's Acting General Counsel, who is not a member of the SES, is temporarily filling that role.

2. Please provide the name and title of your agency's Chief FOIA Officer. [Michele Bouziane, Acting General Counsel.](#)

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

Over the last year, the CSB has had multiple discussions over the incorporation of FOIA and records management requirements throughout the life cycle of a CSB accidental-chemical-release (from a fixed facility into the atmosphere) investigation. CSB's current Strategic Plan is succinct and focuses on the agency's core mission.

B. Presumption of Openness

4. The Attorney General's 2022 FOIA Guidelines provides that "agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions." Does your agency provide such confirmation in its response letters?

The CSB's FOIA response letter templates currently do not contain the above-quoted "foreseeable harm" language. We have occasionally cited the standard in our responses. From now on we will include the language in our template responses.

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interested protected by a FOIA exemption. This is commonly referred to as a *Glomar* response. With respect to these responses, please answer the below questions:

- a. In addition to tracking the asserted exemption, does your agency specifically track whether a request involved a *Glomar* response? **No.**
- b. If yes, please provide:
 - i. the number of times your agency issued a full or partial *Glomar* response (separate full and partial if possible);
 - ii. the number of times a *Glomar* response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).
- c. If your agency does not track the use of *Glomar* responses, what would your agency need to do to track in the future? If possible, please describe the resources and time involved.

N/A. The CSB FOIA Officers have not used the *Glomar* response. The CSB has no classified records (and therefore does not invoke Exemption 1), nor is it allowed to use 5 U.S.C. 552(c). Additionally, the CSB has not used Exemption 7(C).

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

SECTION II: ENSURING FAIR AND EFFECTIVE FOIA ADMINISTRATION

The Attorney General's [FOIA Guidelines](#) provide that “[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of FOIA obligations by the entire agency workforce.” The Guidelines reinforce longstanding guidance to “work with FOIA requesters in a spirit of cooperation.” The Attorney General also “urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency’s FOIA administration” as part of ensuring fair and effective FOIA administration.

A. FOIA Training

1. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

One of the two CSB FOIA Officers provided a one-hour training on the FOIA to most of the agency at an All-Hands meeting on September 20, 2022.

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

Yes, the two FOIA officers have attended OIP trainings. Additionally, this past year our focus was on FOIA Technology inasmuch as FOIAonline is sunsetting. The FOIA Officers have

attended multiple meetings, as well as the NARA-OIP NexGen FOIA Tech showcase presentations.

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

Virtual Litigation Seminar November 10, 2021
Exemption 1 and Exemption 7 January 11, 2022

4. Please provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period. 100%

5. 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. N/A

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and if senior leaders at your agency received a briefing on your agency’s FOIA resources, obligations and expectations during the FOIA process?

As mentioned in response to Question 1 above, CSB staff received a one-hour FOIA training September 20, 2022. Recently, the CSB FOIA Officers met with the CSB Board Members to explain the urgency of the agency’s requirements for a FOIA processing engine to replace FOIAonline, as well as for Records Management Services, as the agency has been without a Records Officer since June of 2021.

B. Outreach

7. Did your FOIA professionals engage in any outreach or dialogue, outside of the standard request process, 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.

8. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue, and, if applicable, any specific examples.

Yes. Some of our complex FOIA requests include requests for investigation files that can involve thousands of records, which may be protected under multiple FOIA exemptions.

9. 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 Fiscal Year 2022 (please provide a total number or an estimate of the number). 0.

C. Other Initiatives

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

In view of the tripling of FOIA requests experienced by the CSB over the last two years, the CSB FOIA Officers recently met with the CSB Board Members and requested, in the short term, an assistant/intern to perform searches for responsive records, and in the long-term, a full-time FOIA officer.

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

Currently, the agency does not use these metrics to manage workload. The agency is looking at FOIA technology to incorporate data or processing metrics into managing workload.

12. Optional -- If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.

SECTION III: PROACTIVE DISCLOSURES

The Attorney General's [FOIA Guidelines](#) emphasize that "proactive disclosure of information is . . . fundamental to the faithful application of the FOIA." The Guidelines direct agencies to post "records online quickly and systematically in advance of any public request" and reiterate that agencies should post records "in the most useful, searchable, and open formats possible."

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

Agency final investigation reports, factual updates of investigations, safety bulletins, etc., are regularly posted on the CSB's website, and more data has been posted recently at the direction of the Chairperson.

2. Provide examples of any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

In the last year, the CSB has posted to its website a spreadsheet listing accidental releases of hazardous chemicals from fixed facilities reported pursuant to its Accidental Release Reporting Rule, which became effective on March 23, 2020.

<https://www.csb.gov/csb-releases-chemical-incident-data-from-reporting-rule/?pg=3>

Additionally, the CSB posted a Guidance document in Q & A form to explain the operation of the Rule.

<https://www.csb.gov/news/incident-report-rule-form-/>

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?

In September of 2022, the CSB hired a new CIO, who is in the process of improving all aspects of the CSB's IT systems. He will be working with our Public Affairs personnel and web design contractors to ensure 508 compliance with respect to posted materials.

4. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

See answer to #3.

5. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

The CSB's new CIO is very focused on information security and safe practices, so, he will likely be consulted with respect to the posting of new data, and also with respect to the formatting of the data.

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

SECTION IV: STEPS TAKE TO GREATER UTILIZE TECHNOLOGY

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's [FOIA Guidelines](#) emphasize the importance of making FOIA websites easily navigable and complying with the [FOIA.gov](#) interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands? **Yes.**

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program. [N/A](#).

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology. [No](#).

4. 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](#). The agency is evaluating how to improve its website and reading room.

5. Did all four of your agency's [quarterly reports](#) for Fiscal Year 2022 appear on FOIA.gov?

[Reports for Q1, Q2, and Q3 show up on foia.gov; the Q4 report should show up soon.](#)

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2023.

[There had been some issues with foia.gov's reception of CSB's quarterly reports in 2022. As our agency will procure a FOIA-processing engine this year to replace FOIAonline, we hope to be able to program the new system to automatically generate quarterly reports so as to facilitate rapid submission to foia.gov.](#)

7. 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 2021 Annual FOIA Report and, if available, for your agency's Fiscal Year 2022 Annual FOIA Report.

<https://www.csb.gov/disclaimers/legal-affairs-foia/>

8. In February 2019, DOJ and OMB issued joint [Guidance](#) establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

[The CSB is a micro-agency; it has no components. The CSB believes it is in compliance with the interoperability standards.](#)

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

SECTION V: STEPS TAKEN TO REMOVE BARRIERS TO ACCESS, IMPROVE TIMELINESS IN RESPONDING TO REQUESTS, AND REDUCE BACKLOGS

The Attorney General's [FOIA Guidelines](#) instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the

following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

A. Remove Barriers to Access

1. Has your agency established alternative means of access to first-party requested records outside of the FOIA process?

The CSB's regulations at 40 CFR Part 1602 specifically describe what procedures to follow for a requester to access records about himself or herself.

2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.

Yes, please see: <https://www.ecfr.gov/current/title-40/chapter-VI/part-1602> .

B. Timeliness

3. For Fiscal Year 2022, 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 2022 Annual FOIA Report. 44 days.

4. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2022 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

None of the FY22 requests for Expedited Processing (EP) met the requirements for EP per our agency's FOIA regulation. Notwithstanding, we will attempt to configure our FOIA- processing-engine-replacement-for-FOIAonline so as to simultaneously schedule the 10-day EP deadline on our electronic calendars.

5. Does your agency utilize a separate track for simple requests? Yes.

6. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2022? No.

7. If not, did the simple track average processing time decrease compared to the previous Fiscal Year? No.

8. Please provide the percentage of requests processed by your agency in Fiscal Year 2022 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100. 22%

9. 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](#).

C. Backlogs

BACKLOGGED REQUESTS

10. If your agency had a backlog of requests at the close of Fiscal Year 2022, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021? [No](#).

11. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2022 than it did during Fiscal Year 2021? [Yes](#).

12. If your agency's request backlog increased during Fiscal Year 2022, 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)
- Impact of COVID-19 and workplace and safety precautions
- Any other reasons – please briefly describe or provide examples when possible

[The CSB's backlog increased for several reasons: lack of human resources, increase in FOIA requests, and issues with technology.](#)

[The CSB's Office of General Counsel \(OGC\) is responsible for completion of FOIA requests. In FY22, the legal office went from four personnel to three personnel. Additionally, one of the FOIA officers assumed the Acting General Counsel position and took on additional responsibilities. The FOIA Office has also been working on FOIA litigation on a complex FOIA request that is taxing the office. The CSB records management program has been in flux.](#)

[On top of the decrease in human resources, the CSB's backlog increased because the CSB received many more FOIA requests in FY22 via FOIAonline vice FY21. Approximately 202 of those requests were spam/duplicates of at least three nonsensical requests. The majority of the non-spam requests we received were intended for other agencies, especially CBP. Most of the remaining requests are complex requests. Additionally, the agency has been updating servers. During the upgrades and system enhancements, there have been periods of limited access. Additionally, the agency has struggled with turnover in the IT Department.](#)

13. 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 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A." 21%.

BACKLOGGED APPEALS

14. If your agency had a backlog of appeals at the close of Fiscal Year 2022, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

The CSB had no backlog in FY 2021. In FY 2022, the CSB had one appeal, which was processed in early FY 2023. The CSB currently has no backlog of appeals.

15. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2022 than it did during Fiscal Year 2021? See answer to #14.

16. If your agency's appeal backlog increased during Fiscal Year 2022, 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: See answer to #14.

- 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)
- Impact of COVID-19 and workplace and safety precautions
- Any other reasons – please briefly describe or provide examples when possible

17. 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 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2022 and/or has no appeal backlog, please answer with "N/A." 100%

D. Backlog Reduction Plans

18. In the 2022 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2021 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 2022? [N/A](#).

19. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2022, please explain your agency's plan to reduce this backlog during Fiscal Year 2023. [N/A](#).

E. Reducing the Age of Requests, Appeals, and Consultations

TEN OLDEST REQUESTS

20. In Fiscal Year 2022, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2021 Annual FOIA Report? [No](#).

21. 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 2021 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. [None](#).

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

[The agency has been updating its servers so that it can conduct email searches. The agency has also been actively seeking FOIA and records management solutions that will facilitate and expedite FOIA request processing.](#)

TEN OLDEST APPEALS

23. In Fiscal Year 2022, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2021 Annual FOIA Report? [N/A](#)

24. 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 2021 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that. [N/A](#)

25. 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

26. In Fiscal Year 2022, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2021 Annual FOIA Report? [N/A](#).

27. 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 2021 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that. [N/A](#).

ADDITIONAL INFORMATION REGARDING TEN OLDEST

28. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2023.

See answer to #22. We are counting on a new FOIA processing system with enhanced search capabilities (perhaps even with Artificial Intelligence) to greatly improve our search for responsive documents and better coordinate deadlines with our calendaring system. That will allow us to whittle away at our 10-oldest-request backlog.

F. Additional Information about FOIA Processing

29. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency’s overall FOIA request processing and backlog. If possible, please indicate the number and nature of requests subject to litigation, common causes leading to litigation, and any other information to illustrate the impact of litigation on your overall FOIA administration.

Yes. There is one complex FOIA request that has been subject to litigation. The agency has no full-time FOIA personnel. The agency has two attorneys who process FOIA requests part-time and one of them has been monopolized by the request. It has significantly impacted the agency’s ability to respond to new and old FOIA requests. The lack of resources has been a cause of backlog which can prompt FOIA litigation.

30. How many requests during Fiscal Year 2022 involved unusual circumstances as defined by the FOIA? (This information is available in your agency’s FY22 raw data).

Seven complex requests were received in 2022. Most of the agency’s complex requests, whenever received, meet the definition of “unusual circumstances” insofar as they involve “the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request”.

Updated October 7, 2022