

## 2016 Chief FOIA Officer Report (Low-Volume Agencies)

### Name and Title of your Agency's Chief FOIA Officer:

Kara Wenzel, Acting General Counsel  
U.S. Chemical Safety and Hazard Investigation Board

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

The guiding principle underlying the President's [FOIA Memorandum](#) and the Attorney General's [2009 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.

#### ***FOIA Training:***

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

Yes.

Such training or events can include offerings from OIP, your own agency or another agency or organization.

The principal FOIA Officer (*i.e.*, the one who spends the most time processing FOIA requests) attended the following courses in person; virtual courses are also listed:

- Office of Gov't Info Services (OGIS) Dispute Resolution Training (6 hours; Jun 24)
- American Society of Access Professionals (ASAP) Annual FOIA Training Conference (3 days; Jul 27-29)
- DOJ Office of Information Services (OIP) Best Practices Workshop Reducing FOIA Backlogs (2 hours; Dec 8)

#### ASAP FOIA On-line Training Courses

- The Privacy Act of 1974: A Basic Overview
- FOIA and Privacy Act Interface
- Privacy Remediation
- Exemption 4
- Exemption 5: The Civil Discovery Privileges

- Fees and Fee Waivers

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

33%

2. 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.

Two additional CSB employees process FOIAs occasionally to help reduce backlog, and also perform second-level review on some of the more complex FOIAs. Each of them will take at least one FOIA course in FY16, either in person or on line.

***Outreach:***

***OPTIONAL:*** Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA?

- This question addresses outreach that is conducted outside of the individual request or appeal process. Outreach activities can include engaging with frequent requesters by holding meetings or events which include them, conducting surveys or otherwise soliciting requester feedback, or participating in any other requester initiative coordinated by your agency or by others, such as OIP.
- *Example:* An agency receives numerous requests from one organization seeking similar types of records. The organization does not know how the agency organizes its records or how its FOIA professionals must conduct searches. When submitting FOIA requests, the organization often submits broad requests that take a long time to process and that result in the review of a lot of records that are ultimately of no interest to the requester. The agency holds a meeting with the organization to discuss its record keeping system, search capabilities, and overall FOIA process to assist the organization in the formulation of future FOIA requests. Because of the meeting, the organization now submits more targeted requests that result in the agency being able to provide the requester the records it is interested in more quickly.

No outreach activities conducted.

***Discretionary Releases:***

4. Does your agency have a distinct process or system in place to review records for discretionary release?

- If so, please briefly describe this process.

Yes, top management reviews agency records for discretionary release. Because of the nature of CSB's work, however, many documents are protected from release by FOIA exemptions. For example, the Board conducts complex safety investigations of chemical accidents concurrently with state and federal civil and criminal authorities. Company documents compiled during these investigations are often labeled, "Confidential Business Information." Additionally, premature release of investigatory materials may jeopardize ongoing criminal (or other kinds of) investigations.

- If your agency is decentralized, please specify whether all components of your agency have such a process or system in place?

N/A

5. During the reporting period, did your agency make any discretionary releases of information?

In compiling response documents to requests for certain Board Member e-mails, we made some discretionary releases (totaling a few pages).

6. What exemption(s) would have covered the material released as a matter of discretion? For a discussion of the exemptions that allow for discretionary releases, please see OIP's guidance on [implementing the President's and Attorney General's 2009 FOIA Memoranda](#).

Ex. 5, deliberative process.

7. Provide a narrative description, as well as some specific examples, of the types of information that your agency released as a matter of discretion during the reporting year.

Pages of e-mail dialogue between Board Member/s and CSB personnel regarding some aspect of CSB operations.

8. If your agency was not able to make any discretionary releases of information, please explain why. For example, you should note here if your agency did not have an opportunity to make discretionary disclosures because you provided full releases in response to all requests or the only exemptions that were applied were those that do not lend themselves to discretionary release (i.e. Exemptions 1, 3, 4, 6, 7A, 7B, 7C, 7F).

N/A

***Other Initiatives:***

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.

- If any of these initiatives are online, please provide links in your description.

N/A

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

The Attorney General's [2009 FOIA Guidelines](#) emphasized 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 that describes your agency's efforts in this area.

***Processing Procedures:***

1. For Fiscal Year 2015, 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 2015 Annual FOIA Report.

- Please note here if your agency did not adjudicate any requests for expedited processing during Fiscal Year 2015.

The CSB did not receive any requests for expedited processing during Fiscal Year 2015.

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.

N/A

3.On July 2, 2015, OIP issued [new guidance](#) to agencies on the proper procedures to be used in the event an agency has a reason to inquire whether a requester is still interested in the processing of his or her request. Please confirm here that to the extent your agency may have had occasion to send a "still interested" inquiry, it has done so in accordance with the new guidelines for doing so, including affording requesters thirty working days to respond.

The CSB did not send any “still interested” letters.

***Requester Services:***

4. Agency FOIA Requester Service Centers and FOIA Public Liaisons serve as the face and voice of an agency. In this capacity they provide a very important service for requesters, informing them about how the FOIA process works and providing specific details on the handling of their individual requests. The FOIA also calls on agency FOIA Requester Service Centers and FOIA Public Liaisons to assist requesters in resolving disputes. Please explain here any steps your agency has taken to strengthen these services to better inform requesters about their requests and to prevent or resolve FOIA disputes.

- If your agency has not taken any steps recently to strengthen these services, either because there has been no need to due to low demand or because these services are already robust, please briefly explain that that here.

The CSB is a micro-agency (41 employees), not big enough to warrant a “FOIA Requester Service Center.” We receive about 50 FOIA requests each year, though the requestors tend to ask for thousands of pages of documents. CSB plans to add resources to the FOIA program in FY16 and prepare for the submission of FOIA requests through the CSB website.

***Other Initiatives:***

3. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc., please describe them here.

N/A

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

Both the [President’s](#) and [Attorney General’s](#) FOIA memoranda 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.

***Posting Material:***

1. Describe your agency's process or system for identifying "frequently requested" records required to be posted online under Subsection (a)(2) of the FOIA. For example, does your agency monitor its FOIA logs or is there some other system in place to identify these records for posting?

Within the last two years, few individual CSB records have been "frequently requested." We do monitor our FOIA logs for frequently requested records.

2. Does your agency have a distinct process or system in place to identify other records for proactive disclosure? If so, please describe your agency's process or system.

- Please note that this question is directed towards proactive disclosure of records that go beyond frequently requested records required to be posted under Subsection (a)(2) of the FOIA.

No formal process is in place. The CSB is considering how to make routine proactive disclosures of data sets associated with investigation reports. In some instances, the agency has published draft reports to ensure that information supporting an investigation is publicized.

3. When making proactive disclosures of records, are your agency's FOIA professionals involved in coding the records for Section 508 compliance or otherwise preparing them for posting? If so, provide an estimate of how much time is involved for each of your FOIA professionals and your agency overall.

- Please note that this question is directed at the efforts of actually posting the records online once all disclosure determinations have been made. For example, efforts to load the records in your web content platform or making the releasable documents accessible in compliance with Section 508 of the Rehabilitation Act.

The CSB's FOIA professionals are not involved in coding records for Section 508 compliance or otherwise preparing them for posting.

4. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?

N/A

4. If so, please briefly explain those challenges.

N/A

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

The CSB Public Affairs staff maintains the CSB website. The FOIA staff coordinates with the Public Affairs staff to ensure that FOIA-reviewed documents are proactively placed on the CSB website.

The CSB posted the PowerPoint presentation concerning its update of its investigation of the DuPont La Porte Facility Toxic Chemical Release of 11/15/2014 here:

[http://www.csb.gov/assets/1/19/DuPont\\_La\\_Porte\\_Board\\_Update\\_2015-07-22-21.pdf](http://www.csb.gov/assets/1/19/DuPont_La_Porte_Board_Update_2015-07-22-21.pdf)

The CSB posted an animation video of the DuPont La Porte Facility Chemical Release here:

<http://www.csb.gov/duPont-laportefacility-toxic-chemical-release/>

The CSB posted its Draft and Final Investigation Reports and animation video of the Caribbean Petroleum Refining Tank Explosion and Fire of 10/23/2009 here:

<http://www.csb.gov/caribbean-petroleum-refining-tank-explosion-and-fire/>

The CSB posted transcripts of its May 6, June 18, and July 22, 2015, public business meetings here:

<http://www.csb.gov/about-the-csb/business-meeting-votes/>

The CSB posted Notation Item voting results for 2015 here:

<http://www.csb.gov/records-details/?Type=1>

7. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe those efforts.

- For example, this can be done through social media or with the offering of e-mail subscription services.

Yes. CSB used the following methods to publicize/highlight proactive disclosures for public awareness:

- News releases on the CSB website,
- Automatic e-mail updates to approximately 50,000 stakeholders
- News updates on social media, such as: Twitter, Facebook and YouTube

***Other Initiatives:***

5. If there are any other steps your agency has taken to increase proactive disclosures, please describe them here.

N/A

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

A key component of the President's [FOIA Memorandum](#) was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

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.

### ***Making Material Posted Online More Usable:***

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

- Steps can include soliciting feedback on the content and presentation of posted material, improving search capabilities on your agency website, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.

No, the posted information is already in a highly usable format. First, at the bottom of the CSB homepage is a link to a "Legal/FOIA" webpage. The Legal Affairs/FOIA webpage contains the following, clearly-displayed headings: Statutes and Legislative History, Regulations, HIPAA, FOIA Reading Room, and Other Documents. The FOIA Reading Room contains FOIA Reports for Fiscal Year 2002 to 2015, Chief FOIA Officer Reports for 2010 to 2015 (including machine-readable formats), a FOIA Reference Guide and a FOIA Improvement Plan from 2005. One click of the mouse gets the user access to the document.

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

- If your agency is already posting material in its most useful format, please describe these efforts.

N/A

### ***Use of Technology to Facilitate Processing of Requests:***

***Not required***, but agencies may answer the questions for this section from the [high-volume guidelines](#) if they have information they would like to include.

### ***Other Initiatives:***

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2015?



No

- Please see OIP's [guidance](#) for posting of quarterly reports to ensure that your agency is following all required steps (including using the correct file type and URL structure) so that your quarterly reports are properly appearing on FOIA.gov. (If your reports are posted to your website, but not appearing on FOIA.gov, please contact OIP in order to resolve the issue.)

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 2016.

Reduced staff numbers and uncertain resources caused a lag in quarterly reporting. The agency is planning to acquire additional resources for FOIA processing, and will resume quarterly reporting for the remainder of FY 2016.

5. Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? See OIP Guidance, "[The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications](#)." (Nov. 22, 2013) If yes, what are the different types of electronic means that are utilized by your agency to communicate with requesters?

Yes, we use email, and we also send large productions to requesters via FTP sites.

6. If your agency does not communicate electronically with requests as a default, are there any limitations or restrictions for the use of such means? If yes, does your agency inform requesters about such limitations? See [id.](#)

N/A

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

The President's [FOIA Memorandum](#) and the Attorney General's [2009 FOIA Guidelines](#) have 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 2015 Annual FOIA Report and, when applicable, your agency's 2014 Annual FOIA Report.*

**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?

Yes

2. If so, for your agency overall in Fiscal Year 2015, was the average number of days to process simple requests twenty working days or fewer?

No

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2015 that were placed in your simple track.

63%

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

**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 2014 and Fiscal Year 2015 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 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

No

6. If not, 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.

Backlog caused by: only one FOIA officer dedicated to processing FOIA requests and increased complexity of requests. To elaborate on the complexity of the requests: requesters asked for Board Member e-mails, text messages, and electronic schedules, all of which required careful review by multiple staff and significant numbers of redactions. Some requesters asked for entire investigation case files, and even when requesters narrowed the scope of their requests, the responsive documents were highly technical and voluminous. Reviewing those documents for exempted material, and redacting them, is a time-consuming exercise.

7. 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 2015.

- To calculate your agency's percentage, you must divide the number of backlogged requests reported in Section XII.A. of your Fiscal Year 2015 Annual FOIA Report by the number of requests received in Fiscal Year 2015, which can be found in Section V.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.

53%

## **BACKLOGGED APPEALS**

8. If your agency had a backlog of appeals at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

N/A

9. If not, explain why and describe the causes that contributed to your agency not being able to reduce 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

10. 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 2015. If your agency did not receive any appeals in Fiscal Year 2015 and/or has no appeal backlog, please answer with "N/A."

- To calculate your agency's percentage, you must divide the number of backlogged appeals reported in Section XII.A. of your Fiscal Year 2015 Annual FOIA Report by the number of appeals received in Fiscal Year 2015, which can be found in Section V.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.

N/A

### ***Backlog Reduction Plans:***

***Not required***, but agencies may answer the questions for this section from the [high-volume guidelines](#) if they have information they would like to include.

***Status of Ten 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 2014 and Fiscal Year 2015 when completing this section of your Chief FOIA Officer Report.

### **TEN OLDEST REQUESTS**

11. In Fiscal Year 2015, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

No

12. 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 2014 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

8

- For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed six of them, you should note that you closed six out of seven "oldest" requests.

13. 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

## TEN OLDEST APPEALS

14. In Fiscal Year 2015, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

No appeals were reported pending in CSB's FY 2014 Annual FOIA report.

15. 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 2014 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

- For example, if you only had seven appeals listed as part of your "ten oldest" in Section VII.C.(5) and you closed six of them, you should note that you closed six out of seven "oldest" appeals.

N/A

## TEN OLDEST CONSULTATIONS

16. In Fiscal Year 2015, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

N/A

17. 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 2014 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

- For example, if you only had seven consultations listed as part of your "ten oldest" in Section XII.C. and you closed six of them, you should note that you closed six out of seven "oldest" consultations.

N/A

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

18. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2014.

The obstacles include: only one FOIA officer dedicated to processing FOIA requests and increased complexity of requests. To elaborate on the complexity of the requests: requesters asked for Board Member e-mails, text messages, and electronic schedules, all of which required careful review by multiple staff and significant numbers of redactions. Some requesters asked for entire investigation case files, and even when requesters narrowed the scope of their requests, the responsive documents were highly technical and voluminous. Reviewing those documents for exempted material, and redacting them, is a time-consuming exercise.

19. 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

20. 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 2016.

The agency is planning to acquire additional resources to reduce the backlog and streamline FOIA processing and review.

***Interim Responses:***

***Not required***, but agencies may answer the questions for this section from the [high-volume guidelines](#) if they have information they would like to include.

**Use of the FOIA's Law Enforcement Exclusions**

1. Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2015?

No.

2. If so, please provide the total number of times exclusions were invoked.

N/A.