Chief FOIA Officer Report

Central Intelligence Agency

March 11, 2013

I. **Steps Taken to Apply the Presumption of Openness**

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.

1. **Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?** During this past year, new public access professionals received on-the-job training and attended other external training opportunities. All public access professionals received refresher training in topics related to the FOIA and other public programs such as the Privacy Act, as well as specific training in information review and release topics.

   Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice? During this time frame, public access professionals attended training opportunities provided by the Department of Justice as well as other related conferences such as the American Society of Access Professionals (ASAP).

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

2. **Did your agency make any discretionary releases of otherwise exempt information?** The CIA has worked diligently to release information to the public that no longer requires protection, including discretionary releases not mandated under FOIA.

   Under the CIA's Historical Review Program (HRP), three historically significant collections, along with publications, were released during the reporting period. In addition, the HRP created new publications with two previously released collections. The releases were based on criteria including historical significance, public interest, and the input of Agency

historians and the Historical Review Panel. The discretionary releases in this reporting period consisted of 3,335 unique documents and provided 48,651 pages of declassified material. This year, the Historical Review Program distributed 2,271,439 copies of these documents, accounting for 26,200,446 pages. For material released in previous years, we distributed (during this reporting period) 3,571,796 copies of declassified documents, accounting for 37,212,460 pages. These collections were provided to historians, scholars, and the public, through an active and highly visible outreach program designed to place the maximum amount of material into the public's hands. Copies of declassified documents were widely distributed through release events at universities and presidential libraries, through presentations at academic conferences, and through educational collaboration that resulted in the documents being placed directly into university classrooms. HRP also has an extensive program that makes the documents digitally available on CIA's public web site and through the Government Printing Office's Catalogue of Government Publications, as well as at each depository library – more than 1,200.

3. **What exemptions would have covered the information that was released as a matter of discretion?** Each released document would have been covered by a unique configuration of exemptions. Overall, across all of the released collections, the exemptions include the operational files exemption, file series exemption for automatic review, and FOIA exemptions b(1), b(3), b(4), and b(5).

4. **Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.** The CIA's Historical Review Program conducts an objective annual planning process each year to identify potential collections for discretionary release. This process involves Agency historians and members of the academic community to identify potential collections of historical significance. In addition, public interest in specific topics and issues, as measured by number of searches on the FOIA web site, number of requests from the public, and interest from professional and academic associations is considered. The program office then reviews and evaluates the potential collections of material. The documents are compared with officially released information previously declassified by all government agencies, and careful consideration is given to potential risks to national security that would arise from declassification, versus the benefits of disclosure. Based on this evaluation and the availability of resources, the Agency makes a determination on processing a collection for discretionary release.

Topics for this year's releases included:

An Underwater Ice Station Zebra – this release declassified a formerly top secret underwater intelligence operation to salvage a film capsule

containing critical imagery intelligence from a U.S. spy satellite, codenamed Hexagon, which crashed into the Pacific Ocean on reentry in 1971. The capsule recovery is only the second underwater intelligence mission declassified by the CIA, and the only time the Agency has released pictures taken on the ocean floor.

Intelligence, Policy, and Politics: The DCI, the White House, and Congress – The documents in this declassified release track the day-by-day evolution of a functioning, effective intelligence organization. This evolution was led by former DCIs: Admiral Sidney W. Souers, General Hoyt S. Vandenberg, Admiral Roscoe H. Hillenkoetter and General William Bedell Smith. Each man marked his tenure with his unique brand of leadership that provided his successor with the foundation needed for the next building block of the Central Intelligence Agency.

CIA Analysis of the Warsaw Pact Forces: The Importance of Clandestine Reporting – The declassified documents in this collection show how acquired clandestine information from various (including human) sources was used to assess Soviet policies, objectives and Warsaw Pact war planning abilities.

The Caesar, Polo, Esau Papers: Cold War Era Hard Target Analysis of Soviet and Chinese policy and Decision Making 1953 - 1973 – The purpose of the CAESAR project was to study all available information on the members of, and the events affecting, the Soviet leadership hierarchy. The vehicles used by the analysts were a series of so-called "working papers," which comprise this collection. The intended customers were other analysts and operations officers in the CIA along with other community agencies. Project CAESAR represented the DI's first all-source, in-depth research endeavor. In 1956, the research project POLO was instituted to study the Chinese Community hierarchy, and in 1959 ESAU was initiated to examine the Sino-Soviet relationship.

The Creation of the Intelligence Community: Founding Documents – These declassified documents show how the US intelligence requirements after World War II interacted with political, legal, and institutional forces leading to the overhaul of the US national security apparatus. These activities ushered the passage of the National Security Act of 1947, which created a national Security Council, a Secretary of Defense, a statutory Joint Chiefs of Staff, the Department of the Air Force… and a Central Intelligence Agency.

5. **Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.** In addition to the

discretionary releases highlighted above, the CIA continues to populate the "Best of CREST" section on its FOIA Electronic Reading Room. "CREST" stands for the CIA Records Search Tool. The CREST system, located at the National Archives and Records Administration (NARA, College Park, Maryland) is a tool that allows the public to search documents 25 years old or older declassified through the Executive Order "automatic declassification" program. About 11 million pages of declassified CIA records are available on CREST. The "Best of CREST" collection (currently 250,000 pages) is included in a complete CREST document index on the FOIA Electronic Reading Room site, and consists of PDF images for documents judged to be of particular interest to the public. In March 2013, CIA will release an additional 727,000 pages of material not mentioned elsewhere in this report, unrelated to FOIA, to the CREST system at NARA. Providing PDF images to the Reading Room allows the public access to these documents without having to visit the National Archives or request them via FOIA.

II. **Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests**

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

1. **Do FOIA professionals within your agency have sufficient IT support?** The FOIA program office involves IT support in every aspect of the FOIA/PA process and has partnered with it to further advance the common goal to use technology to improve responsiveness. IT support personnel are located within close proximity of the FOIA program office, fostering greater interaction and support, and are proactive in their trouble-shooting efforts and in looking ahead for system enhancements. The FOIA program falls under the Chief Information Officer (CIO) at CIA.

2. **Do your FOIA professionals work with your Open Government team.** Our FOIA professionals interact almost daily with our Open Government Team since there is a significant overlap in staffing for the two functions.

3. **Has your agency assessed whether adequate staffing is being devoted to FOIA administration?** The organizational element that contains the FOIA program continues to monitor available resources and workflow in order to improve efficiency and productivity.

4. **Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as**

conducting self-assessments to find greater efficiencies, improving search processes, streamlining consultations, eliminating redundancy, etc. The organizational element that contains the FOIA program has established process improvement teams to identify and undertake strategic objectives geared toward gaining greater efficiencies.

III. <u>Steps Taken to Increase Proactive Disclosures</u>

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

1. **Provide examples of material that your agency has posted this past year.** The CIA provides new material to its public website and the Freedom of Information Act Electronic Reading Room through the year. Our public web site contains access to frequently requested records, special collections, a 25 Year Program Archive, as well as press releases, speeches, featured stories and other items of public interest. In addition to posting some documents frequently requested from closed FOIA cases, the eFOIA Reading Room website also provides public access to documents, when possible, released through the discretionary Historical Review Program (see Section I above for details) and other discretionary releases of high interest to the public. During 2012, CIA also released a collection of documents on the underwater recovery of film from a satellite intelligence mission, codenamed Hexagon, mentioned earlier in this report.

2. **Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities on the site, creating mobile applications, providing explanatory material, etc.?** Beginning in February 2013, the CIA has upgraded and enhanced its FOIA Electronic Reading Room. Additionally, the CIA's website has a "contact us" feature, that can be accessed via the FOIA Electronic Reading Room that provides a requester with the ability to provide feedback on the content of the site as well as the how the content is displayed. Additionally, the CIA holds semi-annual meetings with the Historical Review Panel—a group of outside academics—who propose topics of public interest, and provide feedback from the academic community. We carefully consider the

feedback and suggestions received throughout the year and incorporate them into our work planning processes.

3. **If so, provide examples of such improvements.** Improvements and changes to the FOIA Electronic Reading Room were mostly behind the scenes and allow for faster document searching, load times and the ability to upload larger collections of released documents. Search functionality has also been enhanced to allow searching across all document collections, within document collections, and with additional filtering options for better targeted results.

4. **Describe any other steps taken to increase proactive disclosures at your agency.** In 2012, with public interest continuing to increase and internal resources becoming increasingly more limited, our focus was more on strategically balancing existing resources with the ever-growing public interest. We integrate proactive disclosures within our current programs to the extent possible.

IV.   <u>**Steps Taken to Greater Utilize Technology**</u>

Electronic receipt of FOIA requests:

1. **Can FOIA requests be made electronically to your Agency?** CIA is pleased to announce that our most recent website upgrade, February 2013, included the functionality to allow requesters to submit FOIA requests online.

2. **If your agency is decentralized, can FOIA requests be made electronically to *all* components of your agency?** This question is not applicable because the CIA processes requests centrally.

Online tracking of FOIA requests:

3. **Can a FOIA requester track the status of his/her request electronically?** Not at this time.

4. **If so, describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.** The CIA does not have an online tracking system wherein a requester can check on the status of their request at this time.

5. **In particular, does your agency tracking system provide the requester with an estimated date of completion for his or her request?** The CIA does not have an online tracking system wherein a requester can check on the status of their request at this time. The CIA will provide an estimated date of completion, in writing, upon request.

6. **If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability?** This option is being considered as part of a business process improvement discussion.

Use of technology to facilitate processing of requests:

7. **Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?** Yes, as part of our business process improvement discussions.

8. **If so, describe the technological improvements being made.** CIA continues striving to improve our exiting system's functionality including improved search and the capability to handle additional document types. Additionally, there are ongoing discussions for the future review and release system that include technological advancements in searching for and processing documents for release to the public.

V. **Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs**

1. **Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests-Response Time for All Processed Requests," includes figures that show your agency's average response time for processing requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report your non-expedited requests.**

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

   b. **If so, for your agency overall, for Fiscal Year 2012, was the average number of days to process simple requests 20 working days**

or fewer? The average number of days was 32, but this is a poor representation of normal processing time since a very small number of simple cases are cross-referenced to a complex case. Thus, the median number of days to complete a request—12 days for FY2012—is a better performance measure.

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

2. **Sections XII.D.(2) and XII.E (2) of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report—Backlogged requests/Appeals," show the numbers of any backlog of pending requests from Fiscal Year 2012 as compared to Fiscal Year 2011.**

   a. **If your agency had a backlog at the close of FY 2012, did that backlog decrease as compared with FY 2011?** No.

   b. **If your agency had a backlog of administrative appeals in Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011?** No.

   c. **In Fiscal Year 2012, did your agency close the ten oldest requests that were pending at the end of Fiscal Year 2011?** No. However, CIA did close its second oldest case and is on track to close several others in Fiscal Year 2013.

   d. **In Fiscal Year 2012, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2011?** No. However, CIA is focusing heavily on its ten oldest administrative appeals for Fiscal Year 2013.

3. **If you answered "no" to any of the above questions, describe why that has occurred. In doing so, answer the following questions and then include any additional explanation:**

   Request Backlog:

   a. **Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?** Yes.

   b. **Was the lack of a reduction in the request backlog caused by a loss of staff?** No.

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

d.   **What other causes, if any, contributed to the lack of a decrease in the request backlog?** We've had increases in cases, significant increases in litigation, and increases in competing requests under EO MDR due to changes in law and policy that have changed the economics of making costly and complex requests (and which have greatly increased the time spent in litigation). An increase in FOIA, non-FOIA litigations, and other competing priorities means we must depend on the same staff resources to get work done.

Administrative Appeal Backlog:

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

b.   **Was the lack of a reduction in the appeal backlog caused by a loss of staff?** No.

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

d.   **What other causes, if any, contributed to the lack of a decrease in the appeal backlog?** Increases in cases, significant increases in litigation, and increases in competing requests under Executive Order 13526 that have changed the economics of making costly and complex requests (and which have greatly increased the time spent in litigation) have had a significant impact on our ability to aggressively reduce the backlog. An increase in FOIA, non-FOIA litigations, and other competing priorities means we must depend on the same staff resources to get work done.

4. **OIP has issued guidance encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information. If your agency had a backlog in Fiscal Year 2012, please provide an estimate of the number of cases in the backlog where a substantive, interim response was**

provided during the fiscal year, even though the request was not finally closed. During Fiscal Year 2012, the CIA provided an interim response/rolling release to approximately 27 FOIA cases.

Use of FOIA's Law Enforcement "Exclusions"

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

1. **Did your agency invoke a statutory exclusion during Fiscal Year 2011?** No.

2. **If so, what is the total number of times exclusions were invoked?** Not applicable.

Spotlight on Success

Out of all of the activities undertaken by your agency in the last year to increase transparency, describe here one success story that you would like to highlight as emblematic of your efforts.

CIA, unlike any other agency in the Intelligence Community, much less federal government, makes discretionary releases of historically significant documents available to the public, journalists, and academicians in a purposefully organized manner. CIA makes releases to the public through a variety of programs. CIA's Historical Review Program, for example, partners with a variety of public organizations and institutions to provide public release events at Presidential Libraries and at universities and other locations across the country. These organized release events, often covered by C-SPAN and Associated Press, provide in person access to the material, historians, and contemporary policy makers and analysts.

CIA continues to inform record numbers of citizens, demonstrating our commitment to the Open Government Initiative and its three goals of transparency, participation, and collaboration. As mentioned above, CIA is now accepting FOIA requests online. This change brings us in line with public expectations, and we are confident that it will benefit requesters. It is also another concrete example of CIA's commitment to the President's drive for increased governmental transparency, openness, and "electronic government."