

## 2023 CHIEF FOIA OFFICER REPORT

### U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

#### Section I: FOIA Leadership and Applying the Presumption of Openness

The guiding principle underlying the Attorney General's 2022 [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?

No. The CSB traditionally designates its Chief FOIA Officer role to the CSB's General Counsel, a Senior Executive Service (SES) position. The CSB General Counsel position is currently vacant, but the CSB has requested funding to fill this position in FY2025. The CSB's Acting General Counsel, who is not an SES, is temporarily filling the Chief FOIA Officer position.

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

Christopher M. Lyon, 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?

This year the CSB has focused on establishing its records management program. Records management is key to having a functional FOIA program. The CSB has conducted internal Records Management training to increase awareness among agency personnel about the importance of records and how records management connects to each employee's position. Additionally, the CSB has been digitizing all of its records to make it more searchable for FOIA purposes and has been interviewing for a manager to lead its records management function. The CSB has also been transitioning to a new FOIA platform. The CSB has secured funding and made plans to build out its FOIA program during FY 2024 through increased, targeted hiring. Finally, the CSB has been proactively releasing limited data for public consumption on its Accidental Release Reporting Program. The CSB anticipates onboarding an additional attorney in the agency's Office of General Counsel who specializes in FOIA matters.

## **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?

In general, the CSB’s response letters explain when applying exemptions the potential harm if the information is released. The CSB has templates for responses that will include a prompt for explaining foreseeable harm.

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. If your agency tracks *Glomar* responses, please provide:

- the number of times your agency issued a full or partial *Glomar* response (separate full and partial if possible);
- the number of times a *Glomar* response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).

N/A. The CSB has not issued a *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. If your agency does not track the use of *Glomar* responses, are you planning to track this information in the future?

N/A. The CSB will track *Glomar* responses if needed in the future. Currently, there is no need for FOIA officers to send *Glomar* responses.

7. 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 2022 [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.

The CSB over the last several years has conducted an annual agency FOIA training. The CSB did not have internal training in FY2023. The CSB is planning on resuming training in FY2024.

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.

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

One of the FOIA Officers attended the DOJ's Advanced FOIA training. This training covered Proactive Disclosures, Procedural Requirements, and Exemptions 6 and 7(c).

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.

66%

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.

The CSB plans to send the two FOIA officers to the American Society of Access Professionals (ASAP) to its National Training Conference. The Chief FOIA Officer is planning to attend the internal FOIA training. Another new attorney hired by the agency in FY2024 will attend the internal FOIA training. These training opportunities ensure that 100% of the CSB's FOIA professionals will attend substantive training.

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?

The CSB generally has an annual in-person training on FOIA. The CSB did not conduct FOIA training in 2023. Senior leaders have been briefed on the agency's FOIA program

and committed resources to hiring an additional attorney in the Office of General Counsel who specializes in FOIA matters. Between FY2023 and FY2024, the CSB will have transitioned to a new FOIA platform, received contract help, and, as noted, hired an additional FOIA attorney. Another attorney in the Office of General will assist with FOIA on an as-needed basis.

## **B. Outreach**

7. 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. The CSB's FOIA officers communicate with requesters and relevant parties when FOIA requests for voluminous or complex investigations are received.

8. Outside of the standard request process or routine FOIA Liaison or FOIA Requester Service Center interactions, did your FOIA professionals engage in any outreach or dialogue, with the requester community or open government groups regarding your administration of the FOIA? For example, did you proactively contact frequent requesters, host FOIA-related conference calls with open government groups, or provide FOIA training to members of the public? 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, the CSB does not engage in this kind of outreach.

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 2023 (please provide a total number or an estimate of the number for the agency overall).

One.

## **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.

During FY2023, the CSB had two attorneys that worked on FOIA matters in addition to other duties. One of those attorneys retired. The Board in FY2024 has committed resources to hire two full-time attorneys, one of whom will be devoted to FOIA full-time for the foreseeable future, while the second attorney will provide additional assistance as needed. Additionally, the CSB has been contracting additional FOIA personnel.

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.

As mentioned, the agency is transitioning to FOIAXpress. This platform provides insightful graphics as to the outstanding FOIA requests, the date each request was received, and the status of each request. With this tool, the agency can strategically triage requests based on priority and complexity.

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 2022 [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.

The CSB evaluates in making proactive disclosures whether information will aid in the public's understanding of its investigations and whether it is a matter of public interest. For example, the CSB, when it publishes its investigation reports, determines whether to proactively disclose expert reports to aid in the public's understanding of the investigation. Additionally, the CSB regularly publicly posts (and updates) summary information about chemical incidents reports the agency has received pursuant to its Accidental Release Reporting Rule (40 CFR Part 1604).

2. How long after identifying a record for proactive disclosure does it take your agency to post it?

These types of records are posted as soon as practicable. Due to the nature of information that the CSB collects, records can go through multiple reviews before it can be released.

3. Does your agency post logs of its FOIA requests?

No.

- If so, what information is contained in the logs? N/A
- Are they posted in CSV format? If not, what format are they posted in? N/A

4. 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.

Expert reports –

- a. Intercontinental Terminal Company (ITC) Tank Fire:  
<https://www.csb.gov/intercontinental-terminals-company-itc-tank-fire/> (Appendices D and E)
- b. Husky Energy Superior Refinery Explosion and Fire –  
<https://www.csb.gov/husky-energy-superior-refinery-explosion-and-fire/> (Appendix D)

Accidental Release Data –

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

Board Orders –

<https://www.csb.gov/records-details/?Type=0>

5. 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?

Yes.

6. 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.

The Accidental Release Data is in Excel format so that individuals may be able to sort data.

7. 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.

Yes. The FOIA Office regularly interacts with the CSB's Office of Investigations on FOIA requests.

8. 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 2022 [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 uses to support your FOIA program.

The agency is implementing a platform called FOIAXpress to review and respond to FOIA requests. With this program, FOIA officers will be able to view and respond to FOIA requests; assign priority levels to requests, and track progress on requests (e.g., incomplete, in progress, complete). Additionally, the CSB is in the process of digitizing its paper records and making them searchable. Furthermore, as noted above, the agency has hired additional full-time and contract attorneys who will address FOIA matters.

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.

The CSB uses Adobe to redact records. The CSB also uses SharePoint and Content Manager to search for records. The CSB made steady progress in FY 2023 to transition to FOIAXpress and Microsoft Purview in FY2024. FOIA officers will be able to redact records in FOIAXpress. Additionally, the CSB is using Microsoft Purview, an eDiscovery tool, for searches. At this time, it is not clear how much time and financial resources will be saved with the implementation of FOIAXpress or Microsoft Purview.

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 CSB's FOIA website addresses the essential resources noted in the guidance. For example, the CSB's FOIA website explains how and where requestors can send their FOIA requests, provides links to quarterly and annual FOIA reports in machine-readable formats, and includes links to performance and accountability reports. Moreover, when the CSB transitions fully to FOIAXpress, the CSB intends to make further improvements to the website.

5. Did all four of your agency's [quarterly reports](#) for Fiscal Year 2023 appear on FOIA.gov?

Yes.

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 2024.

N/A

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 2022 Annual FOIA Report and, if available, for your agency's Fiscal Year 2023 Annual FOIA Report.

[Fiscal Year 2022: csb\\_rawdataexport\\_fy22 - copy\\_for\\_csb\\_website.xlsx \(live.com\)](#)

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 was in full compliance with the guidance until October 1, 2023. However, after the official sunset of FOIAOnline, the CSB's new FOIA processing software system was not implemented in time to prevent a gap in coverage, to ensure continued compliance. The reason for this is because the contractor hired by the CSB did not meet the project timeline in terms of required milestones. Specifically, the contractor was supposed to deliver a fully functional replacement system, in accordance with the terms of its Technical Proposal, by August 15, 2023. The new system is still not functional. The CSB is informed that it will be able to roll out its new online FOIA system by April 30, 2024. The CSB remains out of compliance until the new system is operational.

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 2022 [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 typical FOIA or Privacy Act 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>

3. Please describe any other steps your agency has taken to remove barriers to accessing government information.

N/A

## **B. Timeliness**

4. For Fiscal Year 2023, 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 2023 Annual FOIA Report.

128.43

5. 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 2023 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.

The CSB is devoting more resources towards hiring and technology to improve the agency's FOIA program, including requests for expedited processing.

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

Yes.

7. 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 2023?

No.

8. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?

No.

9. Please provide the percentage of requests processed by your agency in Fiscal Year 2023 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.

21.3%

10. 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

11. If your agency had a backlog of requests at the close of Fiscal Year 2023, 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 2022?

No.

12. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2023 than it did during Fiscal Year 2022?

No.

13. If your agency's request backlog increased during Fiscal Year 2023, 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:

- 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)
- Litigation
- Any other reasons – please briefly describe or provide examples when possible

The CSB has had several projects and litigation that consumed the Office of General Counsel's resources, including supporting the agency's core mission work related to completing numerous investigations. Additionally, the FOIA program over the last few years has seen a dramatic increase of requests. The CSB Office of General Counsel, which handles all FOIA work, had been understaffed for a period of years under prior agency leadership, and one of the two main FOIA officers for the majority of FY2023 served as the agency's Acting General Counsel. As explained above, the new agency leadership secured funding and has hired additional personnel to address this situation. Additionally, the agency recently eliminated its long-standing investigation backlog, which was largely responsible for the significant increase in FOIA requests and also increased the complexity of some of the FOIA requests which are seeking entire investigation files. Finally, the agency has been involved in FOIA litigation involving a complex, voluminous FOIA request.

14. 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 2023. 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."

35%

## **Backlogged Appeals**

15. If your agency had a backlog of appeals at the close of Fiscal Year 2023, 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 2022?

N/A

16. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2023 than it did during Fiscal Year 2022?

Yes, the CSB processed one more in appeal in FY 2023 than in FY 2022.

17. If your agency's appeal backlog increased during Fiscal Year 2023, 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)
- Litigation
- Any other reasons – please briefly describe or provide examples when possible

N/A

18. 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 2023. 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 2023 and/or has no appeal backlog, please answer with "N/A."

N/A

## **D. Backlog Reduction Plans**

19. In the 2023 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2022 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 2023?

N/A

20. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2023, please explain your agency's plan to reduce this backlog during Fiscal Year 2024.

N/A

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

### **Ten Oldest Requests**

21. In Fiscal Year 2023, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2022 Annual FOIA Report?

No.

22. 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 2022 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

None.

23. 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 evaluated FOIA resources and contracted for FOIA assistance. The CSB recently has hired a full-time FOIA attorney, plus an additional attorney who will provide FOIA support as needed. The additional human resources, combined with the implementation of FOIAXpress, will provide an opportunity to close out the ten oldest requests.

### **Ten Oldest Appeals**

24. In Fiscal Year 2023, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2022 Annual FOIA Report?

N/A

25. 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 2022 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A

26. 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**

27. In Fiscal Year 2023, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2022 Annual FOIA Report?

N/A

28. 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 2022 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

N/A

### **Additional Information Regarding Ten Oldest**

29. 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 2024.

Although the CSB did not close its ten oldest requests, it has attempted to narrow and provide materials to some of the requesters. Two of the requests were subject to the current FOIA litigation (though one of the two has been dismissed) and the agency is continuing to produce responsive records on a rolling basis. As previously stated, the agency is devoting more resources to its FOIA program in FY2024.

### **F. Additional Information about FOIA Processing**

30. 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
- Any other information to illustrate the impact of litigation on your overall FOIA administration

There is one remaining FOIA request that is the subject of ongoing litigation. The agency is taking all reasonable steps and committing appropriate resources to resolving the matter as quickly as possible. The litigation diverts limited resources that otherwise could go toward completion of other requests.