



To fulfill President Lincoln's promise "To care for him who shall have borne the battle, and for his widow, and his orphan" by serving and honoring the men and women who are America's Veterans.

**Chief Freedom of Information Act Officer Report
March 2019**

**James Paul Gfrerer
Assistant Secretary for Information & Technology
and Chief FOIA Officer**

Section 1: 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 least at the Assistant Secretary or equivalent level. Is your agency's Chief FOIA Officer at or above this level?*

- **Yes**

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

- **James P. Gfrerer, Assistant Secretary for Information & Technology and Chief Information Officer**

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, VA FOIA professionals and other personnel with FOIA duties and responsibilities attended or completed FOIA training presented by DOJ, the VA OGC Information Law Group, AINS (FOIAXpress), the Graduate School, Veterans Affairs, Talent Management Systems on line FOIA classes and the American Society of Access Professionals (ASAP) National Training Conference.**
- **In addition, VHA conducts a monthly VHA FOIA Officer conferences call and has held several trainings for new field FOIA Officers**

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

- **Topics included FOIAXpress software including tracking, redacting, and de-duping; FOIA best practices including VHA FOIA policy; responsibilities of VA non-FOIA professionals to provide responsive records; consequences (including litigation, attorney fees, and judicial fines) of not complying with FOIA requests; FOIA Exemptions; the FOIA Improvement Act of 2016; new FOIA developments; and recent FOIA litigation cases.**

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.*

- **Approximately 86% of our FOIA staff attended or completed some form of FOIA training.**

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.*

- **VA Senior Leadership implemented FOIA-related performance standards in employee work plans for employees who have a role in administering the FOIA.**

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. Our Agency FOIA and Privacy personnel manned a pavilion at the National Association of the United States Army's (AUSA) Annual Convention which was held at the Washington Convention Center on 8 – 10 October 2018. The FOIA and Privacy professionals provided a wealth of FOIA and Privacy information to a diverse group of attendees who were civilians, industry representatives, active duty and retired military, federal employees and veterans.**

D. Other Initiatives

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

- **Veterans Health Administration (VHA) Field FOIA Officers provide training to staff on FOIA with respect to their responsibilities. FOIA training is also incorporated into the annual privacy training required for employees.**
- **Agency personnel are provided a FOIA overview during the on-boarding process within VA. There is also a quarterly live podcast conducted on various topics which includes FOIA that highlights the employees of their obligation to protect Agency records and information and to refer a request for records to their respective FOIA officer within their Administrations for processing.**
- *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.*
- **Our Agency fully adheres to the principles of the FOIA Improvement Act of 2016 and ensures that we disclose as much as is permissible under the act. Also, for each considered redaction, our FOIA personnel are encouraged to consider whether there is a foreseeable harm in releasing the information and if there is no harm, release the information.**

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 describes your agency's efforts in this area.

1. For Fiscal Year 2018, 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 2018 Annual FOIA Report.

- **13.3 days**

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.

- **Our Agency will continue to make improvements to processes' and procedures to minimize the number of days to adjudicate requests for expedited processing. We will provide internal training and detailed written guidance specifically on this topic.**

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.*

- **The VHA FOIA program is evaluated by Privacy Compliance Assurance (PCA), a component of the VHA Information Access and Privacy Office. PCA conducts an independent review of the VHA FOIA program by auditing all facilities on a 3-year cycle. PCA evaluates a VHA FOIA program for compliance with the FOIA and VHA/VA FOIA policies. Results are trended and provided to facility and VHA Central Office Senior leadership. PCA also provides results to the VHA FOIA Office to incorporate into the training program. PCA conducts on-site and virtual audits.**
- **In addition, FOIA will be included in the Privacy and Records Assessment Division assessment process. Which includes an assessment of FOIA practices and processes of the FOIA offices.**

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 2018 (please provide a total number or an estimate of the number).*

- **Our Agency had approximately 179 FOIA Public Liaison contacts/inquiries.**

5. *Please describe the best practices used to ensure that your FOIA system operates efficiently and effectively, such as improving search processes, eliminating redundancy, etc. and any challenges your agency faces in this area, please describe them here.*

- **VHA FOIA Office published an administration level policy on FOIA, VHA Directive 1935, and also developed a FOIA Newcomers Guide and Fact Sheet to assist field FOIA Officers in processing FOIA requests. Our Agency has also established an eDiscovery Enterprise Product Support Team specifically for the purpose of conducting FOIA searches of VA's electronic media storage systems which streamlines our old process of requesting electronic data from many different entities.**
- **The VA Central FOIA Offices has also purchased Electronic Document Review (EDR) licenses via the FOIA tracking system for the use by Agency FOIA offices. The EDR will provide additional tools for the processing of large volumes of responsive records, EDR will also de-duplicate records providing the ability to process voluminous records faster.**

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 links to the posted material

- **Our Agency has proactively disclosed a variety of information for public consumption at the following links:**
- **VA FOIA Library** https://www.oprm.va.gov/foia/FOIA_library.aspx
- **Veterans Benefits Administration (VBA) Performance**
<http://www.vba.va.gov/reports/aspiremap.asp>
- **Veterans Population Data**
http://www.va.gov/vetdata/Veteran_Population.asp
- **Global War on Terror (GWOT) / Gulf War Veterans Information System (GWVIS)** <http://www.va.gov/VETDATA/>
- **Gross Distribution of Expenditures (GDX)**
<http://www.va.gov/VETDATA/Expenditures.asp>
- [Senior Leadership Emails/Travel](#)
- [THIRD PARTY LAND USES](#)
- [Agent Orange](#)

2. Please describe how your agency identifies records that have been requested and released three or more times (and therefore required to be proactively disclosed pursuant to 5 U.S.C. § 552(a)(2)(D)).

- **Our Agency FOIA personnel are instructed to always conduct an FX query of all incoming substantial interest requests to determine if the information has been requested and released before.**

3. 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, we also support the federal open data initiative by proactively posting VA FOIA information on data.gov**

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

- **N/A**

5. Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.

- **Our Agency FOIA offices takes inventory on a regular basis of FOIA requests and especially media requests that may generate multiple requests for the same or similar information and proactively post on the FOIA library for public awareness.**
- **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 technology to facilitate efficiency in conducting searches, including email searches? If so, please describe the type of technology used. If not, please explain why and please describe the typical search process instead.

- **Our Agency continues to utilize eDiscovery and Clearwell for conducting electronic searches and processing voluminous documents for complex requests. In addition, VA has also purchased licenses through AINS to allow FOIA personnel to utilize the Electronic Document Review tool in FOIAXpress, to conduct electronic searches and processing voluminous documents for complex requests.**
- *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**

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2018?

- **Yes** https://www.oprm.va.gov/foia/foia_reports.aspx

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 2019

- **N/A**

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 2017 Annual FOIA Report and, if available, for your agency's Fiscal Year 2018 Annual FOIA Report.

- https://www.oprm.va.gov/foia/foia_reports.aspx

6. Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

- **Our Agency continues to use existing technology such as FOIAXpress, Clearwell, and Adobe Acrobat for all aspects of FOIA processing**

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

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 2018 Annual FOIA Report and, when applicable, your agency's 2017 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**

2. If so, for your agency overall in Fiscal Year 2018, was the average number of days to process simple requests twenty working days or fewer?

- **Yes, our average was 17.6 days.**

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2018 that were placed in your simple track.

- **76%**

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?

- **N/A**

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 2016 and Fiscal Year 2017 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 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

- **No**

6. If not, did your agency process more requests during Fiscal Year 2018 than it did in Fiscal Year 2017?

- **Yes**

7. If your agency's request backlog increased during Fiscal Year 2018, 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. **Yes***
- *A loss of staff. **Yes***
- *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. **Complex email searches of Senior Officials' accounts; complex medical studies, investigations, and complex contracts and supporting documents for significant VA automated systems***

- *Any other reasons – please briefly describe or provide examples when possible. **N/A***

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 2018. If your agency has no request backlog, please answer with "N/A."*

- **20%**

BACKLOGGED APPEALS

9. *If your agency had a backlog of appeals at the close of Fiscal Year 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?*

- **No**

10. *If not, did your agency process more appeals during Fiscal Year 2018 than it did during Fiscal Year 2017?*

- **Yes**

11. *If your agency's appeal backlog increased during Fiscal Year 2018, 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. **Yes***
- *A loss of staff. **Yes***
- *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. **Complex email searches of Senior Officials' accounts; complex medical studies, investigations, and complex contracts and supporting documents for significant VA automated systems***
- *Any other reasons – please briefly describe or provide examples when possible. **N/A***

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 2018. If your agency did not receive any appeals in Fiscal Year 2018 and/or has no appeal backlog, please answer with "N/A."*

- **25%**

C. Backlog Reduction Plans

13. *In the 2018 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2016 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 2018?*

- **Yes**

14. *If your agency had a backlog of more than 1,000 requests in Fiscal Year 2018, what is your agency's plan to reduce this backlog during Fiscal Year 2019?*

- **Our Agency is in the process of hiring FOIA contractor support to work specifically on backlog support and FOIA litigation.**

D. Status of Ten 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 2016 and Fiscal Year 2017 when completing this section of your Chief FOIA Officer Report.

TEN OLDEST REQUESTS

15. In Fiscal Year 2018, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2017 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 2017 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

- **Five**

17. Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?

- **None**

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

- **Our Agency is in the process of hiring additional personnel throughout VA.**

TEN OLDEST APPEALS

19. In Fiscal Year 2018, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

- **Yes**

20. 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 2017 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

- **N/A**

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

- **N/A**

TEN OLDEST CONSULTATIONS

22. In Fiscal Year 2018, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

- **No**

23. 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 2017 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

- **One**

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

24. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2018.

- **FOIA is a collateral duty for many VA central office and field FOIA Officers in which FOIA duties compete with other assigned employee primary responsibilities. This is an issue we are working to rectify.**

25. 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.

- **N/A**

26. 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 2018.

- **Our Agency is in the process of hiring additional FOIA contractor support to work specifically on backlogs and FOIA litigation.**

F. Success Stories

Out of all the activities undertaken by your agency since March 2018 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.

- **This Fiscal Year our Agency saw a significant increase in the number of requests we received, and the level of complexity of these requests also increased, requiring extensive searches with the probability of a very high volume of responsive records. To mitigate this increase and the many labor-intensive man-hours to keep up with the processing workload and continue working to decrease the backlog, we purchased a large block Electronic Document Review (EDR) licenses for FOIAXpress. The licenses were strategically distributed to administration offices and divisions where the need was greatest; and having the EDR technology has proven very effective in speeding up the discovery to search, sort and identify responsive records in large volumes of emails, attachments and other documents. Now our FOIA personnel have**

the ability to quickly filter, deduplicate, rank and sort documents for redaction and processing all within the FOIAXpress system.