

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

# Chief of Freedom of Information Act (FOIA) Officer's Report 2022



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## Section I: Steps Taken 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. *See* 5 U.S.C. § 552(j)(1) (2018). 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.

Kellie Cosgrove Riley, Director, Office of Privacy and Information Management (OPIM)

### B. FOIA Training

3. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. *See* 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

The FOIA Manager provided FOIA training to OPM senior leaders that consisted of an overview of FOIA, the FOIA structure at OPM, agency records subject to the FOIA, and best practices. OPIM FOIA staff provided training to the FOIA points of contact at several program offices; specifically: Exemption 6 training to Healthcare and Insurance, Exemption 5 and Exemption 6 to Merit System Accountability and Compliance, and FOIA procedural overview training to the Office of the Chief Information Officer.

In an effort to encourage participation in FOIA training, the FOIA Manager regularly shares with OPM's FOIA staff training opportunities offered by the Department of Justice, the American Society for Access Professionals, and other organizations. OPM will, generally, cover costs in an effort to encourage the use of FOIA training opportunities.

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

Yes.

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

The FOIA Manager attended the Department of Justice's Virtual Best Practices FOIA Administration training and the Virtual Privacy Considerations Workshop. One member of OPIM's FOIA staff attended DOJ's Virtual Exemption 4 training.

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

Sixty-seven percent of OPM's FOIA professionals have attended substantive FOIA training.

7. OIP has [directed agencies](#) to "take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year." If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

The FOIA Manager will share available training opportunities with the FOIA professionals, provide periodic reminders, and encourage participation in at least one substantive training opportunity.

8. Did the personnel at your agency who have FOIA responsibilities attend training in federal records management during this reporting period?

The FOIA Manager attended records management training as a new OPM employee in April 2021. No additional training in records management was attended by OPM personnel with FOIA responsibilities.

### C. Outreach

9. Did your FOIA professionals engage in any outreach or dialogue, outside of the standard request process, with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

OPM's FOIA professionals have not engaged in outreach or dialogue, outside of the standard request process, with the requester community or open government groups regarding OPM's administration of the FOIA.

### D. Other Initiatives

10. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe:

- how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and

The FOIA Manager provides ad hoc training or briefings to non-FOIA staff based on need or interest. In May 2021, the FOIA Manager provided new senior leaders training that consisted of an overview of FOIA, the FOIA structure at OPM, agency records subject to the FOIA, and best practices. Office heads are provided weekly reports of new FOIA requests received. OPIM is also planning to provide office heads with monthly reports of pending FOIA and Privacy Act requests by program in Fiscal Year 2022.

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The Chief FOIA Officer champions FOIA as often as practicable and has met with the OPM Acting Director, the new appointed Director, the new OPM Chief of Staff, and other office heads to highlight the importance of Privacy, FOIA, and Records Management.

- if senior leaders at your agency received a briefing on your agency's FOIA resources, obligations and expectations during the FOIA process?

Yes. The FOIA Manager provided new senior leaders training that consisted of an overview of FOIA, the FOIA structure at OPM, agency records subject to the FOIA, and best practices.

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

1. For Fiscal Year 2021, 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 2021 Annual FOIA Report.

Not applicable, per Section VIII. A. of the FY 2021 Annual FOIA Report, OPM did not track requests for expedited processing.

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2021 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Not applicable.

3. The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within 180 days. In 2016, OIP issued Guidance for Agency FOIA Regulations and the accompanying Template for Agency FOIA Regulations to assist agencies in updating their regulations in accordance with the statute. Has your agency updated its FOIA regulations in accordance with the FOIA Improvement Act of 2016? If not, what is your agency's plan to update your regulations?

No, OPM has not yet updated its regulations. OPM plans to update its FOIA regulations in Fiscal Year 2022.

4. Standard Operating Procedures (SOPs) generally document your agency's internal processes for administering the FOIA beyond your FOIA regulations and FOIA Reference Guide. As noted in OIP's [guidance](#), having SOPs can improve the consistency and quality of an agency's FOIA process. SOPs can also serve as a significant resource for incoming FOIA professionals and a way to preserve much of the agency's institutional knowledge on administering the FOIA from how to handle requests from start-to-finish, to identifying and making proactive disclosures, to maintaining a FOIA website. Does your agency have up-to-date internal SOPs for your FOIA administration?

No, OPM does not have up-to-date internal SOPs for FOIA administration. OPM plans to create FOIA SOPs in Fiscal Year 2022.

5. If not, please provide a timeline for when your agency plans to develop or update its SOPs.

OPM plans to develop internal SOPs for FOIA administration in Fiscal Year 2022.

6. Has your agency established alternative means of access to first-party requested records outside of the FOIA process?

Yes. Although OPM has historically processed first-party requests for access to personnel records and retirement records within its FOIA procedures, this past year OPM determined that it was most appropriate to process and count them outside of the agency's FOIA system. See response to question 8 of this section.

7. If yes, please provide examples. If no, please explain if such opportunities exist at your agency and whether there are any challenges in establishing alternative means of access.

OPM determined that individual access requests routinely received by the Retirement Services program office's Retirement Operations Center (ROC) that are directly received, processed, and answered by ROC staff can be properly handled as a customer service Privacy Act response directly by the ROC outside of the FOIA process.

8. Did your agency conduct a self-assessment of its FOIA administration during the reporting period? If so, please describe the self-assessment methods used, such as analyzing Annual Report or raw data, using active workflows and track management, reviewing and updating processing procedures, etc. In addition, please specifically highlight any data analysis methods or technologies used to assess your agency's FOIA program.

OPM determined that there are areas of FOIA administration that can be improved with a new FOIA case management system to replace the outdated legacy system currently in place. In September 2021, OPM procured FOIAXpress to serve as OPM's new FOIA case management system. OPM anticipates rolling out FOIAXpress in Quarter 2 of Fiscal Year 2022. FOIAXpress will increase efficiency and effectiveness in FOIA administration by providing technical solutions for tracking, workflow management, and reporting.

OPM assessed the historical treatment of individual access requests routinely received by the Retirement Services program office's Retirement Operations Center (ROC) as FOIA requests. These requests are generally access requests under the Privacy Act, and are directly received, processed, and answered by ROC staff. Upon assessing the nature of the requests, the information at issue, and the procedures in place from intake to final response, OPM determined that such inquiries can be properly handled as a customer service Privacy Act response directly by the ROC outside of the FOIA process. We made the corresponding change of eliminating the numbers from our reported FOIA processing figures. Removing these requests from the FOIA process has, predictably, resulted in a significant change downward in the numbers for the data reported in the Fiscal Year 2021 Annual Report, which now more accurately represent the state of FOIA administration at OPM.

9. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2021 (please provide a total number or an estimate of the number).

OPM's FOIA Public Liaison has been contacted by requesters seeking assistance an estimated 30 times during Fiscal Year 2021.

10. Has your agency reviewed its FOIA-related staffing capabilities to identify resources needed to respond to current and anticipated FOIA demands?

Yes.

11. Optional -- Please describe:

- Best practices used to ensure that your FOIA system operates efficiently and effectively
- Any challenges your agency faces in this area.

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

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

OPM does not currently have a standardized procedure for identifying, tracking, and posting (a)(2) proactive disclosures.

2. Provide examples of any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

In Fiscal Year 2021, OPM posted 573 electronic documents on its website, OPM.gov. Links to the posted material is available through OPM's "Document Count" tool located at <https://www.opm.gov/utilities/document-count/>. OPM has not posted records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D).

3. Does your agency disseminate common types of material outside of FOIA, including in online databases where the public may access them? If yes, please provide examples and, if applicable, statutory authority.

Yes. OPM program offices disseminate material on specific topics outside of FOIA that the public may access at the relevant sections of OPM's website. Links to the posted material is available through OPM's "Document Count" tool located at <https://www.opm.gov/utilities/document-count/>.

4. 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?

Not at this time.

5. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

Not applicable.

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

No.

Optional -- Please describe:

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

## Section IV: Steps Taken to Greater Utilize Technology

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

Yes. The FOIA Manager and the Director of OPIM reviewed OPM's FOIA-related technological capabilities and identified the need to replace the legacy FOIA case management with a more robust solution in order to respond to current and anticipated FOIA demands.

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program.

In September 2021, OPM procured FOIAXpress to replace the legacy case management system. OPM also procured the Public Access Link (PAL) application for FOIAXpress, which offers an online portal for submitting FOIA requests that are directly logged to FOIAXpress. FOIAXpress and PAL are expected to be rolled out during Quarter 2 of Fiscal Year 2022.

3. 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.

4. Did all four of your agency's quarterly reports for Fiscal Year 2021 appear on your agency's website **and** on FOIA.gov?

No.



5. 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 2022.

The quarterly reports appear on FOIA.gov, but have not been posted to OPM's website. OPM is working with the Office of the Chief Information Officer to post the quarterly reports in FY 2022.

6. 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 2020 Annual FOIA Report and, if available, for your agency's Fiscal Year 2021 Annual FOIA Report.

OPM has not posted the raw statistical data used to compile its Annual FOIA Reports to OPM's FOIA website.

7. Optional -- Please describe:

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

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

### A. Simple Track

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

Yes.

2. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2021?

No.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2021 that were placed in your simple track.

7.6 percent

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

### BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2021, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2020?

Yes.

6. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2021 than it did during Fiscal Year 2020?

Not applicable.

7. If your agency's request backlog increased during Fiscal Year 2021, 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.
- Impact of COVID-19 and workplace and safety precautions
- Any other reasons – please briefly describe or provide examples when possible.

Not applicable.

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 2021.

29.7 percent

### BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2021, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2020?

No.

10. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2021 than it did during Fiscal Year 2020?

No.

11. If your agency's appeal backlog increased during Fiscal Year 2021, 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.
- Impact of COVID-19 and workplace and safety precautions.
- Any other reasons – please briefly describe or provide examples when possible.

A single backlogged appeal was inadvertently omitted from the FY 2020 Report, but captured in the FY2021 Report, thus increasing the number of reported backlogged items from "0" (in 2020) to "1" (in this year's report).

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 2021.

11.1 percent

### C. Backlog Reduction Plans

13. In the 2021 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2020 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 2021?

Not applicable.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2021, please explain your agency's plan to reduce this backlog during Fiscal Year 2022. In particular, please also detail how your agency developed and plans to execute your backlog reduction plans.

Not applicable.

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

#### TEN OLDEST REQUESTS

15. In Fiscal Year 2021, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2020 Annual FOIA Report?

No.

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 2020 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

OPM closed 9 of the 10 oldest requests in FY 2021.

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

The FOIA Manager reviewed all pending requests received prior to Fiscal Year 2020 and reached out to requesters to determine whether they are still interested in the information or whether it could be narrowed in scope to make processing more efficient for the program offices. The FOIA staff also reviewed pending requests to identify those seeking specific records that could be located by program offices without the need for narrowing or further clarification. The FOIA staff periodically sends reports on pending requests to program offices as a reminder that requests need to be processed in a timely manner and take proactive measures to contact program offices to encourage workflow progress and that completed requests are routed for closure in a timely manner.

#### TEN OLDEST APPEALS

18. In Fiscal Year 2021, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2020 Annual FOIA Report?

In its Fiscal Year 2020 Annual Report, OPM inadvertently failed to report one of the ten oldest appeals pending, which was received on January 17, 2020. Only one oldest appeal was reported. That appeal was closed.

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 VI.C.(5) of your Fiscal Year 2020 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

OPM had less than ten oldest appeals to close. In its Fiscal Year 2020 Annual Report, OPM inadvertently failed to report one of the ten oldest appeals pending, which was received on January 17, 2020. That appeal remains pending as the oldest.

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

The Office of General Counsel concentrated the FOIA appeals workload in the hands of fewer attorneys with more expertise to speed decision making.

#### TEN OLDEST CONSULTATIONS

21. In Fiscal Year 2021, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2020 Annual FOIA Report?

OPM had no consultations reported pending in the Fiscal Year 2020 Annual FOIA 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 2020 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Not applicable.

#### **E. Additional Information on Ten Oldest**

23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2020.

Obstacles in closing OPM's ten oldest requests included employee turnover in program areas without proper administrative documentation on search and review efforts, and challenges to related searches given the broad scope of the requests.

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 2022.

FOIA staff will proactively communicate with the requesters and program offices to coordinate any necessary clarification or narrowing; help facilitate, to the extent possible, the search and review efforts; and understand particular challenges and how those may be addressed.

#### **G. Success Stories**

Out of all the activities undertaken by your agency since March 2021 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.

- In April 2021, OPM hired a FOIA Manager to lead the agency's FOIA program after the position was vacant for the first half of Fiscal Year 2021.
- In September 2021, OPM procured the FOIAXpress and Public Access Link (PAL) applications to increase the efficiency and effectiveness of FOIA case tracking, management, and reporting.

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- OPM removed from the FOIA process and reporting first person access requests made pursuant to the Privacy Act that are routinely submitted in large numbers to the Retirement Operations Center (ROC) and which are properly handled as initial Privacy Act responses by customer service directly by ROC staff. This has decreased the administrative burden on both OPM's FOIA program and ROC and led to reporting that more accurately represents the status of FOIA administration at OPM.



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