



## 2019 CHIEF FOIA OFFICER REPORT



Photo of Shishaldin Volcano on Unimak Island by Kristine Sowl, U.S. Fish and Wildlife Service.

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## The Department of the Interior 2019 Chief FOIA Officer Report

### 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 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.*

Daniel Jorjani, Principal Deputy Solicitor, Exercising the Authority of the Solicitor.

#### 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 training attended or conducted and the topics covered.*

Department employees attended training sessions provided by the Department of Justice, including best practices sessions. Department employees also attended FOIA training and conferences provided by other entities.

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.*

At least 85%.

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? 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.*

Yes. The Department engages in ongoing outreach and dialogue with the requester community during the request/appeal process. The Department also regularly interacts with the requester community by participating in efforts related to the Department of Justice's National FOIA Portal and attending meetings of the Federal FOIA Advisory Committee and the Chief FOIA Officers Council. For the second year in a row, the Department FOIA policy staff also met with a representative of a 501(c)(3) organization that is a frequent FOIA requester, and their student interns, specifically to discuss their suggestions about areas where future FOIA improvements could occur. This year the focus of the meeting was particularly on improvements the Department could make to its FOIA tracking and case-management technology. The Department agrees that improvement in this area is necessary, as discussed more fully below, particularly in Section IV.

*D. Other Initiatives:*

*8. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In 2017, the Department publicized FOIA-related performance standards for employees that have any role in administering the FOIA, including non-FOIA professionals. Please also indicate whether your agency has considered including FOIA-related performance standards in employee work plans for employees who have any role in administering the FOIA.*

All of the Department's employees requiring network access must take annual Federal Information System Security Awareness Plus Privacy and Records Management Training, which discusses the FOIA. The OIP's briefing video and FOIA infographic is posted on the Department's FOIA Guidance webpage at <https://www.doi.gov/foia/news/guidance>. Additionally, the Department FOIA policy staff engages in ongoing conversations with non-FOIA professionals on FOIA matters. These conversations provide training and notice of FOIA matters. They also reinforce the importance of providing responsive records in a timely manner. This year we also established an internal working group of FOIA officers and staff to address FOIA training needs and challenges in the Department. Finally, as part of the improvements to the FOIA program discussed below in our Success Story, the Department intends to include FOIA-related performance standards in employee work plans for employees who have any role in administering the 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.*

The Department has focused on training to ensure that the Department's FOIA processors apply the presumption properly when responding to FOIA requests. For example, proactive disclosures and transparency are a reoccurring topic at the monthly FOIA Officer meetings led by the Department FOIA policy staff and

attended by the bureau FOIA Officers and members of the Office of the Solicitor (SOL).

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

*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.*

4 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.*

Not applicable.

*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.*

Yes. The Department regularly conduct self-assessments of the Department's FOIA program, by reviewing Annual Report data, conducting audits of each bureau's Electronic FOIA Tracking System entries at least bi-annually, and reviewing and updating processing procedures. During this reporting period, the Department's self-assessment of its FOIA program lead to a high-level emphasis on the importance of the FOIA program, reflected in a Secretary's Order (discussed below in our Success Story) and proposed updates to some of its foundational documents, including its regulations. Our self-assessment, and updates, are still in progress.

4. *The FOIA Improvement Act of 2016 requires additional notifications 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).*

We estimate requesters sought assistance from bureau FOIA Offices' FOIA Public Liaisons 115 times during FY 2018, although such requests for assistance are not always specifically framed as seeking assistance from the FOIA Public Liaisons in that capacity.

5. *Please describe the best practices used to ensure that your FOIA system operates efficiently and effectively and any challenges your agency faces in this area.*

In light of the unprecedented surge in FOIA requests and litigation (discussed below in Section V), the Department has determined changes to our regulations are necessary to best serve our customers and comply with the FOIA as efficiently, equitably, and completely as possible. These proposed changes were published in a notice of proposed rulemaking and the Department is currently reviewing the extensive public comments to understand requesters' many viewpoints on the proposed changes. Points of particular interest are proposed language incorporating the undue burden doctrine, notifying requesters that bureaus may impose monthly page limits on processing records to achieve equity among requesters, and moving from emailed requests to the submission of requests via electronic portals.

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

1. *Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.*

The Department proactively disclosed many types of materials this past reporting year. For example:

- The Bureau of Reclamation regularly issues news releases, news stories, speeches, Congressional testimony, fact sheets, leadership bios, and newsletters for funding opportunities, contracts awarded, studies

completed, staffing changes, and operations underway through its online newsroom: <https://www.usbr.gov/newsroom/>

- On August 15, 2018, the gulf-wide Lease Sale 251 was held in New Orleans, LA. The sale generated \$178,069,406 in high bids for 144 tracts covering 801,288 acres in federal waters of the Gulf of Mexico. A total of 29 companies participated in the lease sale, submitting \$202,667,923 in bids. It was broadcast livestream on the Internet to immediately deliver pertinent information to a broader audience. Sale statistics and the video of the sale are posted on the Bureau of Ocean Energy Management website. <https://www.boem.gov/Sale-251/>
- Bureau of Safety and Environmental Enforcement presented significant research about oil spill response during the 41st Annual Arctic and Marine Oil Spill Program Technical Seminar on Environmental Contamination and Response in Victoria, British Columbia, Canada. The research addresses a challenge in oil spill response that industry and the research community have identified as a priority. <https://www.bsee.gov/newsroom/latest-news/statements-and-releases/press-releases/bsee-research-could-improve-industrys>
- The Fish and Wildlife Service posted monthly project updates for the Mexican Wolf Experimental Population. <https://www.fws.gov/southwest/es/mexicanwolf/recoverydocuments.html>
- The National Park Service posted copies of more than 100,000 public comments received relating to proposed fee increases. <https://www.nps.gov/aboutus/foia/foia-frd.htm>
- U.S. Geological Survey mapping, imagery, and data sets are available at <https://nationalmap.gov>, which includes The National Map Downloader, [TNM Downloader](#), where, using the USTopo or historical topographic maps, members of the public can customize a map with various data such as hydrography, topography, structures, etc. These customized maps are downloadable at no charge.



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

The Department is working to add a new provision to its Departmental Manual Chapter on FOIA explicitly assigning responsibility for this requirement.

3. *Beyond posting new material, is your agency taking steps to make the posted information more usable to the public, especially to the community of individuals who regularly access your agency's website?*

Yes.

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

The Department's main FOIA website (<http://www.doi.gov/foia>) is updated throughout the year with new information and contains links to all of the bureau FOIA websites and FOIA Libraries to make them easy for the public to find, and all of the links (along with contact information) are frequently checked for outdated information and broken links and updated as needed.

- The Department's website contains a "Customer Comment Form" inviting feedback from visitors via email.
- A number of bureaus also regularly improve their websites. For example:
  - The Bureau of Land Management launched an entirely new format for its FOIA website and reorganized its content to be better indexed and more easily searchable.
  - The Office of the Secretary revised the structure of its FOIA website to make it more user-friendly.
  - The Office of Surface Mining Reclamation and Enforcement created a tiger team to revamp its FOIA website and facilitate more meaningful proactive disclosures.
  - The U.S. Geological Survey funded a position to manage the content of its FOIA website and worked with its Web Re-engineering Team to redo its FOIA website.

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

The importance of proactive disclosures is a reoccurring theme in formal and informal training given by (and to) Department employees, including at monthly FOIA Officer meetings. It is challenging making proactive disclosure when the FOIA staff (who would typically be making the proactive disclosures) are focusing on responding on increasing backlogs, requests, and litigation.

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

1. *Is your agency leveraging technology to facilitate efficiency in conducting searches, including searches for emails? If so, please describe the type of technology used. If not, please explain why and please describe the typical search process used instead*

Yes. The Department is currently exploring (and beginning to implement) ways to leverage and improve its technological efficiency in conducting searches. First, the Department is expanding the use of its eMail Enterprise Records and Document Management System (eERDMS) extracts to pull data from our email archive. We are currently expanding a pilot program utilized by several of our bureaus to make sure this expanded use occurs thoughtfully and effectively. Second, we are also beginning to utilize Axcelerate 5 (an industry standard review and redaction platform provided by OpenText/Recommind) and plan to expand it this year to additional bureaus. We are also moving towards replacing the FOIA/Document Management Unit Processing Application (a homegrown tool used to extract emails) with Google Takeout (a standard component that will more efficiently allow us to both extract emails and other types of records, such as calendars).

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 post all of the required quarterly FOIA reports for Fiscal Year 2018?*

Yes.

*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 is for ensuring that such reporting is successful in Fiscal Year 2019.*

Not applicable.

*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.doi.gov/foia/DOI-FOIA-Annual-Reports>

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

In addition to the review and redaction tools discussed above in this section, we are currently actively seeking to migrate from our homegrown, purely tracking-based Electronic FOIA Tracking System to a more modern case-management and tracking tool that is a shared service on the cloud. We expect this tool will greatly assist in our intake process (substantially decreasing the amount of time our processors spend on this step and decreasing errors that negatively impact requesters), facilitate proactive releases, streamline our internal tracking and

review, and allow requesters to search for materials other requester have already received (decreasing the need for repetitive requests). Our challenges include identifying the tool that will best benefit the Department and its requesters, funding the tool, training our employees on the use of the tool, and deploying the tool. We also have joined the Chief FOIA Officers Council Technology Subcommittee to ensure we are up to date on government-wide best practices and started an internal Departmental subcommittee on FOIA and technology.

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

### *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? If your agency uses a multi-track system beyond simple, complex, and expedited to process requests, please describe the tracks you use and how they promote efficiency.*

Yes. Our tracks are currently simple, normal, complex, and exceptional/voluminous (as discussed in more detail in [section 2.15](#) of our regulations). Processing requests generally first-in, first-out within these tracks promotes efficiency and benefits requesters and the Department. Requests that will take less time to process are not delayed by requests that will take a much longer time to process.

For example, speaking generally, if request #1 would take about a year to process, request #2 would take about 55 days to process, request #3 would take about 15

days to process, request #4 would take about 4 workdays to process, and request #5 is granted expedited processing, our regulations allow us to process the requests in order of 5, 4, 3, 2, 1. If we only had simple, complex, and expedited tracks, the requests would need to be processed in order of 5, 4, 1, 2, 3 (greatly delaying the response for requests 2 and 3, and not providing request 1 much quicker).

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 2018?*

Yes.

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

8.2%.

4. *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.

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.*

## **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 during 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 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.*

This year there was an extraordinary increase in the number of incoming requests for many of our bureaus. From Fiscal Year (FY) 2016 to FY 2018, incoming FOIA requests to the Department increased 30 percent (from 6,428 to over 8,350). Some bureaus and offices have been hit especially hard. The Office of the Secretary FOIA Office, for example, has received a 210 percent increase from FY 2016.

The Department's attempts to respond accurately, completely, and in a timely manner to every request have been further hindered by the dramatic increase in litigation, particularly over agency non-response to initial FOIA requests. For example, at the close of FY 2018 the Department had 129 active FOIA cases in litigation (39 in the Office of the Secretary alone) compared to just 6 cases in litigation in total at the close of FY 2015 and 30 cases in litigation in total at the end of FY 2016.

The Department processed over 6,900 requests in FY 2018, compared to 6,437 in FY 2016. Despite the increased production, the Department's backlog of requests without at

least a partial response has also increased. We have been affected by attrition of staff and an increase in the complexity of the requests received. Additionally, many of FOIA processors work on FOIA matters only as a collateral duty, which has the effect of FOIA work repeatedly being pushed to the bottom of the stack by other duties.

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.*

- *To calculate your agency's percentage, you must divide the number of backlogged requests reported in Section XII.A. of your Fiscal Year 2018 Annual FOIA Report by the number of requests received in Fiscal Year 2018, which can be found in Section V.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.*

38%

### ***BACKLOGGED APPEALS***

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

Yes.

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

Not applicable.

11. *If your agency appeal backlog increased during Fiscal Year 2018, please explain why and describe the causes that contributed to your agency not being able 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.*

Not applicable.

*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."*

- *To calculate your agency's percentage, you must divide the number of backlogged appeals reported in Section XII.A. of your Fiscal Year 2018 Annual FOIA Report by the number of appeals received in Fiscal Year 2018, which can be found in Section VI.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.*

179%

### *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 2017 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. As noted last year, we hired contractors and recruited detailees to form a limited-duration strike team to try to reduce this backlog. This effort was not sufficient for the Department to achieve backlog reduction in Fiscal Year 2018.

*14. If your agency had a backlog of more than 1000 requests in Fiscal Year 2018, what is your agency's plan to reduce this backlog during Fiscal Year 2019?*

The technological changes discussed above in this section, and the added advantages that come from things like deduplication (preliminary testing shows an approximately 30% reduction in duplicative records) are currently our primary focus on reducing the backlog. Additionally, we are working to streamline our FOIA regulations and are examining the Department's FOIA structure more generally, as discussed below in our Success Story, to improve efficiencies that will lead to backlog improvements.

*D. Status of Ten Oldest Requests, Appeals, and Consultations*

### ***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?*

Yes.

*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.*

Not applicable.

*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 of these requests were closed because they were withdrawn by the requester.

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

Each bureau was strongly encouraged to close their 10 oldest requests, even if those requests were not on the list of the Department's 10 oldest.

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

Not applicable.

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

Ongoing adjudication of open appeals.

### **TEN OLDEST CONSULTATIONS**

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

The Department only had one consultation pending as of the end of Fiscal Year 2017, which arrived on the last day of Fiscal Year 2017. This consultation was closed in Fiscal Year 2018.

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.*

Not applicable.

*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.*

Not applicable.

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.*

Not applicable.

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 2019.*

Not applicable.

## *F. Success Stories*

*Out of all the activities undertaken by your agency since March 2018 to increase transparency and improve FOIA administration, 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.*

The Department issued a [Secretary's Order](#) on the FOIA that underscores “[t]he Department is fully committed to an equitable FOIA program that ensures compliance with statutory requirements of transparency, accountability, and prompt production” and emphasize the responsibility of every employee to cooperate with FOIA staff throughout the Department. The Order also:

- Designates the Solicitor as the Chief FOIA Officer;
- Created the position of Deputy Chief FOIA Officer (DCFO) to oversee the Department's FOIA program;
- Established a reporting relationship for the Departmental FOIA Officer and Bureau FOIA officers with the DCFO; and
- Created a team to provide strategic direction for selected FOIA requests that impact Department-level interests.