

# 2015 Chief FOIA Officer Report

## Time Frame for Report

Unless otherwise noted, agency 2015 Chief FOIA Officer Report should address agency activities that have occurred since the filing of last year's Report, which was March 17, 2014, up until the filing of the 2015 Report (March 15, 2015). Thus, the general reporting period for the Chief FOIA Officer Reports is March 2014 to March 2015.

## Content of 2015 Chief FOIA Officer Reports

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

**Richard C. Loeb, CSB General Counsel**

### Section 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.

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.

<b>Agencies Receiving More Than 1,000 Requests</b>	<input checked="" type="checkbox"/> <b>All Other Agencies</b>
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#### **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?**

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

**Answer:** Yes, the FOIA Officer attended DOJ OIP's course entitled "FOIA for Attorneys and Access Professionals" in Washington, DC, on December 2-3, 2014.

**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.**

**Answer:** 100%

**3. In the 2014 Chief FOIA Officer Report Guidelines, OIP asked agencies to provide a plan for ensuring that core, substantive FOIA training is offered to all agency FOIA professionals at least once each year. Please provide the status of your agency's implementation of this plan.**

**Answer:** The status of CSB's FOIA training plan is: minimal. CSB faces the following two challenges: 1) CSB is a "micro-agency" (42 full-time employees) with limited resources; and 2) the agency has experienced significant personnel turnover within the last year. CSB's FOIA Training Plan is, therefore, to rely primarily on the training provided by DOJ OIP. CSB's one FOIA officer (other than the Chief FOIA Officer) is scheduled to attend the April 15, 2015, DOJ OIP Advanced Freedom of Information Act Seminar.

**Discretionary Releases:**

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

**Answer:** 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.

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

**Answer:** The CSB made no discretionary releases of information during the reporting period.

*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 FOIA Memoranda.*

**Answer:** N/A

*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.*

**Answer:** N/A

*8. If your agency was not able to make any discretionary releases of information, please explain why.*

**Answer:** CSB did make "proactive" releases of information on the CSB website, as distinguished from "discretionary" releases of information. The opportunity for making discretionary releases of information did not arise during the reporting year. The Chief FOIA Officer continues to look for opportunities where discretionary releases would be appropriate.

**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.*

**Answer:** N/A

**Processing Procedures:**

1. *For Fiscal Year 2014, 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 2014 Annual FOIA Report.*

**Answer:** The average number of days CSB reported for adjudicating requests for expedited processing was one day.

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.*

**Answer:** N/A

**Requester Services:**

3. *Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at the National Archives and Records Administration? See OIP Guidance, "[Notifying Requesters of the Mediation Services Offered by OGIS](#)." (July 9, 2010)*

**Answer:** CSB does not notify requesters of NARA OGIS mediation services.

4. *When assessing fees, does your agency provide a breakdown of how FOIA fees were calculated and assessed to the FOIA requester? For example, does your agency explain the amount of fees attributable to search, review, and duplication? 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)*

**Answer:** In assessing fees, CSB provides FOIA requestors a breakdown of how FOIA fees were calculated and assessed. CSB explains the amount of fees attributable to search, review, and duplication.

5. *If estimated fees estimates are particularly high, does your agency provide an explanation for the estimate to the requester? See [id.](#)*

**Answer:** In cases where estimated fees estimates are particularly high, CSB provides an explanation of the estimate to the requester.

**Other Initiatives:**

6. *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.*

**Answer:** N/A

**Section 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.

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

**Answer:** 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 critical information is received by the public during the Board's formal review period.

2. *Does your process or system involve any collaboration with agency staff outside the FOIA office? If so, describe this interaction.*

**Answer:** 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.

3. *Describe your agency's process or system for identifying "frequently requested" records that should be posted online.*

**Answer:** No such process currently exists.

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

**Answer:** During the reporting period, the CSB posted documents on the agency's website upon the conclusion of the investigations into the Tesoro refinery fire in Anacortes, WA, on April 2,

2010; the release of anhydrous ammonia from the Millard Refrigerated Services warehouse in Theodore, AL, on August 23, 2010; the explosion and flash fires at the U.S. Ink manufacturing facility in East Rutherford, NJ, on October 9, 2012; and the accident at the Chevron refinery in Richmond, CA, on August 6, 2012. The following are examples of posted documents: investigation reports, one case study, one safety bulletin, transcripts of public meetings of the Board, a PowerPoint presentation, lab reports, etc. Additionally, Board votes and other documents were placed on the website.

**Links to documents pertaining to above named investigations:**

<http://www.csb.gov/tesoro-refinery-fatal-explosion-and-fire/>

<http://www.csb.gov/millard-refrigerated-services-ammonia-release/>

<http://www.csb.gov/us-ink-fire/>

<http://www.csb.gov/chevron-refinery-fire/>

**Links to other documents:**

<http://www.csb.gov/about-the-csb/open-government/>

<http://www.csb.gov/key-lessons-for-preventing-incidents-from-flammable-chemicals-in-educational-demonstrations/>

<http://www.csb.gov/horsehead-holding-company-fatal-explosion-and-fire/>

<http://www.csb.gov/silver-eagle-refinery-flash-fire-and-explosion-and-catastrophic-pipe-explosion/>

<http://www.csb.gov/citgo-refinery-hydrofluoric-acid-release-and-fire/>

***Other Initiatives:***

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

**Answer:** N/A

**Section IV: Steps Taken to Greater Utilize Technology: *Online Tracking of FOIA Requests and Appeals***

**[For agencies receiving less than 1,000 requests]** *Not required, but agencies may answer the questions for this section if they have information they would like to include*

**Making Material Posted Online More Useful:**

1. *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?*

- *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.*

**Answer:** No, the posted information is already in a highly usable format.

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

**Answer:** N/A

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

**Answer:** The work of the CSB is straightforward, *i.e.*, to investigate, determine the root cause of, and report to the public on, chemical accidents resulting in a fatality, serious injury or substantial property damages. The documents posted on the website, therefore, are intended to assist the public's understanding of the manner in which particular accidents occurred, and, as such, are fairly self-explanatory. Additionally, the CSB posts some video re-creations of accidents to further assist the public's understanding.

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

**Answer:** The CSB did not encounter challenges that made it difficult to post records the CSB would otherwise have liked to post.

4. *If so, please briefly explain what those challenges are.*

**Answer:** N/A

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

**Other Initiatives:**

5. *Did your agency successfully post all four quarterly reports for Fiscal Year 2014?*

- *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 of FOIA.gov, please contact OIP in order to resolve the issue.)*

**Answer:** The quarterly reports for Fiscal Year 2014 were not posted successfully.

*6. 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 2015.*

**Answer:** Activities associated with personnel changes disrupted FOIA reporting. The CSB plan includes the continued acclimation, and FOIA training, of the current FOIA Officer. This plan should result in successful quarterly reporting in FY 2015.

*7. 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 utilized by your agency to communicate with requesters?*

**Answer:** The CSB FOIA staff uses Microsoft Outlook/e-mail to respond to FOIA requestors and also to answer their questions about the FOIA process.

*8. If your agency does not communicate electronically with requesters 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.*

**Answer:** N/A

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

The **President** and the **Attorney General** have emphasized the importance of improving timeliness in responding to requests. This section 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 2014 Annual FOIA Report and, when applicable, your agency's 2013 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?*



**Answer:** The CSB uses a separate track for the processing of simple requests.

*2. If so, for your agency overall in Fiscal Year 2014, was the average number of days to process simple requests twenty working days or fewer?*

**Answer:** For FY 2014, the average number of days to process simple requests was 2 days.

*3. Please provide the percentage of requests processed by your agency in Fiscal Year 2014 that were placed in your simple track.*

**Answer:** Processed simple requests represented fifty-three decimal seven percent (53.7%) of all processed requests for Fiscal Year 2014.

*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?*

**Answer:** 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 2013 and Fiscal Year 2014 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 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013?*

**Answer:** Between the close of FY 2013 and the close of FY 2014, the backlog of FOIA requests increased.

- *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*

**Answer:** The increase in backlogged FOIA requests was due primarily to a loss of staff. Additionally, many of these requests are for a large number of documents, each of which will have to be reviewed and sifted for exemptions. The CSB investigations that are the subject of the FOIA requests contain thousands of responsive documents.

*6. 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 2014. If your agency did not receive any requests in Fiscal Year 2014 and/or has no request backlog, please*



answer with "N/A."

- *To calculate your agency's percentage, you must divide the number of backlogged requests reported in Section XII.A. of your Fiscal Year 2014 Annual FOIA Report by the number of requests received in Fiscal Year 2014, 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.*

**Answer:** The backlogged requests represent seventeen decimal two percent (17.2%) of the total number of requests received by the CSB in Fiscal Year 2014.

### **BACKLOGGED APPEALS**

7. *If your agency had a backlog of appeals at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013?*

- *If not, explain why and describe the causes that contributed to your agency not being able reduce backlog. When doing so, please also indicate if any of the following were contributing factors:*
  - *An increase in the number of incoming appeal*
  - *A loss of staff*
  - *An increase in the complexity of the appeals received*

**Answer:** N/A

8. *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 2014. If your agency did not receive any appeals in Fiscal Year 2014 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 2014 Annual FOIA Report by the number of appeals received in Fiscal Year 2014, which can be found in Section VI.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.*

**Answer:** N/A

**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 2013 and Fiscal Year 2014 when completing this section of your Chief FOIA Officer Report.

### **TEN OLDEST REQUESTS**

9. In Fiscal Year 2014, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

**Answer:** No backlogged requests were reported pending in CSB's FY 2013 Annual FOIA Report.

10. 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 2013 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

- 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.

**Answer:** N/A

11. 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?

**Answer:** N/A

### **TEN OLDEST APPEALS**

12. In Fiscal Year 2014, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

**Answer:** No appeals were reported pending in CSB's FY 2013 Annual FOIA Report.

13. 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 2013 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.

**Answer:** N/A

### **TEN OLDEST CONSULTATIONS**

14. In Fiscal Year 2014, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

**Answer:** No consultations were reported pending in CSB's FY 2013 Annual FOIA Report.

15. 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 2013 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.

**Answer:** N/A

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

16. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2013.

**Answer:** N/A

17. 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.

**Answer:** N/A

18. 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 2015.

**Answer:** N/A

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

Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2014?

**Answer:** The CSB did not invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2014.

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

**Answer:** N/A