### Name and Title of your Agency's Chief FOIA Officer: **Catrina D. Purvis, Chief Privacy Officer and Director of Open Government**

### Section 1: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying DOJ's FOIA Guidelines is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

### A. FOIA Leadership

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at the Assistant Secretary or equivalent level. Is your agency's Chief FOIA Officer at this level?

Yes.

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

### Catrina D. Purvis, Chief Privacy Officer and Director of Open Government

### B. FOIA Training

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

Yes.

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

DOC FOIA professionals attended the National Training Conference conducted by the American Society of Access Professionals, Inc. and completed FOIA training modules provided by the Department of Justice (DOJ) which are now available in the Commerce Learning Center (CLC).

Specific training attended by DOC FOIA professionals include:

- The FOIA Workshop
- The FOIA Seminar
- Attorneys and Access Professionals Training
- Sunshine Week Events and Training
- FOIA Procedural Requirements
- FOIA Exemptions Overview
- FOIA Requests Start to Finish; FOIA Accountability & Resources
- FOIA Litigation Seminar
- FOIA Training for Professionals
- Continuing FOIA Education
- FOIA and Privacy Roundtables

Training covering the following FOIA topics were conducted within DOC onsite, via roundtables and brown bag sessions:

- Using Relativity for faster searches, record deduplication, and email threading
- Tasking, assigning, searching, redacting, referring, and consulting on responsive documents
- The definition of FOIA, FOIA request types received by DOC, and the roles, rules and responsibility of complying with the FOIA
- FOIA exemptions with emphasis on (b)(4) the Argus Case
- Maintaining records electronically via FOIAOnline and FOIAXpress
- Taking the lead action on FOIA requests from conducting searches and receiving responsive documents to producing the records for FOIA requesters
- Aggregate FOIA requests and merging them together
- Time management for working on FOIA requests, meeting search obligations, and redacting the correct information
- Proactive disclosures: posting responsive records on the website and referring requesters to the links
- Presumption of Openness when reviewing responsive records for disclosure
- Internal and External Communication for FOIA-related issues
- Search adequacy, collection of responsive documents, and release determination of documents
- Uploading responsive records electronically
- Department FOIA Regulations
- Department FOIA Public Reference Guide
- Handling backlogged requests
- FOIA Improvement Act of 2016
- FOIA Procedural Requirements

- Relationship between FOIA and the Privacy Act
- Recent FOIA Court Decisions
- Case load electronic filing systems
- FOIA and Privacy Case Law
- FOIA and Privacy Requests
- FOIA best practices
- Tasks and Collaboration
- Fees

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

# An estimated average of 86% of DOC FOIA professionals attended substantive FOIA training during the reporting period.

6. 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.

#### Not applicable.

#### C. Outreach

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

Yes. DOC engaged in regular and significant outreach/dialogue with the requester and open government community regarding administration of the FOIA. This included outreach and assistance to requesters in perfecting requests as well as regular dialogue with the requesters regarding pending and backlogged requests.

**Examples of such are as follows:** 

• The Annual Sunshine Week event conducted at the Census Bureau on March 13, 2019 titled, "Taking stock: Access to Information and Open Government Data."

- The Bureau of Economic Administration (BEA) FOIA website update which improves online outreach and increases the availability of information regarding BEA's administration of FOIA.
- The Census Bureau engagements with the internal and external Census community, along with its FOIA office participation in several FOIA and Privacy events which included members of the public.
- The National Oceanic and Atmospheric Administration (NOAA) issuance of guidance to FOIA professionals to engage with each of their requesters to answer questions regarding the impacts of the shutdown on FOIA processing timeliness.
- The Office of the Inspector General (OIG) participation in an informal working group consisting of FOIA professionals within other federal agency OIGs to discuss FOIA developments.
- The Office of the Secretary (OS) investment in an e-discovery system, "Relativity", which allows FOIA professionals to complete faster email searches to provide interim responses for complex requests.

#### **D.** Other Initiatives

8. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA.

DOC and its bureau/ operating unit (BOU) FOIA Offices continue to engage with non-FOIA professionals, emphasizing open communication and transparency to ensure compliance with applicable laws, regulations and obligations. FOIA professionals work with non-FOIA professionals from program offices, program staff, senior managers, line offices, and regional offices on an ongoing basis to inform them of their obligations under the FOIA. FOIA professionals relay the importance of FOIA, open government and transparency through memoranda and FOIA updates communicated to agency staff when tasking requests for fee estimates or record searches. Individual formal FOIA training was also provided to non-FOIA professionals on a needed basis, and FOIA staff were available to answer questions. In addition, contact information for FOIA professionals is provided in outgoing FOIA assignment and tasking memoranda.

#### Furthermore, at the BOU level:

• The Bureau of Industry and Security (BIS) conducted FOIA training for bureau employees in September ensuring all bureau employees are informed of their

obligations under the FOIA. The BIS FOIA Officer also provided on the job training to non-FOIA professionals as needed.

- BEA FOIA professionals collaborated with non-FOIA professionals such as staff, program office management, and the Office of the Chief Information Officer to inform them of their obligations under FOIA. They collaborate by communicating verbally and via the new FOIA manual. BEA is proactively developing a revised intranet site, which will educate all bureau staff about their obligations under the FOIA.
- Census initiated an outreach training campaign throughout the agency to inform senior managers of the importance of processing FOIAs, and the risks and implications of not properly responding to FOIA requests. The FOIA Office trained over 200 Census employees.
- The Economic Development Administration (EDA) Chief FOIA Officer emphasized the importance of FOIA to non-FOIA professionals through memoranda and FOIA updates communicated to the agency's staff. In addition, new employees were provided ad hoc training to understand their FOIA responsibilities.
- ITA FOIA staff were available to answer questions from program staff and included a contact telephone number in all outgoing FOIA. ITA emphasized open communication and transparency to ensure compliance with the applicable laws and obligations. ITA also communicated FOIA program updates to ITA staff through frequent communication via the internal newsletter, "News You Can Us" and conducted in-person one-on-one guidance.
- NOAA's Roundtable events in the region involved FOIA professionals, IT Specialists, Privacy Professionals, and GC staff. The Roundtable events allowed FOIA professionals, record custodians, subject matter experts, IT professionals, and legal counsel to discuss improvement areas with region-specific FOIA issues that have arisen in processing. The FOIA Officer at NOAA presented to management the benefits of FOIA-related performance standards in employee work plans. The majority of NOAA's FOIA administration staff has FOIA included in their performance standards, including NOAA's FOIA liaisons, FOIA professionals, and NOAA's FOIA Officer.
- The National Telecommunications & Information Administration (NTIA) conducted training throughout the year as a part of concerted effort to assist NTIA employees in understanding their roles and responsibilities under FOIA. In addition, NTIA attorneys provide information to NTIA staff regarding their FOIA obligations. Also, each request for fee estimate or search includes detailed instructions regarding how to conduct a proper fee estimate or search. On a case-

by-case basis, FOIA training materials are provided to new staff or those that are seeking specific information regarding their FOIA obligations. Information NTIA provides includes a FOIA Q&A posted on NTIA's intranet, which NTIA updates as needed. NTIA attorneys also regularly answer questions regarding FOIA and aids when asked.

- The National Technical Information Service (NTIS) conducted briefings for non-FOIA staff upon completion of training. FOIA topics were also included on teleconferences when possible and briefed at weekly senior leadership meeting.
- The Office of the Inspector General (OIG) offered FOIA training to all OIG employees. The training session provided an overview of the statute, informed employees of associated responsibilities, and included a question and answer segment. In addition to the structured training offered, the OIG FOIA staff alerted personnel of updates as needed and maintained an open-door policy for questions related to FOIA search, production, and other issues.
- The United States Patent and Trademark Office (USPTO) FOIA Office conducted training sessions for the Regional Offices of the USPTO as well as Q&A panels for various groups within the agency. Additionally, the agency ensured that each major business unit has a FOIA Coordinator who assists the FOIA Office in ensuring that non-FOIA professionals understand their obligations. FOIA related performance standards are also included in FOIA Coordinator performance appraisal plans. Moreover, FOIA training materials are available to USPTO employees on the USPTO intranet at: <a href="http://ptoweb.uspto.gov/ptointranet/ogc/foiaservice.htm">http://ptoweb.uspto.gov/ptointranet/ogc/foiaservice.htm</a>.
- The Immediate Office of the Secretary (IOS) and Chief Financial Officer/ Assistant Secretary of Administration (CFO/ASA) operating units conducted training sessions on a one-on-one basis. This included FOIA process, roles and responsibilities training for new political appointees. Furthermore, there is a FOIA contact in each office who coordinates FOIA searches, document reviews, and submission of redacted responsive records. In addition, FOIA staff contact information is included in each fee, search, referral, and consultation tasker.
- The Information Law Division of the DOC General Counsel provided guidance on the interpretation of FOIA and answered questions regarding duties and responsibilities with regards to FOIA.

9. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

Examples of other initiative undertaken by DOC to ensure that the presumption of openness is being applied include:

- The presumption of openness is built into BEA's mission as a Principle Federal Statistical Agency, and as a matter of practice all information of common value is available subject to applicable laws.
- The Census FOIA Office enhanced their internal web website to include more information about FOIA processes and how the public can obtain more information. Census also enhanced its public facing website to share links and other Census operation information requested by the public.
- EDA provides for joint Chief Counsel and Regional Counsel review of all items flagged for redaction or withholding under FOIA exemptions, with an emphasis on the presumption of openness.
- ITA regularly provides guidance to program staff on the FOIA including the presumption of openness and conducting foreseeable harm reviews. ITA FOIA Staff consistently works with the business units to ensure they are segregating information with emphasis on the presumption of openness.
- The NIST FOIA Office emphasizes the importance of openness as a factor to consider when reviewing records during its training sessions and when discussing specific requests. In addition, the FOIA Office and the NIST Office of the Chief Counsel carefully review all suggested withholdings, placing a priority on the presumption of openness, and consider the foreseeable harm prior to making a final determination to withhold records or information.
- NOAA issued guidance to all FOIA coordinators and liaisons regarding the presumption of openness as it relates to the requirement of foreseeable harm in applying FOIA Exemption 5, and NOAA has incorporated that guidance into its regional FOIA Roundtables.
- NTIA continues to have a proactive openness policy with respect to agency records and informational material made available to the public through its website and social media, including blogs and press releases. For example, NTIA works diligently to post grants, contracts, other agreements, reports, key correspondence, advisory committee minutes, speeches, congressional testimony, public notices and other regulatory matters, and comments in Federal Communications Commission proceedings.
- The OIG adheres to public posting requirements under The Inspector General Empowerment Act of 2016 for OIG products. OIG audit, evaluation, and certain other products and correspondence receive a public release review and are made

publicly available on the OIG website, as appropriate, under the terms of FOIA. <u>https://www.oig.doc.gov/Pages/default.aspx</u>.

- The FOIA Office regularly briefs new leadership, new FOIA Coordinators, and the various business units about the presumption of openness and the requirements under the FOIA.
- The Department FOIA Office provides compliance and operational oversight for administration of the FOIA with emphasis on ensuring the presumption of openness is applied.
- Information Law Division of OGC continues providing guidance on the proper understanding, interpretation, and execution of FOIA.

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

DOJ's FOIA Guidelines emphasize that "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." It is essential that agencies effectively manage their FOIA program.

Please answer the following questions to describe the steps your agency has taken to ensure that the management of your FOIA program is effective and efficient. You should also include any additional information that that describes your agency's efforts in this area.

1. For Fiscal Year 2019, 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 2019 Annual FOIA Report.

# The average number of days for DOC to adjudicate an expedited request in FY 2019 was 23.26.

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

The DOC FOIA office will conduct outreach to the BOU FOIA Officers to emphasize the importance of adjudicating expedited processing in fewer than 10 calendar days. The days to adjudicate requests for expedited processing will be monitored via weekly reporting through the fiscal year to ensure that it is being reduced over time. In addition, BOUs will ensure expedited processing requests are prioritized, additional resources are assigned, daily monitoring of requests submitted online, and revising internal timelines.

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report data, using active workflows and track management, reviewing and updating processing procedures, etc.

- Note: In September 2017, OIP released a FOIA Self-Assessment Toolkit as a resource for agencies conducting a self-assessment of their FOIA program. The Toolkit is available on OIP's website for all agencies to use.

DOC continues to conduct self-assessments of the FOIA program. The methods used included review of Annual Report data, quarterly metrics, and analysis of monthly and weekly report data to identify processes which may be streamlined to improve quality and timeliness of processing. DOC continued to engage senior management to emphasize the importance of FOIA to Doc and it BOUs. DOC also added staff, such as temporary staff on detail or contractors.

Specifically, ITA maintained a team of contractors and other professionals to strategize backlog reduction, conduct an inventory of existing requests, improve processes, and develop Standard Operating Procedures to assist the bureau in improving its FOIA program. ITA developed its first fully encompassing Standard Operating Procedure (SOP) that covers the FOIA program from exemptions, revisions, references, ITA responsibilities, communication, procedures/processes, fees, reporting requirements, records, etc. In addition, ITA works on updating its SOP throughout the reporting period, as it finds ways to improve the process and make it more efficient.

NIST holds regular meetings among the FOIA Officer and FOIA staff to discuss program inefficiencies and remediations. FOIA staff often team up for large and complex requests. NIST conduct quarterly reports to gauge status on oldest requests as well as other aspects of the FOIA program.

NOAA conducted multiple self-assessments, which were distributed to NOAA's Senior Leadership, as well as to all FOIA professionals. Program weaknesses were identified, as were line offices that had increased backlogs, slower response times, or surges in incoming FOAI requests that required additional attention.

OIG regularly assesses its FOIA program to find greater efficiencies, improve search processes, and eliminate redundancy. This year, activities included regularly monitoring the status of open cases to ensure timely action, tracking open cases, and reviewing FOIA process procedures.

The USPTO FOIA Office used its FOIA management and tracking computer program to monitor workflow, better manage the number of requests each FOIA specialist had to process, and to identify emerging processing challenges. The USPTO FOIA Office also looked at the previous Annual Report to compare the numbers and statistics to understand trends and attempt to improve efficiency. Lastly, the USPTO FOIA Office holds routine staff meetings to identify issues and highlight and disseminate best practices.

DOC continues improvements to include monthly reviews of BOU ten oldest requests, as identified in the FY 2020 Annual FOIA Report, and initially, FOIA requests that have been backlogged for more than 90 days. Additional periodic meetings and assessments of DOC FOIA programs were conducted to identify areas of concern that may lead to processing delays for requests. Assessments included discussions of ways to address problem areas that may have been discovered. Another objective is to identify ways that DOC might assist a BOU with its FOIA program, if or when needed. Meetings also usually included discussions of individual cases, case load, workflow, and suggestions for process improvements. DOC implemented a new e-discovery tool that is helping the search and review process by lowering the number of responsive documents as it pulls out the duplicate responsive documents and allows for quicker processing and responding. DOC holds FOIA monthly council meetings that include discussions of best practices or methods.

4. 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 FY 2017 (please provide a total number or an estimate of the number).

#### Requestors sought assistance from DOC FOIA Public Liaisons approximately 36 times.

- 5. Please describe:
- Best practices used to ensure that your FOIA system operates efficiently and effectively.
- Any challenges your agency faces in this area.
- DOC continued use of the FOIAOnline tracking system to ensure the FOIA program operates efficiently and effectively. While some of the reporting and tracking features require improvement, the development team for FOIAonline made updates which increased the tracking system and the ability to create the data for reports, especially the FOIA Annual Report. To fill the gaps through completion, DOC created Excel spreadsheets to enhance and help manage status and metrics. The spreadsheets are compared to FOIAonline output to enhance the accuracy of the counts and metrics. The DOC FOIA Office also used standard correspondence templates for internal and external written communications. The templates are used for tasking, overdue notices, referrals and consultations. The DOC FOIA Office Relativity e-discovery tools to conduct comprehensive email searches to reduce search and review time. The DOC FOIA Office conducted BOU weekly meetings to discuss complex cases and exchange ideas to improve search terms, workflow and improve the FOIA processes from intake to closure. Presenting the operating units responsible for searching for responsive documents with search terms resulted in quicker responses to FOIA Officer. The DOC

FOIA Office also increased communications with FOIA requesters which improved understanding of the request. The DOC Chief FOIA Officer also conducts monthly DOC FOIA Council meetings to review program compliance, challenges and provide training.

- NTIA used a set of FOIA forms to send to each office and employee responding to fee estimates and searches. These forms make it easy and quick for staff to complete. This has also increased the response rate from staff and shortened the time needed to respond to the FOIA fee estimates and searches. NTIA is consistently exploring new methods, software and technology to improve processing and to lessen the burden on employees and staff for searching, processing and providing FOIA records. In addition, NTIA Office of Chief Counsel (OCC) reviews methods and processing regularly, including changes to the law and DOJ guidance to discuss ways in which it can improve its FOIA processing effectiveness and efficiency.
- OIG regularly assesses its FOIA program to find greater efficiencies, improve search processes, and eliminate redundancy. Activities included regularly monitoring the status of open cases to ensure timely action and tracking open cases to ensure efficient processing at every step. Best practices include quickly adjudicating fee waiver requests and helping requesters scope requests as needed.
- The USPTO FOIA Office uses an electronic system, FOIAXpress, to manage its FOIA requests. In addition to its redaction capabilities, FOIA Xpress is an effective tool for document sharing and record organization. It allows the FOIA professionals to quickly search for specific requests, requesters, and other request-related information. The USPTO Office of General Counsel has also purchased the Clearwell electronic discovery management tool, which has advanced de-duplicating, organizing and record searching capabilities. At this time, the USPTO FOIA Office is using Clearwell primarily for FOIA requests with voluminous responsive records. Additionally, the USPTO brought an additional capability of Electronic Document Review for FOIAXpress which has improved the system's capabilities de-duplicate and conduct keyword search capabilities.

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

The Department of Justice has long focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

1. Provide examples of 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. section 552(a)(2)(D). Please including links to these materials.

- BEA publishes all materials of common value. The BEA mission is to disseminate data; therefore, by default, the process of proactively releasing information is a core role for BEA and considered to be a normal operating procedure. In 2019, less than 3 percent of FOIA requests required a unique disclosure. BEA's goal is to publish as much of our findings as they can. BEA is working on a new FOIA website to post proactive disclosures, if necessary. Much of BEA's current site effectively discloses information as outlined in DOJ's explanation of 5 U.S.C. section 552(a)(2)(D). For instance, BEA receives many requests for regional and national economic information; however, this information is already publicly available on BEA's website. That said, when BEA receives these requests, the requestor is referred to BEA's website. Since BEA's FOIA program began only three years ago, it is possible that as time goes on BEA will receive consistent requests that would warrant a proactive disclosure release. To date, this has not been the case.
- BIS posts all finalized export violations as well as all antiboycott violations to the public website, <u>http://efoia.bis.doc.gov/index.php/electronic-foia/index-of-documents.</u>
- Census received numerous requests for all sorts of information regarding the 2020 Census. The FOIA office has taken the initiative to release on their site thousands of records regarding the Citizenship question as well as links to most reports and information regarding the 2020 Census operations. <u>https://www.census.gov/about/policies/foia.html#</u>.
- EDA has proactively disclosed requests that involved grant information for specific grant projects that garnered a large about of public attention.
- ITA has posted material including:
  - The Tariff Tool system that consolidates and distills thousands of pages of U.S. Free Trade Agreement (FTA) tariff commitments down into a simple, online database (available at <u>http://export.gov/fta/ftatarifftool/ftamain.aspx</u>.
  - ACCESS is the repository for all records filed in anti-dumping and countervailing duty (AD/CVD) proceedings. ACCESS provides the capability for registered E-Filers to submit documents to the record of an AD/CVD proceeding and allows the public to view versions of all documents submitted (available at <u>https://access.trade.gov/login.aspx</u>; free registration.
  - The National Travel and Tourism office within ITA now posts its monthly statistics on arrival and departure information to and from the United States. Available at <u>https://travel.trade.gov/research/monthly/index.asp</u>)

- NOAA has posted material including:
  - Comprehensive Hurricane coverage, spanning the entire National Hurricane Data Archive. This combined expansive data trove proved indispensable, and provided the public, news media, and incident responders with a massive library of proactively disclosed material to aid in Hurricane prediction, tracking, and response during the critical Hurricane season of 2017. This data library includes:
    - Tropical Cyclone Reports (<u>http://www.nhc.noaa.gov/data/#tcr</u>),
    - Tropical Cyclone Advisories (<u>http://www.nhc.noaa.gov/data/#advisories</u>)
    - Graphical Tropical Weather Outlook (http://www.nhc.noaa.gov/data/#gtwo)
    - Marine and Advisory Text Products (<u>http://www.nhc.noaa.gov/data/#text</u>)
    - Marine Graphical Products (<u>http://www.nhc.noaa.gov/data/#marine</u>)
    - Best Track Data (<u>http://www.nhc.noaa.gov/data/#hurdat</u>)
    - Past Track Seasonal Maps (<u>http://www.nhc.noaa.gov/data/#tracks\_all</u>)
    - Past Track Maps of U.S. Landfalling Major Hurricanes (http://www.nhc.noaa.gov/data/#tracks\_us)
    - Tropical Cyclone GIS Data Format (<u>http://www.nhc.noaa.gov/data/#gis</u>)
    - Tropical Cyclone "Storm Wallet" Electronic Archive (<u>http://www.nhc.noaa.gov/data/#wallet</u>)
    - Tropical Cyclone Monthly Summary Archive (http://www.nhc.noaa.gov/data/#monthly)
    - Tropical Cyclone Annual Summaries from 1872-2006 (<u>http://www.nhc.noaa.gov/data/#annual</u>)
    - Seasonal Outlooks (<u>http://www.nhc.noaa.gov/data/#outlooks</u>)
    - Cyclone Climatology (<u>http://www.nhc.noaa.gov/data/#climo</u>)
    - Forecast Verification (<u>http://www.nhc.noaa.gov/data/#verif</u>)
    - Aircraft Reconnaissance Archive (<u>http://www.nhc.noaa.gov/data/</u>)
    - Reports of Cyclones by Death Rate, Cost, and Intensity (<u>http://www.nhc.noaa.gov/data/#extreme</u>)
      - (http://www.nhc.noaa.gov/data/#cphc)
  - Weather and Climate Data

(http://www.ncdc.noaa.gov/)

**Hurricane Histories** 

• Ocean Data

(http://www.nodc.noaa.gov/)

- Coastal Data (http://www.ncddc.noaa.gov/)
- Geophysical Data
- o (http://www.ngdc.noaa.gov/)
- Fisheries Data across the:
  - Alaska

(http://www.alaskafisheries.noaa.gov/)

- Greater Atlantic

   (<u>http://www.greateratlantic.fisheries.noaa.gov/</u>)
- Pacific Island (<u>http://www.fpir.noaa.gov/</u>)

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- Southeast and Caribbean Island (<u>http://sero.nmfs.noaa.gov/</u>)
  - West Coast regions (<u>http://www.westcoast.fisheries.noaa.gov/</u>)

As well as Program-related data, scientific research, observer program data, National Marine Mammal Laboratory information, Habitat and Ecological Process data, and International Research data.

- Programmatic information is routinely released regarding: Sustainable Fisheries, Protected Resources, Habitat Conservation, Science and Technology and Data Portals International Affairs and Seafood Inspection, Law Enforcement, and Aquaculture. (http://www.nmfs.noaa.gov/)
- Nautical Charts and the NOAA Coast Survey data (<u>http://oceanservice.noaa.gov/facts/find-charts.html</u>)
- NOAA Tides and Currents
  - Data from the Center for Operational Oceanographic Products and Services o (http://oceanservice.noaa.gov/facts/find-tides-currents.html)
- Marine Debris (http://oceanservice.noaa.gov/hazards/marinedebris/)
- Infographic representations
  - o (<u>http://oceanservice.noaa.gov/infographics/</u>)
- Story Maps
   (http://oceanservice.noaa.gov/map-stories/welcome.html)
- National Weather Service Alerts
  - (<u>http://www.weather.gov/alerts</u>)
- Forecast Maps (http://www.weather.gov/forecastmaps)
- Doppler Radar National Mosaic (http://www.weather.gov/Radar)
- River, Lake, and Rainfall data (<u>http://water.weather.gov/ahps/</u>)
- Air Quality • (<u>http://airquality.weather.gov/</u>)
- Satellite Images
- o (http://www.weather.gov/satellite
- Past weather data (<u>http://www.weather.gov/climate</u>)

- Marine and Aviation Operations Accident Investigations and Lessons Learned, including Safety News, Diving Incident Reports, Environmental Spill Reports, and Marine Investigations and Lessons Learned (http://www.omao.noaa.gov/accident investigations lessons learned/index.html)
- NOAA Research activities, including NOAA Research Laboratories, National Sea Grant College Programs, NOAA Office of Ocean Exploration and Research, NOAA Climate Program Office, Office of Weather and Air Quality, NOAA Unmanned Aircraft Systems, and NOAA Ocean Acidification Programs (<u>http://research.noaa.gov/AboutUs/WhoWeAre.aspx</u>)
- NIST has posted material including Data:
  - Data: <u>https://data.nist.gov</u>
  - Code: <u>https://www.nist.gov/services-resources/software</u> / and <u>https://github.com/usnistgov</u>
  - Peer-reviewed publications: <u>https://www.ncbi.nlm.nih.gov/pmc/funder/nist/</u>
  - Agency publications: <u>https://nist.ent.sirsi.net/client/en\_US/default/search/results?te=ILS&lm=NISTP</u> <u>UBS</u>
  - Other information: <u>https://nistdigitalarchives.contentdm.oclc.org</u> / and <u>https://www.nist.gov/nist-museum</u>
- NTIA has posted material including
  - Starting in FY18, NTIA issued State and Local Implementation Grant Program 2.0 (SLIGP 2.0) Grants to 46 states and the U.S. territories to provide resources to local governments as they plan for the nationwide public safety broadband network. During FY18 and FY19, NTIA posted all grant award and agreement materials on its website including Performance Progress Reports and any subsequent Agreement Amendments. See

https://www.ntia.doc.gov/sligp2/awards. Posting the SLIGP2 records involves a concerted effort to review each document and discuss with the recipient whether the document should be posted in its entirety or redacted for business confidential and/or personal private information. This continues the process established with NTIA Broadband Technology Opportunity Program (BTOP) to post all grant award documents on NTIA's website. Since 2009, NTIA has posted 1000s of grant award documents reducing NTIA's FOIA burden significantly.

- NTIA regularly posts filings, reports, speeches, testimony, Federal Register notices, and significant correspondence. See <u>http://www.ntia.doc.gov/publications</u>.
- In FY19, NTIA has not posted any records that had been requested through FOIA and released three or more times as required by this section.

- The OIG has proactively disclosed items such as Semi-annual reports to Congress; audit, evaluation, and other reports; the OIG top management challenges report on issues facing the Department; congressional testimony, and information on current and planned activities. These materials can be found at http://www.oig.doc.gov/Pages/default.aspx.
- The USPTO makes large numbers of records related to patents and trademarks, including applications, available through proactive disclosures. Documents filed by applicants or USPTO official actions with respect to these applications are typically filed electronically and are available to the public through means such as USPTO websites. See <a href="http://www.uspto.gov/ip/boards/foia\_rr/index.jsp">http://www.uspto.gov/ip/boards/foia\_rr/index.jsp</a>.
  - The Immediate Office of the Secretary has proactively placed Secretary Wilbur Ross' calendar on the website for the years 2017 and 2018. The links for the calendars is <u>http://www.osec.doc.gov/opog/FOIA/FOIA\_elibrary.html#records</u>, under the frequently requested records. As soon as, the disclosure review is completed the department FOIA Office will be posting the 2019 and so far in 2020 calendars.
- 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?

Yes.

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

BEA's Communications Staff regularly review a wide array of web analytics, customer feedback and survey responses to improve web usability and information architecture. In 2018, BEA released its new product-centric web architecture, measurably improving the ability for users to readily find data. In 2019, BEA launched a new data science approach to web usability review, using advanced statistical techniques to gain insight into web user behavior and where additional site improvements are necessary.

BIS posts highlighted items in the Press Releases.

Census provides the following Link on the Census Bureau main page: <u>https://census.gov/</u>

EDA categorizes the information on the EDA's website and evaluates whether additional requests should be to the Reading Room on a regular basis.

The Office of the Secretary posted the Department's Secretary Wilbur Ross' calendars/schedule for the years 2016 and 2017. Upon completion of the disclosure review,

the years 2018 & 2019 will also be posted on the Department's website (Commerce.gov) in the Electronic FOIA Library under Frequently requested records. (osec.doc.gov/opog/FOIA/FOIA\_elibrary.html). Also, the public can access the following records regarding the Citizenship question on the DOC website under "Reinstatement of the citizenship question on the decennial census": Materials considered by the Secretary in deciding to reinstate a question on citizenship; Supplemental Production - 7.3.18 Court Order - Batch 1; Supplemental Production - 7.3.18 Court Order - Batch 2; DAO checklist for documents at Bates Nos. 10357-11026 in Supplemental Production – 7.3.18 Court Order – Batch 2; Note on Certain Redactions in Supplemental Production – 7.3.18 Court Order – Batch 2

ITA's public-facing FOIA specific site provides information about the bureau and information requests. ITA's public facing webpage ties to the Commerce OPOG website where requesters can access Frequently Requested Records and view System of Records Notices.

NIST has recently become a member of DataCite and ORCiD. These in addition to the previously existing CrossRef membership allow NIST to assign persistent identifiers (which are essentially permanent URLs) to researchers as well as to the papers and data published by NIST. Persistent identifiers enable customers to locate NIST information in the long term and to locate associated pieces of information – for example, a paper with a DOI assigned by the publisher would also provide the authors' ORCiDs and DOIs for data associated with the publication. Conversely, DOIs for associated publications would be displayed for data in the data repository.

NOAA has aligned the FOIA Program under the Chief Data Officer, which brings the program within the Division that also handles Privacy and Open Government. This alignment of the FOIA Program within the CDO has brought NOAA's FOIA goals within the OCDO Strategic Framework for improving data accessibility and innovation through NOAA data sets. This has resulted in a renewed focus on developing cloud-based platforms for data sharing, common-data storage and access, and integration into the larger NOAA Data Strategy.

NTIA regularly uses various methods to ensure that its audience is aware of its programs and work, including regular blog posts (https://www.ntia.doc.gov/blogs), press releases (https://www.ntia.doc.gov/newsroom), and social media such as Twitter (@NTIAgov). These media tools point back to information and records posted on NTIA's website.

The OIG continually welcomes feedback on the content and presentation of posted material and regularly reviews the website to make sure that posted information is clearly presented to the public. The USPTO has made available to the public a variety of data products concerning patents and trademark data. These include bulk data products about patents and trademarks and graphical tools that provide visual displays derived from patents data.

4. Please describe:

- Best practices used to improve proactive disclosures
- Any challenges your agency faces in this area

BEA receives many requests for regional and national economic information; however, this information is already publicly available on BEA's website. We have turned to advanced web analytics to determine if improvements are necessary to the existing information architecture to assist these users in finding the data directly.

ITA proactively publicizes important disclosures on ITA websites, trade.gov and export.gov. In collaboration with the Office of the U.S. Trade Representative, ITA publishes text and datasets for important trade agreements that impact commercial industries. ITA continues to seek opportunities to expand disclosures of this nature with a focus on transparency and openness.

NIST's first priority is to make data public if it is expected that there will be great interest in re-use (e.g., SRD, greenhouse gases, disasters, netzero, 'omics, STRbase, etc.). Generally, if a NIST researcher is contacted one or more times for release of information, the researcher would likely choose to formally publish their data. A challenge that NIST faces is that it is incumbent upon the researcher to recognize if information has been requested multiple times. A decision must then be made if the situation warrants the publication of the requested data once they've had to invest the resources to make it reusable by the people who've directly requested it.

NOAA, along with the other Bureaus within the Department of Commerce, utilizes FOIAonline as its FOIA processing platform. That has allowed for custom report extractions to improve identification of requested records amendable to proactive disclosure. Similarly, when multiple requesters seek requests that are overlapping—but not identical—NOAA has made the determination in several cases to conduct a single, overarching search that would produce all responsive records to the requester group at large, and disclose all of the records through FOIAonline, or through the FOIA Reading Room so that the entire public can benefit from the largest balance of all responsive records on a subject that is of public interest.

As a part of the FOIA closeout process for each FOIA, NTIA/OCC checks whether the records must be proactively disclosed under this provision. NTIA has recommended that FOIA Online add this as a new functionality for records processed and recorded through that system to better automate this process.

A future challenge may be the need to post information related to the new mission of NTIS 2.0 (emphasis on Data Strategic Mission and Joint Venture Partnerships)

Consider public interest and analyze the frequency with which records are requested from the OIG.

USPTO have begun coordination with the business units to make the USPTO FOIA Office aware of routinely requested information through FOIA or other materials that should be posted. We are also developing a FAQ section for the public.

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

A key component of FOIA administration is using technology to make information more accessible. In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that that describes your agency's efforts in this area.

1. Is your agency leveraging or exploring any new technology to facilitate efficiency in its FOIA administration that you have not previously reported? If so, please describe the type of technology.

Yes. DOC leverages and explores new technology to facilitate overall FOIA efficiency. The FOIA Office for the Office of the Secretary initiated program to pilot use of the Relativity eDiscovery Software to reduce FOIA backlogs and improve processing. This tool is being piloted for FOIA litigations. FOIA online enhancements and upgrades also leveraged to improve FOIA processing. The Department also uses the Kiteworks secure file sharing platform to transmit documents containing sensitive and/or personal privacy information.

Furthermore, ITA uses Microsoft OneDrive in their business units to compile responsive records. These records can then be seamlessly shared with the ITA FOIA staff and any other authorized users of the system. ITA conducts email searches using Microsoft Office 365 portal using its native search capability.

Additionally, USPTO uses the Clearwell e-discovery management tool for voluminous responsive records. USPTO also uses FOIAXpress Electronic Document Review for improved efficiency in de-duplication and keyword searches.

2. 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. DOC reviewed its FOIA website(s) during the reporting period to ensure it addressed the elements noted in the OIP guidance.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2019?

# Yes. DOC successfully posted all four quarterly reports for Fiscal Year 2019. The reports can be found at: <u>http://www.osec.doc.gov/opog/FOIA/FOIA\_reports\_quarterly.html</u>.

4. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2020.

The Department did post all quarterly reports on the Department of Commerce website and inadvertently did not place in FOIA.gov. The Department's plan for ensuring that such reporting is successful in Fiscal Year 2020 is to place the quarterly numbers on our Department's website and immediately after we will submit our quarterly numbers into FOIA.gov.

5. 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 2018 Annual FOIA Report and, if available, for your agency's Fiscal Year 2019 Annual FOIA Report.

The raw data used to compile DOC's Fiscal Year 2018 Annual Report can be found at: <a href="http://www.osec.doc.gov/opog/FOIA/FOIA">http://www.osec.doc.gov/opog/FOIA/FOIA</a> reports annual.html.

Upon clearance the DOC Fiscal Year 2019 Annual Report will be found at: <a href="http://www.osec.doc.gov/opog/FOIA/FOIA\_reports\_annual.html">http://www.osec.doc.gov/opog/FOIA/FOIA\_reports\_annual.html</a>.

6. Please describe:

- Best practices used in greater utilizing technology
- Any challenges your agency faces in this area

# The DOC FOIA Program and Information Law Division utilize its "Relativity" pilot program to enhance email search capabilities which exponentially improves

timeliness of document collection. It allows specified documents and data sets to be identified and extracted from custodian accounts using filters and search terms. The tool automates deduplication, email threading which decreases analyst review times.

Many of the DOC BOUs use Microsoft Excel spreadsheets along with the FOIAonline output for quarterly and yearly reporting. Examples of best practices identified by specific DOC BOUs include: the Information Law Division use of FOIAonline to streamline the appeals process; MBDA use of grants.gov to access grant files; ITA use of Tableau software to improve their FOIA processing and operations; and NOAA use of the Unified Messaging Service search capability to increase Bureau-wide searches, and extract responsive records across large groups of employees, regions, offices, and in some cases, across all of NOAA. This allows NOAA to carry out searches in cases where searches by individuals would be impractical or would result in onerous search times. NOAA also recently adopted a new application that allows for collaborative file-sharing spaces that can be accessed by external stakeholders with the use of revocable certificates. This allows for largescale data sharing of encrypted files for FOIA review and consultation purposes.

Challenges which DOC faces in this area as in others include resource/ budget constraints which are compounded by increased FOIA requests. Technology enhancements afford automation which improve efficiency.

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

# \*All the questions with numbers as data is from the DOC Draft Annual Report that is yet to be cleared by DOJ.

The Department of Justice has emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations.

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2019 Annual FOIA Report and, when applicable, your agency's 2018 Annual FOIA Report.

### A. Simple Track

Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

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

#### Yes. DOC utilizes a separate track for simple requests.

2. If your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2019?

# No. The overall average number of days to process simple requests was 52.12 days for DOC.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2019 that were placed in your simple track.

# The percentage of requests processed by DOC in Fiscal Year 2019 that were placed in a simple track was 46%.

4. If your agency does not track simple requests separately, was the average number of days to process all non-expedited requests twenty working days or fewer?

#### Not applicable.

#### **B. Backlogs**

Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2018 and Fiscal Year 2019 when completing this section of your Chief FOIA Officer Report.

#### **BACKLOGGED REQUESTS**

5. If your agency had a backlog of requests at the close of Fiscal Year 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?

No. The backlog of requests for DOC at the close of Fiscal Year 2019 was 721. This was an increase of 26% as compared with the backlog reported at the end of Fiscal Year 2018 which was 572.

6. If not, did your agency process more requests during Fiscal Year 2019 than it did during Fiscal Year 2018?

# Yes. The number of requests processed in Fiscal Year 2019 was 2017 and in Fiscal Year 2018 was 2,003.

7. If your agency's request backlog increased during Fiscal Year 2019, 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 requests.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons please briefly describe or provide examples when possible.

The DOC FOIA backlog increased during Fiscal Year 2019. Causes and contributing factors experienced: a) an increase in the number of incoming requests, b) a loss of staff, c) the government shutdown in January 2019, and d) and increase in the complexity of the requests received. Many of the requests were for "any and all" records, large timeframes, pages of search terms and a vast number of employees were included in individual requests.

8. 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 2019. If your agency has no request backlog, please answer with "N/A"

The percentage of requests that make up the backlog out of the total number of requests received by DOC in Fiscal Year 2019 is 30%.

#### **BACKLOGGED APPEALS**

9. If your agency had a backlog of appeals at the close of Fiscal Year 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?

No. The backlog had an increase in Fiscal Year 2019 compared to Fiscal Year 2018. The backlog at the end of Fiscal Year 2018 was 82 appeals while the backlog at the end of Fiscal Year 2019 was 85 appeals. This represents a 4% increase in the number of backlogged appeals at the end of Fiscal Year 2019.

10. If not, did your agency process more appeals during Fiscal Year 2019 than it did during Fiscal Year 2018?

# Yes. The DOC processed 68 appeals in Fiscal Year 2019 compared to 66 appeals in Fiscal Year 2018, which is a 3% increase in the number of processed appeals.

11. If your agency's appeal backlog increased during Fiscal Year 2019, 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.
- Any other reasons please briefly describe or provide examples when possible.

The following factors all contributed to the increase in the DOC backlog: a) An increase in the amount of FOIA litigation, and the resulting staff time spent on the litigation as compared to the FOIA appeals; b) the Government shutdown; and c) the loss of the administrative staff member, resulting in attorneys and FOIA professionals spending their time on the administrative aspects of the FOIA appeals instead of on substantive review.

12. 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 2019. If your agency did not receive any appeals in Fiscal Year 2019 and/or has no appeal backlog, please answer with "N/A."

Appeals that make up the backlog out of the total number of appeals received by DOC received in Fiscal Year 2019 is 130.8%.

### C. Backlog Reduction Plans

13. In the 2019 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2018 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 2019?

In Fiscal Year 2018, DOC had a backlog of 572 so the agency was not required to provide and implement a backlog reduction plan. In Fiscal Year 2019, DOC backlog is 721, which is a 26% increase from Fiscal Year 2018.

DOC has had an increase in backlog since 2017, therefore DOC is making strides to implement changes to reduce the backlog. We are utilizing contract staff. We are hiring competent and experienced FOIA contract staff. BOU's have utilized law students. In addition, we need staff to focus full time on review. DOC FOIA Office has implemented a pilot program with the use of the eDiscovery tool, Relativity with hopes to roll out to the BOU's. Relativity has brought us deduplication and e-mail threading. We have found that these capabilities are tremendously decreasing the volume of documents to be reviewed. This decrease in review time leads us to faster closure of FOIA requests.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2019, what is your agency's plan to reduce this backlog during Fiscal Year 2020?

#### Not applicable.

### D. Status of Oldest Requests, Appeals, and Consultations

Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2018 and Fiscal Year 2019 when completing this section of your Chief FOIA Officer Report.

#### TEN OLDEST REQUESTS

15. In Fiscal Year 2019, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

# No. DOC did not close the ten oldest requests that were reported pending in its Fiscal Year 2018 Annual FOIA Report.

16. 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 2018 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

# Two of DOC's ten oldest requests, as listed in Section VII.E of its Fiscal Year 2018 Annual FOIA Report, were closed in FY 2019.

17. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.?

**BEA** is assigning temporary resources to assist with case management, review and processing, which allows for FOIA Officers and other analyst to close requests.

BIS has set the oldest requests as priority and continued working with the requesters for the possibilities of narrowing the request scopes

Census hired two more staff to help process requests, Also, the Chief FOIA Officer assisted the FOIA staff redact highly complex cases.

ITA developed a follow-up correspondence template that is used to reach out to and communicate with the various ITA business units that have overdue requests and referrals. ITA also developed a Business Unit report to detail current statuses to respective Business Units, as well as a summary dashboard to brief ITA leadership on FOIA requests and the current backlog and litigation.

NIST will continue to conduct regular meetings among the FOIA Officer and FOIA staff to discuss program inefficiencies and remediations. FOIA staff often team up for large and complex requests. NIST conducts quarterly reports to gauge status of oldest requests as well as other aspects of the FOIA program.

NOAA was the first Bureau to participate in the DOC FOIA Compliance Review Boards (CRBs). These CRBs are an opportunity for the Bureaus to report on pending request

processing times, and to identify requests that have become backlogged or require immediate attention.

NTIA has established a goal to provide requesters interim responses every 30 days. This keeps the requester apprised of the progress of their case and regularly provides responsive records. In this way, the requests are consistently being processed and closed out. NTIA also hires legal interns during the school semesters and summers, who help to process the larger FOIA requests.

OIG routinely monitors the status of open requests throughout the FOIA search, review, and productions process to ensure that all cases are responded to as expeditiously as possible.

PTO re-distributed workloads and utilized the Electronic Document Review (EDR) addition to FOIAXpress which enables PTO to accelerate the FOIA document review process. Accelerating the FOIA document review allows PTO users to search, quickly filter, performs de-duplication and sorts documents to identify responsive records in large volumes of the e-mail, e-mail attachments and e-mail files. The EDR enables PTO users to quickly filter, deduplicate, rank and sort records and exports the results of the searches for disclosure review and redaction.

The IOS is utilizing the e-discovery tool Relativity allowing IOS to search, quickly filter, de-duplicate, sort e-mail documents identifying large volumes of responsive e-mail, e-mail attachments and e-mail files. Relativity exports the results of e-mail searches for disclosure review. Relativity allows for the redacting to be done and saved for future searches.

### TEN OLDEST APPEALS

18. In Fiscal Year 2019, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

# No. DOC did not close any of the ten oldest appeals reported pending in the Fiscal Year 2018 Annual FOIA Report.

19. 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 2018 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

# No, the Information Law Division did not close any of ten oldest appeals that were reported pending in the Fiscal Year 2018 Annual FOIA report. The Division was unable to complete

the remaining appeals because of the volume of responsive records and increased litigation received.

20. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

At the end of Fiscal Year 2019, the Office of General Counsel reorganized the Information Law and General Litigation Divisions to transfer responsibility for FOIA Litigation from Information Law to General Litigation. As a result, the remaining Information Law Division staff is focused on FOIA appeals and reducing the backlog.

### TEN OLDEST CONSULTATIONS

21. In Fiscal Year 2019, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

# NO. DOC did not close the ten oldest consultations that were reported pending in its Fiscal Year 2018 Annual Report.

22. 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 2018 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

DOC did not close any of the ten oldest consultations by the end of the fiscal year, as listed in Section XII.C of its Fiscal Year 2018 Annual Report.

### E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans

23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2019.

For requests: The obstacles in closing the 10 oldest request included receipt of voluminous requests that required extensive searches and review or required consultations with multiple DOC BOU's and Federal Agencies.

For consultations: The main obstacle was staffing and resources. In addition, the consultations required disclosure reviews with multiple DOC BOU's.

For oldest appeal the biggest obstacle to closing the ten oldest appeals is a lack of resources, including the Division's prior focus on FOIA litigation (see #20).

24. If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

#### Not applicable.

25. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2020.

For requests: To ensure appropriate priority is given to the ten oldest requests, DOC FOIA leadership will communicate directly on a monthly basis with BOU FOIA officers to discuss their oldest backlogged requests, along with assisting with making concrete plans to close them. Additionally, the outstanding ten oldest requests will be reviewed during DOC FOIA Council meetings.

For consultations: DOC FOIA leadership will communicate directly on a monthly basis with BOU FOIA Officers to discuss their oldest backlogged consultations, along with assisting with make concrete plans to close them. Additionally, the outstanding ten oldest consultations will be reviewed during DOC FOIA Council meetings.

For appeals: Many of the oldest appeals are nearing completion and are awaiting review. We have a plan to focus resources on the oldest appeals and will continue to process them until completion is obtain.

### F. Success Stories

Out of all the activities undertaken by your agency since March 2019 to increase transparency and improve FOIA administration, please briefly describe here at least 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. As noted above, OIP will highlight these agency success stories during Sunshine Week. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

- BEA developed and distributed FOIA procedures and policies precisely for their bureau.
- The Census FOIA Office conducted outreach and training for over 250 staff and senior leaders on FOIA and the Privacy Act and the importance of transparency and open government. The FOIA staff ventured out to the regional offices and the Census Bureau Regional Census Centers to train staff all over the country. With the 2020 Census around the corner, the Census Bureau will embark on hiring over 500,000 temporary employees to conduct the Census. The Chief FOIA Officer felt it was important to visit the regions to make managers aware of how FOIA and the Privacy Act impacts employees and the public.
- ITA closed all 10 oldest requests that were pending at the beginning of FY 19. ITA processed 235 cases during the year and reduced the backlog by 59.2%. The staff developed and implemented a bi-monthly FOIA report and dashboard to detail the ITA FOIA workload by ITA business unit.
- NOAA has begun a FOIA Roundtable open discussions for FOIA Professionals, Privacy Professionals, Subject Matter Experts, IT Staff, and the General Counsel. The purpose of the Roundtable is intended to allow NOAA staff across different regions, offices, and areas of expertise an opportunity to discuss lessons learned in FOIA processing, recordkeeping, foreseeable harm, and exemption applicability. This has allowed each phase of the FOIA process to hand off better in the next step of processing. NOAA also ramped up its requester outreach initiatives, and scheduled a public forum with members of the requester community. NOAA invited members of the news media, University educators, NGOs, and other stakeholders who had previously submitted FOIA requests to come and discuss with NOAA/CIO leadership improvement areas where NOAA can advance its obligations of transparency while protecting exempt information. Although the forum was postponed due to the Government shutdown, NOAA will be rescheduling the forum to again host this collaborative outreach event.
- NTIA continues to find success in completing its largest FOIA cases through a focused effort by NTIA attorneys and staff and through employing student legal interns. NTIA attorneys oversee and mentor the student intern's work and FOIA legal and technical training, which provides invaluable legal experience to the student. While FOIA processing is only a part of the internship experience, the student intern, over the course of a semester, will process hundreds of FOIA documents as a valuable service to NTIA's FOIA program. This keeps NTIA's FOIA backlog at a minimum.
- Despite a large increase in FOIA litigation, and the staff time spent on this litigation, the Information Law Division processed 40% more appeals in Fiscal Year 2019 compared to Fiscal Year 2018 and ended Fiscal Year 2019 with only three more backlogged appeals than it had at the end of Fiscal Year 2018.

- During the reporting period, the OIG conducted bureau-wide FOIA training designed to convey participants' responsibilities and roles as federal employees with respect to FOIA implementation, particularly with respect to the efficiency, thoroughness, and productiveness of records searches.
- PTO has made special efforts to increase its oral and written communications with requesters and business units within the agency. PTO continues to expand its outreach to the Business Units within the USPTO.
- The greatest success this fiscal year for the Office of the Secretary is the implementation of the cloud-based e-discovery tool, Relativity. Leveraging relativity is allowing analysts to organize voluminous e-mail records, conduct comprehensive searches, filter searche, de-duplicate, deNIST and thread email. Analysts redactions of privileged information are saved and stored to use for future FOIA request responses. It allows for consistent search results of responsive records. The more adequate and timeliness for searches the less likely a litigation risk. This is a significant part in decreasing the backlog presently at the department. Relativity allows for analysts to remove irrelevant records while identifying content that is relevant. The department is leveraging relativity to conduct faster, more uniformed searches, more efficient reviews of records to quickly provide responses to our FOIA requesters and decrease our backlog. The plan of rolling out this tool to the department, would decrease the litigation risks for the entire Department, as well as decrease the Department's backlog.