Chief FOIA Officer Report





he Commerce Department's mission is to help make American businesses more innovative at home and more competitive abroad.







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Section I: Steps Taken to Applying the Presumption of Openness

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

Yes. The Department of Commerce co-sponsored a multi-agency FOIA Training Conference in the Department of Commerce auditorium, with the Environmental Protection Agency, and the Departments of Interior, Homeland Security and Health and Human Services on September 15, 2011. Topics included: Recent Court Decisions, presented by the Department of Justice; Panel Discussion Exemption 2- Post Milner; Recent Developments: FOIA Module Creation, presented by the Environmental Protection Agency; Resolving Federal FOIA Disputes, presented by the National Archives and Records Administration; Controlled Unclassified Information, presented by the National Archives and Records Administration; FOIA Requester Forum, guest speakers from Citizens for Responsibility and Ethics in Washington and OMB Watch; e-Discovery Tools and FOIA Processing, presented by the Environmental Protection Agency and the National Oceanic and Atmospheric Administration.

The Department wide event drew attendees from every bureau of the Department. In addition the Census Bureau trains program areas on an ongoing basis as they are working with them on FOIA requests and FOIA appeals. In addition, the Census FOIA Officer created a new FOIA employee presentation and conducted FOIA training for 3 new staff members. The Economic and Statistics Administration held FOIA and Record Retention training and attended FOIA training conducted by the Office of General Counsel, General Law Division.

The National Institute of Standards and Technology provided training on FOIA practices for new NIST management staff. The National Oceanic and Atmospheric Administration began monthly meetings in June for FOIA professionals which includes a training component. The National Telecommunications and Information Administration attended an updating and training session of FOIA law held by the Office of General Counsel, General Law Division. The Office of General Counsel, General Law Division, provided over 20 trainings during fiscal year 2011 to multiple bureaus agency-wide. The Office of Inspector General conducted training for new hires to the Office of Counsel (the OIG's FOIA processing office), which included a basic overview of FOIA and issues commonly encountered by OIG in processing FOIAs. After initial training, the new-hire attorneys worked closely with their peers and with the OC paralegal while processing actual FOIA requests.





2. Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?

Yes. A broad representation of FOIA professionals from across the Department attended the following training:

DOJ FOIA Fee Summit Training

DOJ Exemption 2 after Milner

DOJ FOIA for Attorneys and Access Professionals Training

DOJ/OGIS Dispute Resolution Skills for FOIA Public Liaisons

DOJ FOIA Requester Roundtable – Document Referrals and Consultations

DOJ FOIA Requester Roundtable – Contractors and Other Business Records

DOJ FOIA Litigation Seminar

DOJ Annual FOIA Report Refresher Training

Chief FOIA Officer Report Refresher Training

American Society for Access Professionals FOIA Training

3. Did your agency make any discretionary releases of otherwise exempt information?

Yes. The following bureaus of the Department reported making discretionary releases:

Office of the Secretary

Census Bureau

International Trade Administration

National Institute of Standards and Technology

National Telecommunications Administration

Office of Inspector General

During fiscal year 2011, the General Law Division reviewed every appeal to determine whether discretionary releases could be made. Over the course of the past year the General Law Division continued to make discretionary releases on the majority of the exemption (b)(5) information.

4. What exemptions would have covered the information that was released as a matter of discretion?

FOIA exemption (b)(5) was released as a matter of discretion.

5. Describe your agency's process to review records to determine whether discretionary releases are possible.





All FOIA professionals actively engage their operating unit from the outset of the request to help determine whether or not discretionary releases may be made. All FOIA Officers conduct document reviews to ensure that the exemption is appropriately applied and with an eye toward presumption of openness. All FOIA search certification memoranda include a foreseeable harm statement, which must be signed by the senior official in the responsible office.

If a record or portion of it meets the criteria for exemptions (b)(2), (b)(5), (b)(7), the Census Bureau requires the program office to provide a statement of harm, and the FOIA professionals perform their own analysis of potential harm. If the harm threshold is not met, the information is released.

All FOIA requests assigned to the Economic Development Administration, National Telecommunications and Information Administration, U.S. Patent and Trademark Office, and Office of Inspector General are processed by their respective Chief Counsel Office. FOIA requests assigned to the National Institute of Standards and Technology are first reviewed by FOIA professionals and then a NIST FOIA attorney.

National Oceanic and Atmospheric Administration attorneys review responsive records for high profile and large volume cases earlier in the process to assist with identifying records that may be released under the presumption of openness.

In the cases where the deliberative process privilege of exemption 5 is initially invoked, the International Trade Administration has asked that a second review of the record be conducted. The subject matter specialists are asked to weigh the harm.

The Office of General Counsel, General Law Division follows the 2009 FOIA Guidelines and strongly encourages agencies to make discretionary releases of information whenever there is no foreseeable harm. If any information is initially being withheld under exemption (b)(5), they require a Foreseeable Harm Statement from each bureau to outline in detail why the withheld information represents foreseeable harm. This new requirement has encouraged bureaus to consider making discretionary releases of otherwise exempt information.

6. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

All FOIA Officers post any information that has been requested more than once via a FOIA request in the FOIA Library. Additionally, we routinely look at all outgoing requests to see if they may be of wider public interest. If they are, we post them to our FOIA Library for wider access. Several bureaus of the





Department are currently working on redesigning their FOIA Libraries to allow for easier access. The Economic and Statistics Administration's Chief Economist has a Twitter account. The Office of General Counsel, General Law Division, provides general advice on the FOIA and training in which open government is emphasized.

As part of its responsibilities as an oversight agency, the Office of Inspector General makes proactive releases of its reports and information on its activities to the public through regular postings on the OIG website. The IG Reform Act of 2008 requires the agency to post any report or audit that is subject to public release on its website within three working days of a public release determination. The OIG engages in an ongoing review of information related to investigations to determine the extent to which this information can be proactively released without jeopardizing law enforcement proceedings, consistent with the Privacy Act of 1974, as amended, and the requirement to protect confidential sources. To ensure that the presumption of openness is appropriately applied in processing FOIA requests, the OIG approaches each FOIA request with a view toward discretionary disclosure when appropriate. The OIG also makes it a practice to make partial disclosures of documents when full disclosure is not possible under the terms of FOIA.

7. Did your agency have an increase in the number of responses where records were released in full?

No. From FY 2010 to FY 2011 the Department overall had a decrease in the number of responses where records were released in full from 763 in FY 2010 to 732 in FY 2011. Individually, four bureaus of the Department had an increase in the number of responses where records were released in full from FY 2010 to FY 2011.

Economic Development Administration: 28 in FY 2010 to 38 in FY 2011

National Institute of Standards and Technology: 49 in FY 2010 to 64 in FY 2011

National Technical Information Service: 1 in FY 2010 to 5 in FY 2011

U.S. Patent and Trademark Office: 43 in FY 2010 to 64 in FY 2011





8. Did your agency have an increase in the number of responses where records were released in part?

From FY 2010 to FY 2011 the Department overall had an increase in the number of responses where records were released in part from 308 in FY 2010 to 415 in FY 2011. Individually, six bureaus of the Department had an increase in the number of responses where records were released in part from FY 2010 to FY 2011.

Economic Development Administration: 12 in FY 2010 to 15 in FY 2011

Minority Business Development Agency: 0 in FY 2010 to 1 in FY 2011

National Institute of Standards and Technology: 21 in FY 2010 to 66 in FY 2011

National Oceanic and Atmospheric Administration: 75 in FY 2010 to 99 in FY 2011

National Telecommunications and Information Administration: 8 in FY 2010 to 24 in FY 2011

U.S. Patent and Trademark Office: 51 in FY 2010 to 55 in FY 2011

Section II: Steps Taken to Ensure that Your Agency has an Effective System In Place for Responding to Requests

1. Do FOIA professionals in your agency have sufficient IT support?

Yes. FOIA professionals within the Department have access to IT staff by phone and e-mail and after-hours in the form of on-call support.

2. Is there regular interaction between agency FOIA professionals and the Chief FOIA Officer?

Yes. The Chief FOIA Officer for the Department is in the process of designating a Deputy Chief FOIA Officer to serve as the principal executive contact at the Department level for managing the FOIA program. The Deputy





Chief FOIA Officer will be the Chief Privacy Officer and Director of Open Government. The FOIA, Privacy, and Open Government programs are under the purview of the Chief Privacy Officer and Director of Open Government. Both the Departmental FOIA Officer and Office of the Secretary's FOIA Officer reside in the Office of Privacy and Open Government and report directly to the Deputy Chief FOIA Officer.

The Deputy Chief FOIA Officer regularly interacts with agency FOIA Officers and FOIA professionals, attends FOIA Officer Roundtable Meetings and FOIA training. He in turn reports to the Chief FOIA Officer on the program, including on issues that require additional resources and management support.

The Secretary is establishing a FOIA Council, chaired by the Chief FOIA Officer, with the General Counsel serving as the vice chair, and the Deputy Chief FOIA Officer serving as Executive Director. The FOIA Council will work to strengthen Department FOIA policies and procedures to ensure that they reflect the goals, values, and policies that the Department advocates. Toward that end, the FOIA Council will routinely review Department FOIA policies and procedures and identify opportunities for strengthening, clarifying, and otherwise improving them. The Council will assist operating units by providing advice on addressing staffing needs, responding appropriately to FOIA requests, improving processing times, and reducing the backlog. The FOIA Council will identify and recommend FOIA and other relevant training opportunities for Department employees, as appropriate.

3. Do your FOIA professionals work with your agency's Open Government Team?

Yes. At the Departmental level, both the FOIA staff and Open Government staff reside within the Office of Privacy and Open Government. Both programs provide access to Federal records and staff from these programs regularly collaborates to streamline processes and increase transparency.

Recent collaborative initiatives include providing the FOIA case management database developed from a collaborative effort by combining the best portions of existing government developed databases within the Department to all DOC bureaus as well as offering it to other Federal agencies currently without an electronic FOIA database/tracking system. This was part of an internal Departmental initiative to evaluate the existing Departmental FOIA environment and determine the approach that would allow an end-state solution to improve FOIA while creating a more transparent, participative and collaborative environment. In order to achieve the end-state the Department is partnering with the Environmental





Protection Agency and the National Archives and Records Administration on the FOIA Module, a multi-agency FOIA portal that automates FOIA processing and reporting, stores FOIA requests and responses in a repository, keeps records electronically, and allows requesters to submit requests to fewer government websites, track the status of requests and find, view, and download FOIA requests and agency responses, all in a secure online environment.

4. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to FOIA administration.

FOIA workload and staffing are continuously monitored and reviewed by all offices of the Department to ensure adequate staffing. The formation of the FOIA Council, as previously discussed, will provide upper management awareness and involvement in FOIA staffing needs.

The Chief FOIA Officer has added Department-wide FOIA backlog reporting to the Balanced Scorecard Quarterly Reporting. The Balanced Scorecard is a reporting metric that is a performance management tool that measures specific metrics against pre-established performance goals that is presented to the Deputy Secretary.

5. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.

The addition of the Balanced Scorecard Quarterly Reporting, noted above in number 4, is a new tool being used to measure progress in reducing the backlog.

Bureaus of the Department that either did not have a database/tracking system or wanted to upgrade their current database/tracking system have migrated to the FOIA case management database, noted above in number 3, which allows bureaus to have electronic reporting capabilities, including generating the annual FOIA report statistics.

The Bureau of Industry and Security has implemented a fully electronic program where all requests are answered electronically if possible. This new program has decreased response time significantly and completely reduced paper products. The new electronic process has also saved work-hours by eliminating the end of year shredding/destruction of files when the retention period has been reached and saved space by eliminating paper filing cabinets. All fiscal year files are now saved on a CD.

Multiple bureaus use either FOIA flow charts or FOIA processing books to ensure





efficiency, as well as template letters for frequent requests, and redaction software.

Regular status checks of on-going FOIA requests are conducted to ensure prompt and consistent processing. Most bureaus now process more requests electronically to speed processing and to trim costs. All bureaus accept requests through various means, including electronic mail, and communicate with requesters via e-mail.

In addition to staffing increases of the past year, the Office of Inspector General is currently working to improve their current electronic database by migrating functionality to a FOIA case management tracking system. The system allows for greater reporting capability and increased OIG control of it functionality thus allowing the OIG to track and manage FOIA requests with increased efficiency.

Section III: Steps Take to Increase Proactive Disclosures

1. Has your agency added new material to your website since last year?

Yes. Ten of the Department's twelve bureaus reported having added new material to their websites since last year.

2. Provide examples of the records, datasets, videos, etc., that have been posted this past year.

Emergency information/data related to Hurricane Irene NY State Native American boundary documentation Field Operations Selection Guidelines

ESA Reports -

- o The Competitiveness and Innovative Capacity of the United States
- o Exploring the Digital Nation Computer and Internet Use at Home
- Education Supports Racial and Ethnic Equality in STEM

ESA and NTIA Blogs -

- Economic Indicator 2011 Employment Review: Which Jobs Grew in 2011; Next Steps for 2012
- o A Timeline of Out Competing
- Economic Indicator: Holiday Retail Jobs Return to Pre-Recession Level – Taking a Closer Look
- Economic Indicator: The European Economy and U.S. Exports A Seasonally Adjusted View
- o Broadband grant project in Puerto Rico –





http://www.ntia.doc.gov/blog/2011/report-field-broadband-bridge-puerto-rico.

NTIA Grant Information –

 Broadband grant information – project in Tennessee http://www2.ntia.doc.gov/grantees/DeltaCom.

NTIA meeting notices, reports, documents, transcripts, and webcasts for Commerce Spectrum Management Advisory Committee (CSMAC). These meetings are held at least three times per year and are considered of significant interest to the public and industry as spectrum management impacts wireless, TV, Internet, telephone resources and new service opportunities. http://www.ntia.doc.gov/meetings/CSMAC.

NTIA also made available and continues to update and improve access to data in a national broadband deployment map. This map is fully searchable using data from the ongoing broadband projects to show where broadband is available, including at what speeds, providers, etc. and is searchable by the public. For example, one could search using a home address or community. http://broadbandmap.gov/.

NTIA often provides transcripts and video from NTIA officials' speeches. Many of these are distributed using the agency blog. See the following, which contains a YouTube video of a recent Deputy Assistant Secretary speech: http://www.ntia.doc.gov/blog/2012/commerce-competes-report-btop-building-infrastructure-21st-century.

ITA Trade Information –

- o www.trade.gov
- o www.export.gov
- o https://iaacess.trade.gov

NIST World Trade Center Information –

o http://wtcdata.nist.gov

The OIG posts new information on its website on a rolling basis as reports and other written products are issued and as new information becomes available. For instance, the website contains Semi-annual reports to Congress, audit, inspection, and evaluation reports, the OIG top management challenges report on issues facing the Department, congressional testimony, information on current and planned activities, and investigative alerts warning the public about scams and other fraudulent activity.

The USPTO has monitored and examined the nature of FOIA requests received





during the past two years and has discovered that a significant portion of our FOIA requests, at least 30-45%, pertain to procurement contracts. USPTO has adopted the "at least three FOIA requests" standard and routinely posts procurement contracts that meet that standard. In addition, the USPTO's FOIA Library contains document repositories that are fully text-searchable. The FOIA Library is implemented by the E-FOIA system where the USPTO posts other agency documents such as:

- Final Decisions of the Office of the Director (Enrollment and Discipline)
- o Final Decisions of the Office of Commissioner of Patents
- o Final Decisions of the Board of Patent Appeals and Interferences
- Final Decisions of the Office of Commissioner of Trademarks
- o Final Decisions of the Trademark Trial an Appeal Board
- Notice of Suite filed with the U.S. District Courts for Patents and Trademarks
- 3. Describe the system your agency uses to routinely identify records that are appropriate for posting.
 - Bureau FOIA professionals routinely post documents that have been requested more than once in the FOIA Library. Additionally, some documents that are of probable public interest are proactively posted or posted after the first request. The National Oceanic and Atmospheric Administration FOIA professionals identify records that are appropriate for posting at monthly meetings. Economic and Statistics Administration staff economists post information on current economic events. Each bureau's individual program offices are responsible for routinely identifying records that are appropriate for posting, such as press releases, speeches, testimony, public notices, regulatory decisions, public comments, reports, key contracts, grant information, advisory committee information, public meeting transcripts and archived audio and video webcasts, and other information about issues of interest to the public.
- 4. Beyond posting new materials, is your agency taking steps to make the information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities, providing explanatory material, etc.?

Yes. Websites have been redesigned or are currently being redesigned to have a more professional, user friendly appearance with easy to follow links. Many bureaus have created blogs to provide up-to-the minute information.





The International Trade Administration solicits public feedback through a number of online methods such as links to submit comments, provide website feedback, and take surveys. In addition the public can provide comments in writing to the various points of contact for each website and operating unit.

The National Institute of Standards and Technology website and multimedia tools are available to the public and interested technical audiences to explain in layman's terms what work is done at NIST, the results of the work, and solicit input about those results and direction of their work. With the use of Web 2.0 technologies (blogs, wikis, social networks, videos or websites with commenting functions, or research collaboration sites) a two-way conversation with the public is possible.

The National Oceanic and Atmospheric Administration FOIA Office is developing a frequently requested website regarding the Deepwater Horizon/BP

Oil Spill that will link to the NOAA Library's online public access catalog and mandated Deepwater Horizon/BP Oil Spill Repository: http://noaa.ntis.gov/site/home.php?PHPSESSID=mh78k6qiu87lv50kjfejufr6h3.

The National Telecommunications and Information Administrations newly redesigned website provides a link for user feedback. See the following link that announced the rollout of the new website and includes a user feedback link: http://www.ntia.doc.gov/page/2011/new-website-notice.

The Office of Inspector General is currently in the process of developing a social media policy, which the agency intends to use to increase communication with individuals who regularly access the OIG's website, including solicitation of feedback and suggestions for improved communication and distribution. The OIG's public affairs specialist has also led an effort to update the OIG's website, which has improved public access to agency material and improved general navigation of the website. Finally, a representative for the OIG recently participated in a new media working group established by the Council of Inspectors General on Integrity and Efficiency to explore how the OIG community can use new media to further the IG mission.

5. Describe any other steps taken to increase proactive disclosures at your agency.

Census FOIA staff are currently involved in many cross-agency teams, creating policies. Proactive disclosures are continuously discussed within those meetings. For example, a proactive disclosure caveat was included in the draft custom tabulations policy, to indicate that Census will post the list of created custom





tabulations annually. Senior Economic and Statistics Administration staff members use speaking opportunities to educate the public about the current economic outlook.

The International Trade Administration is always developing new techniques to get information to the public. One example includes U.S. & Foreign Commercial Services, Trade Information Center (TIC). They have developed the 1-800-USA-TRAD(E) hotline so that U.S. businesses interested in exporting can call the TIC and receive information about how their goods would be received in foreign countries. Also, the research wing of ITA, Manufacturing and Services, publishes their quarterly National Trade and State Export data on Trade Stats Express.

The National Institute of Standards and Technology posted material pertaining to the disaster and failure studies repository data simulations from their study of the World Trade Center investigation. In the future, NIST intends to post similar information and records for other disaster and failure studies.

Section IV: Steps Taken To Greater Utilize Technology

Electronic receipt of FOIA requests:

- 1. Can FOIA requests be made electronically to your agency?
 - Yes. All bureaus have the capability to receive both FOIA requests and FOIA appeals electronically.
- 2. If your agency processes requests on a decentralized basis, do all components of your agency receive requests electronically?
 - Yes. The Department processes requests on a decentralized basis, and all bureaus have the capability to receive requests electronically.

Online tracking of FOIA requests:

- 3. Can a FOIA requester track the status of his/her request electronically?
 - No. At this time, a FOIA requester cannot track the status of their request electronically. The requester is provided with both a telephone number and an e-mail address through which they can reach the appropriate bureau FOIA Office.
- 4. If no, is your agency taking steps to establish this capability?
 - Yes. As noted, in Section II, number 3, the Department is partnering with the





Environmental Protection Agency and the National Archives and Records Administration on the FOIA Module, a multi-agency FOIA portal that automates FOIA processing and reporting, stores FOIA requests and responses in a repository, keeps records electronically, and allows requesters to submit requests to fewer government websites, track the status of requests and find, view, and download FOIA requests and agency responses, all in a secure online environment.

5. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving records search capabilities, utilizing documents sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

Yes. Most bureaus of the Department have implemented electronic processing of FOIA requests.

6. If so, describe the technological improvements being made.

The bureaus of the Department that either did not have a database/tracking system or wanted to upgrade their current database/tracking system have migrated to the FOIA case management database, noted in Section II, number 3. The Bureau of Industry and Security is using new FOIA case management tracking system. The Office of Inspector General is preparing to deploy a new FOIA case management tracking system, which has improved search and reporting capabilities, as well as improved data storage, and which allows for greater control of data.

Many bureaus send and receive documents via a secure file transfer mechanism. The National Oceanic and Atmospheric Administration have limited use of a secure file transfer mechanism and are looking to expand the user base.

A document management system is being deployed throughout the Department's Office of the General Counsel. The deployment is ongoing and should be completed in 2012. It will provide the capability to share documents among various offices within the Department's Office of the General Counsel that could be used for consultations and referrals.

Section V: Steps taken to Improve Timeliness in Responding to Requests and Reduce Backlogs





- 1. 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. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.
 - a. Does your agency utilize a separate track for simple requests?
 Seven of the thirteen bureaus in the Department utilize a multi-tracking processing system.
 - b. If so, for your agency overall, for Fiscal Year 2011, was the average number of days to process simple requests twenty working days or fewer?
 - Of the seven bureaus of the Department that utilize a multi-tracking processing system, the average number of days to process simple requests was thirty-for days.
 - c. If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?
 - Of the six bureaus that do not track simple requests separately, four of them had an average number of days to process non-expedited requests in fewer than twenty working days. Two bureaus averaged more than twenty working days to respond to non-expedited requests.
- 2. Sections XII.D.(2) and XII.E.(2) of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report Backlogged Requests/Appeals," show the numbers of any backlog of pending requests or pending appeals from Fiscal Year 2011 as compared to Fiscal Year 2010. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition, Section VII.E, entitled "Pending Requests Ten Oldest Pending Requests," and Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," from both Fiscal Year 2010 and Fiscal Year 2011 should be used for this section.
 - a. If your agency had a backlog of requests at the close of Fiscal Year 2011, did that backlog decrease as compared with Fiscal Year 2010?
 - No. The backlog of FOIA requests for the Department overall increased by 8 from Fiscal Year 2010. In Fiscal Year 2010 the FOIA backlog was 195 and in





Fiscal Year 2011 the FOIA backlog was 203.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2011, did that backlog decrease as compared to Fiscal Year 2010?
 - Yes. The backlog of administrative appeals decreased in Fiscal Year by 26 from Fiscal Year 2010. In Fiscal Year 2010 the appeal backlog was 73 and in Fiscal Year 2011 the appeal backlog was 47.
- c. In Fiscal Year 2011, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2010?
 - No. The Department overall closed out 9 of the 10 oldest requests that were pending as of the end of Fiscal Year 2010.
- d. In Fiscal Year 2011, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2010?
 - Yes. The Department closed the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2011.
- 3. If you answered "no" to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation:

Request Backlog:

- a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?
 - Yes, in part. An increase in the number of incoming FOIA requests contributed to the lack of reduction in the backlog. In Fiscal Year 2010 the number of FOIA requests received was 2113 and in Fiscal Year 2011 the number of FOIA requests received was 2202. This was an increase of 89 FOIA requests.
- b. Was the lack of a reduction in the request backlog caused by a loss of staff?
 - Yes, in part. The reduction in the request backlog was cause by loss of staff in two bureaus of the Department. One bureau was without a full time experienced FOIA Officer for most of the fiscal year and another was without a full time experienced FOIA Officer for several months. New staff has been hired in both instances.
- c. Was the lack of a reduction in the request backlog caused by an increase in the





complexity of the requests received?

Yes, in part. The size and scope of certain incoming requests contributed to the lack of reduction in the request backlog.

d. What other causes, if any, contributed to the lack of a decrease in the request backlog?

Consultations with outside entities either on (b)(4) redactions or with another agency.

Administrative Appeal Backlog:

a. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?

Not applicable.

- b. Was the lack of a reduction in the appeal backlog caused by a loss of staff?Not applicable.
- e. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received?

Not applicable.

f. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?

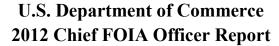
Not applicable.

All agencies should strive to both reduce any existing backlogs or requests and appeals and to improve their timeliness in responding to requests and appeals. Describe the steps your agency is taking to make improvements in those areas. In doing so, answer the following questions and then also include any other steps being taken to reduce backlogs and to improve timeliness.

1. Does your agency routinely set goals and monitor the progress of your FOIA caseload?

Yes, all FOIA Officers and FOIA professionals routinely set goals and monitor the progress of the FOIA caseload. The Balanced Scorecard Quarterly Reporting, as noted above in Section II, number 4, is a new tool being used to measure progress in reducing the backlog.







2. Has your agency increased its FOIA staffing?

Yes. The National Institute of Standards and Technology, National Oceanic and Atmospheric Administration, and the Office of Inspector General increased FOIA staffing.

3. Has your agency made IT improvements to increase timeliness?

Yes. Improved databases/tracking systems have help increase timeliness through improved reporting and tracking capabilities. Sending, receiving and redacting documents electronically and assigning requests electronically have trimmed days off of processing times.

4. If your agency receives consultations from other agencies, has your agency taken steps to improve the efficiency of the handling of such consultations, such as utilizing IT to share the documents, or establishing guidelines or agreements with other agencies on the handling of particular information to speed up or eliminate the need for consultations?

Sending and receiving consultations electronically has helped to improve processing times. At this time, the Department does not have agreements with other agencies on handling of particular information to speed up or eliminate the need for consultations.

Use of FOIA's Law Enforcement "Exclusions"

In order to increase transparency regarding the use of the FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to "treat the records as not subject to the requirements of [the FOIA]," 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

- Did your agency invoke a statutory exclusion during Fiscal Year 2011?
 No.
- If so, what is the total number of times exclusions were invoked?Not applicable.

Spotlight on Success

Out of all the activities undertaken by your agency since March 2011 to increase transparency and improve FOIA administration, describe here one success story that you would like to highlight as emblematic of your agency's efforts.





The Department of Commerce, Office of the Secretary and National Oceanic and Atmospheric Administration partnered together in a pilot project with several other agencies in the development of the FOIA Module. In moving to an automated tracking and processing system with a web-based public interface, the Department will increase transparency and collaboration by allowing requesters to easily submit a request and track its progress. This process will allow the Department to achieve its long-range goal of an integrated FOIA system that allows full workflow management along with NARA compliant electronics records management of FOIA request and responses. The FOIA Module will help to streamline and improve efficiency of the Departments internal processes by moving requests electronically to a defined workflow that collects metrics for reporting and status publication. Utilizing a web-based shared service environment (Software as a Service), the Department will achieve considerable cost savings over commercial tools which require expensive licenses and separate maintenance contracts.