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 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.

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply 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, National Archives and Records Administration, Department of the Treasury, Merit Systems Protection Board, Department of Homeland Security, Department of Transportation, and Department of State on September 11, 2012. All Department of Commerce FOIA Officers or their designees participated in this event.

The Chief Financial Officer and Assistant Secretary for Administration held an all hands FOIA training event, conducted by the Office of General Counsel, General Law Division and the Office of Privacy and Open Government on October 2, 2012. The Census Bureau held FOIA refresher training for its FOIA professionals in November 2012, conducted by the Office of General Counsel, General Law Division. The Census Bureau also held bi-weekly FOIA training for FOIA staff during this reporting period. The U.S. Patent and Trademark Office (USPTO) provided internal agency training programs on four occasions during FY 2012, including a 45-minute presentation to the USPTO Senior Management Team, consisting of the heads and deputy heads of each USPTO Business Unit. The other three programs were targeted trainings based on common FOIA requests that different Business Units encounter. The USPTO FOIA Office also made itself available upon request for any additional or one-onone training. The International Trade Administration (ITA) FOIA Officer provided individual training on specific FOIA issues upon request during this reporting period. The Economic and Statistics Administration (ESA) held FOIA training on September 18, 2012. The training was conducted by the FOIA Public Liaison and was open to all ESA staff members. The Office of Inspector General (OIG) conducted training for new hires to the Office of Counsel (OC) (the OIG's FOIA processing office), which included a basic overview of FOIA and issues commonly encountered by OIG in processing FOIAs. The National Institute of Standards and Technology (NIST) FOIA Officer and staff provided FOIA training for new NIST management and FOIA training upon request to operating units for groups and individuals during this reporting period.

The Office of General Counsel, General Law Division, provided over 10 trainings during FY 2012 to multiple bureaus agency-wide.

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 for Attorneys and Access Professionals
- DOJ Director's Lecture Series, Achieving FOIA Goals
- DOJ Director's Lecture Series, Tracking Agency Progress to Implement the FOIA Guidelines





- DOJ Annual FOIA Report Refresher Training
- DOJ Chief FOIA Officer Report Refresher Training
- American Society of Access FOIA Professionals Training
- Department of Agriculture, Freedom of Information and Privacy Act Training

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

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

Yes. The Department routinely releases information that qualifies for FOIA Exemptions when the harm review and analysis reveals no specific harm with occur to the agency from its release. The following bureaus of the Department reported making discretionary releases:

- Census Bureau
- International Trade Administration
- Minority Business Development Agency
- National Institute of Standards and Technology
- National Oceanic and Atmospheric Administration
- National Telecommunications and Information Administration
- Office of the Secretary
- Office of Inspector General
- U.S. Patent and Trademark Office
- 3. What exemptions would have covered the information that was released as a matter of discretion?

Discretionary releases have been made for information that would have been covered under FOIA Exemption 4, 5 U.S.C. § 552 (b)(4) and Exemption 5, 5 U.S.C. § 552 (b)(5).

- 4. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.
 - meeting minutes
 - records related to an annual USPTO diversity event
 - internal briefing papers/memoranda
 - internal communications/e-mails
 - draft reports and documents
 - in a few instances, communications that could be protected under the attorney workproduct and attorney-client privilege
 - submitters with an opportunity to withhold business sensitive information have allow us to release some of their information that could have been withheld
- 5. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

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. Additionally, FOIA professionals are encouraging staff in training and meetings to make proactive disclosures.

As a way to ensure that the presumption of openness is being applied, the Census Bureau FOIA Office conducts group reviews of responsive records to which FOIA Exemptions 2, 5 U.S.C. § 552 (b)(2), 5, 5 U.S.C. § 552 (b)(5), or 7, 5 U.S.C. § 552 (b)(7) apply. These types of reviews serve two main purposes: a) they help train FOIA professionals on the definition and application of the presumption of openness, and b) they help to ensure the presumption of openness is being applied, whenever and as much as possible. FOIA staff is also required to complete a harm analysis and review for the portions of the responsive records to which FOIA Exemptions 2, 5, or 7 apply. Individuals in the offices where the records originated are consulted in determining if any specific harm would be caused by the release.

To determine whether a discretionary release is possible, ITA starts with reviewing of the responsive records by the subject matter experts (SME). The SME often created or, at least, maintain control of the record that is being reviewed. They conduct a foreseeable harm review of the portions of a record that could be protected under the FOIA. Afterward, ITA's FOIA Officer conducts a secondary review to see what information could be withheld or discretionarily released. For the first instance, ITA's FOIA Officer inquires why the SME is not requesting the information that falls under the deliberative process privilege to be protected. The SME then provides rational on whether: the information would not inhibit open, frank discussion; the draft reflects final agency action; or the information would not cause public confusion. Conversely, ITA's FOIA Officer also reviews the suggested withholdings for possible discretionary disclosure. If the FOIA Officer cannot reasonably see a foreseeable harm, the portion of the record in question is referred back the SME for a second review. If an agreement cannot be reached, then both the SME and the FOIA Officer seek assistance from the Departmental Office of Privacy and Open Government and/or the Office of the General Counsel.

NTIA is proactive in posting grant agreement documents and other documents such as reports, agreement and contract documents, filings, press releases, testimony, etc. on its website.

As part of its responsibilities as an oversight agency, the OIG 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 where 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.

The USPTO FOIA Office emphasized the importance of FOIA in a presentation to the Agency's Senior Management Team. This presentation has had a trickle-down effect within each manager's Business Unit. In addition, the USPTO FOIA Office increased its visibility in the Agency by reaching out to individual Business Units to provide training and by preparing reference binders for all new FOIA coordinators (each Business Unit has an employee that serves as a FOIA coordinator for requests that come into his or her Business Unit). The USPTO FOIA Office also published a FOIA training guide on its intranet, available to everyone in the Agency. The FOIA training guide includes a brief explanation of the FOIA and also includes a section regarding the President's Memorandum on the FOIA and the Attorney General's FOIA Guidelines. Finally, the USPTO FOIA Office followed the Department of Justice's September 19, 2012 guidance regarding the § 552(c) exclusions and added an explanation of the statutory exclusions to its FOIA Library.





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

As the Attorney General emphasized in his FOIA Guidelines, "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests."

This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support.

Describe here the steps your agency has taken to ensure that its system for responding to requests is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

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

Yes. FOIA professionals within the Department have sufficient IT support and have access to IT staff by phone and e-mail and after-hours in the form of on-call support. More support in new technology would be welcomed especially in the removal of duplicative information in e-mail records.

2. 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.

The following bureau FOIA Officers reported working with their individual bureau Open Government Teams: Bureau of Industry and Security (BIS), Economic and Statistics Administration (ESA), ITA, NIST, National Technical Information Service (NTIS) and USPTO.

The Census Bureau's FOIA Officer and FOIA Public Liaison are members of the Census Bureau Open Government Working Group, as well as the Department of Commerce Open Government Working Group. The FOIA Officer also serves as the Open Government Senior Lead for the Census Bureau.

The Departmental FOIA Officer and FOIA Officers from the Census Bureau, ITA, NTIA, and NOAA have worked closely with the Deputy Director of Open Government over the past year in the development of the FOIAonline system. We have collaborated to insure that the system not only meets the Department's FOIA program needs, but also supports the administration's Open Government Directive.

3. Has your agency assessed whether adequate staffing is being devoted to FOIA administration?

Yes. The following bureaus reported adequate staffing is being devoted to FOIA administration: Census, ESA, EDA, BIS, ITA, MBDA, NIST, NTIS, OIG, and USPTO.





Staffing levels have decreased within some bureaus of the Department. We are currently exploring ideas on how to deploy resources across the Department where additional staffing levels are needed.

The Census Bureau has developed plans for using interns and other staff, and has used them to augment full-time FOIA staff when needed.

4. Describe 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, streamlining consultations, eliminating redundancy, etc.

The Chief FOIA Officer requires Department-wide FOIA backlog reporting on 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 Secretary.

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

Established a FOIA Council in FY 2012, 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.

All bureaus of the Department, with the exception of the USPTO, which uses a different IT solution to process FOIA requests, are now using FOIAonline to improve FOIA processing and customer service. The transition to FOIAonline has moved the Department from a paper based records system to almost an entirely paperless system.

The Census Bureau mapped its FOIA request intake process as a way to visually describe how new FOIA requests are received and assigned. This project was used to ensure the processing of FOIA requests started in an efficient manner, as well as to identify any bottlenecks that may have existed. Census began a project in January 2013 to map the rest of our "as is" FOIA business processes so we can evaluate the overall processing of FOIA requests and identify any inefficiencies and improvement areas.

NTIA conducted regular status checks of on-going FOIA requests to ensure prompt and consistent processing. NTIA also processed more requests electronically to speed processing and to trim costs. This includes utilizing scanning equipment and electronic redacting tools available in Adobe.





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.

Describe here the steps your agency has taken both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2012 to March 2013). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

- 1. Provide examples of material that your agency has posted this past year.
 - BIS posted all final export violations as well as all antiboycott violations to the public website.
 - Census Bureau posted emergency preparedness and response data products, Disclosure Review Board meeting minutes, Data Stewardship policies, and updated custom tabulation requests and FOIA request logs.
 - ESA posted the following reports: The Competitiveness and Innovative Capacity of the United States; Intellectual Property and the U.S. Economy: Industries in Focus; The Benefits of Manufacturing Jobs; The Second Phase Report on the Statistical Discrepancy of Merchandise Trade between the Unites States and China; and throughout the year, press releases pertaining to Department of Commerce Activities.
 - ITA posted the following: General information, like press releases, is available at www.trade.gov. Domestic and International updates on export related issues are posted to www.export.gov, and, perhaps most notably, https://iaaccess.trade.gov/ maintains the voluminous files associated with antidumping and countervailing cases.NIST posted World Trade Center documents, datasets, videos, photos, and computer simulated models: http://wtcdata.nist.gov/
 - NOAA posted pdf files and links to high profile documents. This includes the inquiry into the National Weather Service, IPCC Working Group 1 comments, and Deepwater Horizon Oil Spill documents on Oil Budget and Sea Turtles.
 - NTIA posts a large amount of documentation on its website regarding its highly visible programs such as the Broadband Technology Opportunities Program (BTOP) and First Responder Authority Network (FirstNet). This includes regular updates to project amendments, letters, environmental documentation, quarterly reports, ARRA reports, filings, meeting minutes, etc. NTIA also regularly posts all filings, reports, speeches, testimony, etc. In addition, NTIA provides live streaming of certain high profile meetings and also archives those video streams on its website.
 - OIG posted 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 covering a period of years.
 - USPTO posted all new Patent Trial and Appeal Board decisions (current to date), new Trademark Trial and Appeal Board decisions (current to date), new final disciplinary actions by the Office of Enrollment and Discipline (current through December 2012), and new notices of suit filed with U.S. District Courts (current to date).
- 2. 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, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities on the site, creating mobile applications, providing explanatory material, etc.?





Yes.

- 3. If so, provide examples of such improvements.
 - BIS has a public website where export violations and antiboycott violations, along with other interesting bureau information such as speeches given by the Under Secretary and Assistant Secretaries posted for public comment.
 - The Census Bureau is taking steps to ensure more useful material is being posted. Several of the things Census does include: review responses to requests to determine if material disclosed may be of use to other requesters and we discuss how to make responsive records available through the FOIAonline system, which is available to the public. Census FOIA professionals have also attended a FOIA roundtable, entitled "FOIA Libraries: Maximizing Usefulness from the Requester Perspective," as a way to understand what the requester community was looking for regarding materials we post on our FOIA Library.
 - The Under Secretary for Economic Affairs hosts a blog that discusses the Economic Indicators. Interested individuals can sign up to have the economic indicators delivered to their email.
 - ITA solicits public feedback through a number of ways. Online, each website has a "Website Feedback" link that allows the user to provide specific information in ways that the user's experience can be better enhanced. In addition, each specific subject area page provides direct email and physical addresses for the public to provide feedback and ask questions to a subject matter expert.
 - Beyond posting new material, NIST's web site and multimedia tools are available to the public and interested technical audiences to explain in layman's terms the work done at NIST, the results of the work, and solicit input about those results and direction of our 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 responsive records to the Deepwater Horizon Oil Spill requests are now searchable through NOAA's Library catalog making it accessible to a wider range of users.
 - As NTIA noted in its 2012 report, it has revised its website design to, among other things, highlight topics of public interest for ease of access to agency information. The agency also receives feedback through its website regarding content posted.
 - The USPTO FOIA Library provides several options to submit feedback and/or report any problems. The Library has a link to the general USPTO Contact Center as well as a dedicated "webmaster" e-mail address for submitting comments or concerns.
 - The OIG's public affairs specialist has led an effort to update the OIG's website, which has
 improved public access to agency material and has improved general navigation of the website.
 Additionally, OIG is also working with the Department to use the FOIAOnline system to
 communicate more effectively with the public.
- 4. Describe any other steps taken to increase proactive disclosures at your agency.
 - Encouraging staff in training and FOIA Professionals meetings to make proactive disclosures.
 - The individual program offices are responsible for routinely identifying records that are appropriate for posting.
 - One way the Census Bureau is increasing proactive disclosures is through mobile applications. The Census Bureau released its first mobile app called America's Economy in August 2012. The app makes 16 leading economic indicators available to the public via mobile devices. The Census Bureau collaborated with the Bureau of Labor Statistics and the Bureau of Economic Analysis. The app provides easy access to the indicator data, trend information, up to 24 months of historical data (where available), and a regional breakdown (where available). The app has been very popular since its release and has had almost 40,000 downloads. Another example of increasing proactive disclosures is the Census Bureau's OnTheMap application, which provides access to





data that shows where workers are employed and where they live, was enhanced to allow easy access from mobile devices. The application (OnTheMap Mobile) can be accessed by Android and iOS devices at http://onthemap.ces.census.gov/m/. A third step the Census Bureau has taken id through the Application Programming Interface (API) project, which provides a new online service that makes key demographic, socioeconomic, and housing statistics more accessible than ever before. The Census Bureau's first ever public API allows developers to design Web and mobile apps to explore or learn more about America's changing population and economy. The new API lets developers customize Census Bureau statistics into Web or mobile apps that provide users quick and easy access from popular sets of statistics, such as: a) 2010 Census (Summary File 1), which includes detailed statistics on population age, sex, race, Hispanic origin, household relationship and owner/renter status, for a variety of geographic areas down to the level of census tracts and blocks; and b) 2006-2012 American Community Survey (five year estimates), which includes detailed statistics on a rich assortment of topics (education, income, employment, commuting, occupation, housing characteristics, and more) down to the level of census tracts and block groups.

- Besides the general ITA website and the posts on Data.gov, IA-Access, Export.gov, and Trade States Express are the three largest ways that ITA is continuously and proactively releasing information to the public.
- The USPTO FOIA Office continues to monitor and examine the nature of FOIA requests received each year on an ongoing basis to determine if and whether it has repeat requests or popular categories that are not already addressed in the FOIA Library. In addition, the USPTO's FOIA Library contains document repositories that are fully text-searchable so that the public can quickly access the records that are proactively disclosed.
- The OIG employs a public affairs specialist whose responsibilities include the publication of information on the OIG website. In addition to the types of information routinely posted, as discussed in section III.2, the OIG continues to examine ways to make proactive disclosures regarding investigations consistent with the Privacy Act and confidentiality requirements.

Section IV: Steps Taken to Greater Utilize Technology

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. In 2010 and 2011, agencies reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2013, as we did in 2012, the questions have been further refined and now also address different, more innovative aspects of technology use.

Electronic receipt of FOIA requests:

1. Can FOIA requests be made electronically to your agency?

Yes. All bureaus of the Department accept FOIA requests via email, facsimile or mail. New in October 2012, the Department of Commerce joined FOIAonline which provides the ability for requesters to file a request online at https://foiaonline.regulations.gov/foia/action/public/home.

2. If your agency is decentralized, can FOIA requests be made electronically to *all* components of your agency?

Yes. All bureaus of the Department accept FOIA requests via email, FOIAonline, facsimile or mail.





Online tracking of FOIA requests:

3. Can a FOIA requester track the status of his/her request electronically?

For all bureaus of the Department, except USPTO, yes, if the requester files a request at FOIAonline, https://foiaonline.regulations.gov/foia/action/public/home and establishes an account.

For USPTO, yes, by clicking the link "Check FOIA Request Status" on the USPTO FOIA webpage.

4. If so, describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed" while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.

For all bureaus of the Department, except USPTO: Submitted – Evaluation – Assignment – Processing – Closed.

For USPTO: The requester can see the stage of their request: Received – Assigned for Processing – On Hold-Need Info/Clarification – In Process – Cost Estimate Sent – Completed – or Closed. The requester also sees a key to explain what each of these statuses means.

5. In particular, does your agency tracking system provide the requester with an estimated date of completion for his or her request?

For all bureaus of the Department, except USPTO: ves.

For USPTO: No, the online tracking system does not provide the requester with an estimated date of completion. However, the requester does receive an estimated date of completion in the acknowledgement letter that goes out within 1 to 2 business days of receiving a request.

6. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability?

Not applicable

Use of technology to facilitate processing of requests:

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

Yes. FOIA Online provides the capability to share documents with other agencies for purposes of consultations and referrals. Also, the Department's Office of the General Counsel, has deployed a document sharing program using Sharepoint that could also facilitated these advanced capabilities.

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

The Department, with the exception of USPTO, uses FOIAonline which provides a searchable repository of released records. Some operating units use commercial de-duplication software like Clearwell.





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

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section 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 and appeals. For the figures required in this Section, please use those contained in the specified sections of your agency's 2012 Annual FOIA Report.

- 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?
 - Eight of the thirteen bureaus in the Department utilize a multi-tracking processing system. The five bureaus that do not utilize a multi-tracking processing system, record all requests under the simple track.
 - b. If so, for your agency overall, for Fiscal Year 2012, was the average number of days to process simple requests twenty working days or fewer?
 - Yes. The agency overall average number of days to process simple requests was eighteen working 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 five bureaus that do not track simple requests separately, the average number of days to process simple requests was fourteen 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 2012 as compared to Fiscal Year 2011. 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 2011 and Fiscal Year 2012 should be used for this section.
 - a. If your agency had a backlog of requests at the close of Fiscal Year 2012, did that backlog decrease as compared with Fiscal Year 2011?





No. The backlog of FOIA requests for the agency overall increased by 87 from Fiscal Year 2011. The agency overall number increased from 140 in Fiscal Year 2011 to 227 in Fiscal Year 2012. Of the Department's thirteen bureaus, 5 bureaus increased their backlog, seven decreased their backlog, and one bureau remained the same.

b. If your agency had a backlog of administrative appeals in Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011?

Yes. The backlog of administrative appeals for the agency overall decreased by 14 from Fiscal Year 2011. The number of backlogged administrative appeals decreased from 47 in Fiscal Year 2011 to 33 in Fiscal Year 2012.

c. In Fiscal Year 2012, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2011?

No. The agency overall closed out 5 of the 10 oldest requests that were pending as of the end of Fiscal Year 2011.

d. In Fiscal Year 2012, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2011?

No. The agency overall closed out 5 of the 10 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?

No.

b. Was the lack of a reduction in the request backlog caused by a loss of staff?

Yes, in part. The agency overall experienced a decrease in the number of full-time FOIA employees and number of equivalent full-time FOIA employees. In Fiscal Year 2011 the agency overall number of full-time FOIA employees was 12.25 and number of equivalent full-time FOIA employees was 35.72. In Fiscal Year 2012 the agency overall number of full-time FOIA employees was 5.5 and number of equivalent full-time FOIA employees was 32.95.

c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?

Yes. The volume of complex requests increased.

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





Some of the 10 oldest requests were about the Deepwater Horizon Oil Spill which required coordination with the Department of Justice prior to closing request due to litigation.

Expedited processing was partially granted on a complex aspect of one request, thus delaying older requests.

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.

c. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received?

Not applicable.

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

Not applicable.

4. OIP has issued guidance encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information. If your agency had a backlog in Fiscal Year 2012, please provide an estimate of the number of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

Interim releases are a common practice for the agency overall. We estimate that substantive interim responses were provided to 40% of the total number of cases in the backlog.

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:

1. Did your agency invoke a statutory exclusion during Fiscal Year 2012?

Yes. The OIG invoked exclusion 5 U.S.C. § 552(c)(1).

2. If so, what was the total number of times exclusions were invoked?





The OIG invoked exclusion 5 U.S.C. § 552(c)(1) only once during FY 2012.

Spotlight on Success

Out of all the activities undertaken by your agency since March 2012 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 success story can come from any one of the five key areas.

The greatest success this year for the agency overall was the implementation of the FOIAonline system. When a requester submits their request through FOIAonline, no data entry is required. The system also allows requesters to monitor the progress on their requests and thereby reducing the number of status-updates calls received. Furthermore, internal Department referrals and consultations can be done with a push of a button instead of using inter-office mail or physically dropping-off requests and/or responsive records.

The greatest success this year for an individual bureau and falling under multiple key areas, the NOAA FOIA Office entered into a cooperative effort with the NOAA Library to make the responsive documents to Deepwater Horizon Oil Spill requests available through the Library's online catalog. Not only does this mean that potential requesters do not need to file a request, but researchers around the world can access the responsive records by using common library catalog systems. This reveals a group of documents that they may not otherwise know exist. The connection is made by using Library of Congress Subject Headings (LCSH) so that a potential requester can click on the LCSH hyperlink to see what other information may be available through multiple international cataloging services. A link to the NOAA Library Catalog can be found on the NOAA FOIA homepage (http://www.corporateservices.noaa.gov/~foia/noaa_useful_websites/index.html).