2023

CHIEF FOIA OFFICER REPORT

U.S. DEPARTMENT OF THE INTERIOR

Contents

The Department of the Interior 2023 Chief FOIA Officer Report

Section I: FOIA Leadership and Applying the Presumption of Openness

A. Leadership Support for FOIA

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. See 5 U.S.C. § 552(j)(1) (2018). 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.*

   Robert T. Anderson, Solicitor.

3. *What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan.*

   The Department has incorporated FOIA into it core mission by establishing the Departmental FOIA Office (DFO) to provide Department-wide oversight, governance, and support to the FOIA request processing offices in the Department's component bureaus. The DFO's FY2023 strategic planning effort outlined key goals and objectives for FY 2023, including, but not limited to, developing a Department-wide backlog reduction plan, deploying an improved FOIA request tracking and case management system and an improved document review platform for FOIA processing, creating a central contracting vehicle the FOIA processing offices may easily access to obtain temporary contractor support, launching mandatory FOIA training for all employees, and expanding the scope of operational support provided by the DFO's FOIA Support Team to directly target and reduce backlogs.

B. Presumption of Openness

4. *The Attorney General's 2022 FOIA Guidelines provides that "agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions." Does your agency provide such confirmation in its response letters?*

   Yes, the Department has issued required language to ensure our FOIA processors provide this confirmation in our response letters.

5. *In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interested protected by a FOIA exemption. This is commonly referred to as a Glomar response. With respect to these responses, please answer the below questions:*

   a. *In addition to tracking the asserted exemption, does your agency specifically track whether a request involved a Glomar response?*

The Department's FOIA Handbook instructs FOIA processers in the Department's component bureaus, other than the Office of the Inspector General (OIG), to consult with the DFO before issuing a Glomar response. As a result, the DFO is able to manually track Glomar responses issued by the bureaus other than the OIG. The OIG also manually tracks Glomar responses. The combined numbers for the Department overall and our OIG are detailed below.

b. *If yes, please provide:*

   i. *the number of times your agency issued a full or partial Glomar response (separate full and partial if possible);*

- Full: 20 times
- Partial: 2 times

   ii. *the number of times a Glomar response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).*

- Exemption 5 – 2 times
- Exemption 6 – 5 times
- Exemption 7(C) – 22 times
- Exemption 7(E) – 3 times

c. *If your agency does not track the use of Glomar responses, what would your agency need to do to track in the future? If possible, please describe the resources and time involved.*

The Department is deploying an improved FOIA request tracking and case management system in FY2023 and will explore whether automated tracking for Glomar responses is possible as it configures and implements the new system.

6. *Optional -- 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 issued comprehensive guidance to FOIA processers to assist them in applying the FOIA's Foreseeable Harm requirement in an effort to ensure that FOIA processing determinations at the Department are made in favor of maximum responsible disclosure. The DFO also provides training regarding the Foreseeable Harm requirement in its "FOIA Fundamentals" course for new FOIA processers and its mandatory training for political appointees and staff discussed below.

Section II: Ensuring Fair and Effective FOIA Administration

A. FOIA Training

1. *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.*

In 2022, the DFO hired a Training Program Manager to design and implement a comprehensive FOIA training program for the Department. The Training Manager piloted a three-day "FOIA Fundamentals" course for new FOIA processers and provided training with the Department's FOIA professionals on perfecting FOIA requests. The Training Manager also collaborated with the Department's FOIA & Privacy Act Appeals Officer to provide an in-person comprehensive two-day course on FOIA processing to more than 40 agency FOIA Professionals. The FOIA Technology Program Manager also provided technical training to FOIA staff to enable them to more effectively utilize FOIA processing technology.

The DFO greatly appreciates DOJ OIP's development of the three FOIA e-Learning modules that were released in August 2022. These modules provide exceptional FOIA training that is specifically tailored to the needs of three classes of employees: All Federal Employees, Executives, and FOIA Professionals. The Department has deployed all three modules in our online training environment. Because DOJ OIP has equipped us with this valuable tool that instructs on basic FOIA principles, the DFO and Bureau FOIA Officers are able to better focus our efforts on training products more specifically tailored to the Department's FOIA operations.

2. *In addition to the training developed by the DFO and made available Department-wide, the Department's Bureau FOIA Officers provide training to FOIA professionals and non-FOIA personnel within their bureaus on a periodic basis and upon request from stakeholders. 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.

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

   Internally developed training included:

   - Virtual training on procedural requirements with a focus on intake;
   - Virtual training on managing cases in FOIAonline;
   - In-person, multi-day training seminars focusing on all aspects of the FOIA process (*i.e.*, FOIA start-to-finish training).

   External training attended by DOI FOIA professionals included:

   - DOJ-OIP – Virtual Introduction to the FOIA; Virtual Litigation Workshop; Virtual Exemption 1 and Exemption 7 Training; Virtual Exemption 4 and Exemption 5 Training; Virtual Privacy Considerations Training; Virtual Continuing FOIA Education;
   - American Society of Access Professionals (ASAP) National Training Conference;

- Public Employees for Environmental Responsibility (PEER) – Redact This! FOIA On Your Own Terms;
- University of North Carolina Center for Media Law & Policy – Fresh Thinking on Government Transparency virtual panel discussion;
- The Graduate School – Freedom of Information and Privacy Acts.

4. *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.*

   Approximately 88%.

5. *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.

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

   The DFO provides mandatory FOIA training to all incoming political appointees and staff to ensure they understand their legal obligations under the FOIA as well as the practical and logistical aspects of FOIA request processing. This training also describes the mission and functions of the DFO and underscores the Secretary's expectation that senior leaders make FOIA compliance a priority in their organizations.

   Additionally, in 2022 the Deputy Chief FOIA Officer provided a briefing to Senior Executives in the Office of the Solicitor outlining the legal standards governing overly broad and unduly burdensome FOIA requests. The briefing, which clarified that complex and voluminous FOIA requests cannot be categorically rejected as unreasonable, was designed to assist the Department's senior legal advisors to manage the expectations of their clients in the Department's program offices. The DFO plans to provide this briefing to other senior leaders in the Department in FY2023.

   Given the decentralized nature of DOI's FOIA operations, Bureau FOIA Officers play a key role in outreach to non-FOIA professionals. Bureau FOIA Officers reported providing training to non-FOIA professionals on the following topics:

   - General briefings on the FOIA process provided during New Employee Onboarding;
   - FOIA 101 training for non-FOIA professionals;
   - Expectations for searches;
   - The risks associated with untimely responses;

- The importance of proactive disclosure;
- The importance of subject-matter experts in the FOIA process;
- Record custodians' FOIA obligations;
- "Brown bag" sessions to familiarize program offices with the FOIA office/staff; and
- Briefings to bureau executives on the current status of the FOIA program.

B. *Outreach*

7. *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.*

   The Department currently has staff serving on the FOIA Advisory Committee and on the Chief FOIA Officers' Council (CFOC) Technology Committee, and the Committee on Cross-Agency Collaboration & Innovation.

8. *As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue, and, if applicable, any specific examples.*

   The Department's FOIA professionals routinely engage with requesters in an effort to clarify, narrow, or otherwise streamline the scope of incoming FOIA requests. FOIA professional typically consult with program subject matter experts to understand the likely scope of the requests and then meet with requesters to seek clarification when needed, target requests whenever possible, set realistic expectations, and establish interim release schedules.

   The Department also engages in requester outreach to strategically address backlogs. For example, in FY2022, the FST reached out to a requester to determine whether he would be amenable to narrowing the scope of his 80 backlogged requests. The requester agreed to withdraw over a third of the requests and narrow the scope of all but one of the remaining requests, enabling the FST to more quickly provide the requester with the records wanted.

   In addition, when searches return a large volume of responsive records, the FWS allows requesters may to determine the priority for processing the responsive records. Requesters also have the option to identify records that can be excluded. This has allowed the bureau to respond more timely, eliminated unnecessary processing work, and provided requesters with only the records they are actually seeking.

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 Fiscal Year 2022 (please provide a total number or an estimate of the number)*

We estimate requesters sought assistance from the FOIA Public Liaison approximately 100 times during FY 2022.

C. Other Initiatives

10. *Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.*

An ongoing initiative of the DFO is to conduct targeted assessments of the FOIA processing offices in the Department's component bureaus and issue data-driven recommendations to bureau leaders for improving FOIA processing staffing and operations. In light of strong public interest in law enforcement issues and in support of the Department's efforts to increase public transparency on this topic, the DFO is currently assisting the National Park Service (NPS) to realign and strengthen the capability of the FOIA processing team that serves the Department's largest and most visible law enforcement component. This effort includes a comprehensive assessment of current staffing levels and processing procedures, as well as recommended strategies to reduce backlogs and address the anticipated increase in FOIA workload due to the expanded use of body-worn cameras.

11. *How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.*

The Department's FOIA programs are currently utilizing the data, tools, and reporting features in FOIAonline to help track key information for program administration. This allows our offices to monitor requests by bureau, region, and FOIA professional staff.

12. *Optional --If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.*

The US Fish and Wildlife Service (FWS) FOIA office implemented a FOIA SharePoint site accessible by the entire FWS organization. The purpose of the site is to make information available to employees and managers concerning their roles and responsibilities in responding to FOIA requests. The site includes relevant policy, guidance, and training materials, a Q&A platform, and a regularly updated list of open requests that identifies the assigned FOIA processer and likely Record Custodians.

 NPS is currently establishing the Office of Public Trust, a new office within the Visitor and Resource Protection Division, to oversee NPS law enforcement activities. This new office will handle public information requests, including FOIA requests for NPS law enforcement records including, for example, incident reports for auto accidents, records pertaining to high-profile events, body-worn camera footage, and data regarding criminal activity and law enforcement response. As discussed above, the DFO is working closely with NPS to ensure that the FOIA function in the new office is properly staffed.

In response to President Biden's May 22, 2022, Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety, the Department has expanded and standardized its body-worn camera program for Departmental law enforcement units. The DFO is supporting this effort by consulting on policy changes to implement the Executive Order's requirements concerning expedited public release of camera footage as well as developing guidance for the FOIA community on processing FOIA requests for such footage.

Section III: Proactive Disclosures

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

   Bureaus throughout the Department are focused on proactive disclosures. Specific examples include:

   - The Open Data, Design, and Development (ODDD) team within the Office of Natural Resources Revenue (ONRR) manages their public websites. The team follows user-centered design and development practices to identify the public need for data and information, conducts usability testing, and gathers information from customers about needs for data and information. The ODDD team also tracks FOIA and data requests for data that could be made public on an annual basis, with a goal to reduce the number of data requests by making more data available and accessible to the public. ONRR maintains monthly analytics for public websites to help identify and be responsive to the audience. The analytics tracks page views, document downloads, user sessions, search terms, referring pages, etc.
   - The U.S. Geological Survey (USGS) FOIA program monitors updates to USGS Directives, Survey Manual chapters, and Instructional Memorandum that are posted each quarter on the USGS web site (https://www.usgs.gov/survey-manual/whats-new). These updates include administrative staff manuals and instructions to staff that affect a member of the public. The USGS FOIA team also tracks Technical Announcements posted on the USGS website. These announcements share technical news with the public that focuses on data, methodologies, and more. The USGS posts and publishes a large amount of data and information, and the FOIA team reviews information posted by programs to determine what else may constitute a (a)(2) proactive disclosure.
   - The Bureau of Ocean Energy Management's (BOEM) FOIA team reviews FOIA requests to identify frequently requested data and information and works with program offices throughout the Bureau to prioritize records for posting. The FOIA team also collaborates with the Office of Communications who engage with regional and Headquarters offices to identify items of interest to the public. The Office of Communications identifies records that are of significant public informative value, and routinely places them on BOEM's website. This includes records about final decisions, Construction and Operations Plans, leasing documents, studies, and public versions of company submitted documents. When there is a high demand for

information, the Bureau develops and provides Frequently Asked Questions (FAQs) and/or Question and Answers (Q&As) to minimize public requests for information. For example, BOEM produced a recent fact sheet on Offshore Wind Activity and Marine Mammal Protection: https://www.boem.gov/renewable-energy/state-activities/offshore-wind-activities-and-marine-mammal-protection.

- FWS employees and managers understand the importance and benefit of proactive disclosure. To ensure compliance, regional and program employees and managers routinely collaborate with the FWS FOIA Office for guidance on how to release high interest records prior to receiving a FOIA request. The records are generally provided to the FOIA Office for review and then posted on the FOIA website and/or the program website. FWS also provides proactive disclosures through public facing systems. Specifically, FWS has revised three systems (eDECS, ECOS, IPAC) to provide greater access for the public to search for records related to permitting and FWS actions under the Endangered Species Act.

- FWS also made management of the FOIA Library a priority this year. The Library has received a fresh new user-friendly look, which allows the public to easily access and search for previously processed FOIA requests. The FOIA Team leads monitor incoming FOIA request for the "rule of three" and submit records to the FWS FOIA Office for posting in the Library. The FOIA Office assigned one team member responsibility for ensuring postings to the Library are done timely and accurately.

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

- ONRR proactively compiled and published two data sets this year on its Natural Resources Revenue Data website. The public can now download historical revenue data for CY1982-2002 and historical disbursement data for FY1982-2002. Historical revenue data includes federal offshore and onshore revenue that can be further broken down by location, revenue type, and commodity. Historical disbursement data includes federal onshore and offshore disbursements that can be further broken down by location and fund type. ONRR encourages the public to utilize this interactive website and also welcomes comments and recommendations for improvement. https://revenuedata.doi.gov/

- The Bureau of Safety and Environmental Enforcement (BSEE) proactively posts the Pacific Regions Applications for Permit to Modify (APM) as well as alternate compliance, departures, and time extension approvals for activities at oil facilities. https://www.bsee.gov/stats-facts/ocs-regions/pacific/pacific-region-completed-applications-for-permit-to-modify-apm and https://www.data.bsee.gov/Company/Approvals/Default.aspx.

- The Office of the Secretary (OS) proactively posts visitor logs and calendars of high-level officials. These items are located at https://www.doi.gov/foia/os/doi-headquarters-visitor-logs and https://www.doi.gov/foia/os/secretarial-calendars.

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.

4. *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.*

The Department is committed to making its information and communication technology accessible in open, machine-readable formats. For example, ONRR's public website is built and maintained by open-source code in GitHub repositories for the purpose of providing open data. ONRR publishes all of the public data sets in both Excel and csv formats, to ensure viewing and using the data is not dependent on specific software applications.

5. *Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.*

As described above, the ODDD team within ONRR reviews FOIA and other agency data requests to identify additional categories and types of information to consider for inclusion on ONRR websites.

In addition, the FWS Data Management Office and FOIA Office have both provided training to mission program staff regarding proactive disclosures. Data Management has also developed a Data Management Plan, which includes a tagging system for easy identification of releasable/unreleasable data. Additionally, when upgrading existing or procuring new data management software, FWS FOIA Office collaborates with the Information and Technology Division and the responsible mission office to determine whether the software should include the ability for a public interface. One example of the positive result of this collaboration includes the FWS new ePermits system whose requirements include the ability to implement a public search tool to search for Migratory Bird and Endangered Species Act permits.

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

The Department emphasizes the importance of proactive disclosures in formal and informal training, including at monthly FOIA Officer meetings. We understand increased proactive disclosures lead to increased transparency, although it is challenging to make proactive disclosure when the FOIA staff (who would typically be making the proactive disclosures) are focusing on responding to increasing backlogs, incoming requests, and/or processing FOIA requests in the context of litigation. We also note that the competing obligations of Section 508 of the Rehabilitation Act and FOIA are a continued unresolved challenge.

<u>Section IV: Steps Taken to Greater Utilize Technology</u>

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

   Yes. The DFO's FOIA Technology Program Manager leads the Department's FOIA Technology Working Group which includes FOIA and IT professionals from multiple bureaus. The mission of the working group is to identify opportunities, develop recommendations and proposals, and implement solutions to reduce or remediate technology challenges faced by DOI FOIA professionals. Specific projects and initiatives include collaborating on the procurement and deployment of a new document review platform to better meet the needs of the FOIA community and leading the Department team responsible for procuring a new electronic FOIA request tracking and case management system.

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

   In collaboration with our Records Management Program, the DFO is currently configuring a new document review platform for use across our FOIA programs. We anticipate that this new technology will significantly improve the ability of the FOIA offices to efficiently and effectively process complex and voluminous requests involving a large number of records and assist to leverage the collection and processing of records across bureaus and Department functions. In addition, several bureaus began using Adobe Professional plug-ins provided by Evermap to facilitate document processing, and the FWS is using the Microsoft 365 Workflow to improve communications between the bureau FOIA office and program offices.

3. *Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.*

   Multiple bureau FOIA offices use Adobe Acrobat Professional which includes some predictive coding features. Additionally, the Office of the Solicitor FOIA office utilizes Evermap's AutoRedact plug-in for Adobe Acrobat to assist them to efficiently and consistently identify and redact information that is exempt from disclosure.

4. *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.

5. *Did all four of your agency's quarterly reports for Fiscal Year 2022 appear on FOIA.gov?*

Yes.

6. *If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2023.*

    Not applicable.

7. *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 2021 Annual FOIA Report and, if available, for your agency's Fiscal Year 2022 Annual FOIA Report.*

    https://www.doi.gov/foia/DOI-FOIA-Annual-Reports

8. *In February 2019, DOJ and OMB issued joint Guidance establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance.*

    Yes.

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

    The DFO is providing increased training and support for the technology used by the FOIA community, including developing and issuing user guides for our common technology used by our FOIA processers and providing live training to FOIA processers to help them more effectively utilize the Department's current FOIA request tracking and case management system.

    The DFO conducted a comprehensive requirements analysis with the FOIA community to inform the procurement of the new FOIA request tracking and case management system, worked closely with the Office of the Chief Information Officer (OCIO) to ensure that the new document review platform procured by the Department is suitable for processing complex or voluminous FOIA requests, and is working with the OCIO on an ongoing basis to anticipate and address impacts to the FOIA community of enterprise-wide changes in the Department's email and other Information Technology systems.

    In addition, the DFO is participates in the CFOC's Technology Committee and leading the Best Practices subcommittee. The decentralized nature of the Department's Information Technology program can present challenges, as technology available for use for one bureau may not be available or supported in another, and we are striving to address those challenges.

Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness in Responding to Requests, and Reduce Backlogs

A. *Remove Barriers to Access*

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

    No.

2. *If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.*

    The DFO and is working with the Department's Privacy Act Program to ensure that first-party Privacy Act requests are not mistakenly directed to the FOIA processing offices. This is a problem for Department components with law enforcement functions such as the NPS, FWS, Bureau of Indian Affairs, and Bureau of Land Management that generate accident reports and other records frequently requested by first-party requesters. Ensuring the public can access for these records outside of the context of FOIA is challenging given the size and decentralized nature of the programs. The DFO has begun working with the United States Park Police (a component of NPS) to develop a solution to this problem that we hope may be deployed in other law enforcement components in the coming years.

B. Timeliness

3. *For Fiscal Year 2022, 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 2022 Annual FOIA Report.*

    22.5 days.

4. *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 2022 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.*

    During FY 2021, the DFO hired a FOIA Compliance Officer, who monitors the timeliness of responses by the bureau FOIA processing offices to expedited processing requests. The DFO also discussed this issue during meetings with the Bureau FOIA Officers. The Compliance Officer is collaborating with the Bureau FOIA Officers to address impediments to the timely resolution of expedited processing requests and saw improvement from FY 2021 to FY 2022, during which time the average number of days was reduced from 39 to 22.5.   The DFO continues to monitor this data and expects to see further improvements for FY 2023.

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

    Yes.

6. *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 2022?*

No.

7. *If not, did the simple track average processing time decrease compared to the previous Fiscal Year?*

   No.

8. *Please provide the percentage of requests processed by your agency in Fiscal Year 2022 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100*

   63%

9. *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.

C. Backlogs

Backlogged Requests

10. *If your agency had a backlog of requests at the close of Fiscal Year 2022, 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 2021.*

    No.

11. *If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2022 than it did during Fiscal Year 2021?*

    Yes.

12. *If your agency's request backlog increased during Fiscal Year 2022, 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*

    The Department's overall backlog increased in FY 2022, in part due to an approximate 12% increase in the number of FOIA requests received by the NPS FOIA office as

compared to FY 2021, resulting in the largest number of requests ever received by NPS. The NPS FOIA Team also processed more requests in 2022 than ever before.

The FOIA offices have also been affected by attrition of staff and FOIA Officers and many FOIA processors work on FOIA matters only as a collateral duty, which has the effect of FOIA work being a lower priority.

Despite the increase in backlogged requests for some bureaus, many others were successful in reducing their backlogs to include Office of the Secretary; Bureau of Ocean Energy Management (BOEM); Bureau of Reclamation; Office of Inspector General; Office of Surface Mining Reclamation and Enforcement; U.S. Geological Survey; and Office of the Solicitor (SOL). Of particular note, BOEM reduced the number of backlogged requests by 93%, from 14 to 1. BOEM and FWS also provided support to the SOL during the year, which helped SOL reduce the number of backlogged requests by approximately 33%, from 200 to 135.

13. *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 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A."*

   75%

Backlogged Appeals

14. *If your agency had a backlog of appeals at the close of Fiscal Year 2022, 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 2021?*

   Yes.

15. *If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2022 than it did during Fiscal Year 2021?*

   Not applicable.

16. *If your agency's appeal backlog increased during Fiscal Year 2022, 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*

Not applicable.

17. *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 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2022 and/or has no appeal backlog, please answer with "N/A."*

137%

D. Backlog Reduction Plans

18. *In the 2022 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2021 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 2022?*

The Department created the DFO in 2020 to reduce existing backlogs and prevent the accrual of future backlogs by improving the processing quality and capacity of the bureau FOIA offices. The DFO is steadily standing up a program to oversee, govern, and support the FOIA offices by issuing uniform policies for FOIA processing, identifying best practices and establishing stand operating procedures, providing increased training, improved technology, conducting staffing assessment and planning, and other key functions that will ultimately result in reduced backlogs.

The DFO has also established a FOIA Support Team (FST) to provide direct operational support to bureaus with significant backlogs. To date, the FST has focused its backlog-reduction efforts on the Office of the Secretary's FOIA office. The FST generally took control of OS's requests submitted during or before fiscal year 2019 (1,261 requests in total). The FST has closed 775 of these requests to date (61% of the total) and is working through the 486 remaining requests. In so doing, the FST has developed a strategic backlog-reduction approach involving extensive auditing, review by trained attorneys, and increased requester outreach.

At the same time, the Bureaus have also been addressing the underlying reasons for their backlogs, for example:

- FWS conducted an analysis of its FOIA processing and the results indicated a problem with FOIA intake which was contributing to the overall backlog. The FWS implemented a new workflow process and organizational structure to improve efficiency and accountability that includes both Intake and Review teams. The Intake team takes in all FWS request in order to properly perfect requests before they are assigned to the Review team. The result will help to

ensure properly perfected requests, properly initiated searches, and streamlining review time for processers. The FWS also included backlog reduction requirements in the FOIA processor employee performance appraisals.

- The NPS awarded an Indefinite Delivery/Indefinite Quantity (IDIQ) contract at the end of FY 2021 to provide options for regional and park offices to obtain additional contractor support for FOIA processing to assist with the increases in incoming requests and support backlog reduction. Several NPS offices have begun adding contract staff via the IDIQ which helped the NPS process the largest number of requests in a reporting period for their bureau (per our previously published Annual Reports).

In FY2023, the DFO will be developing a Department-wide backlog reduction plan that is informed by all of these activities.

19. *If your agency had a backlog of more than 1,000 requests in Fiscal Year 2022, please explain your agency's plan to reduce this backlog during Fiscal Year 2023.*

See response to Question #18 above.

E. *Reducing the Age of Requests, Appeals, and Consultations*

Ten Oldest Requests

20. *In Fiscal Year 2022, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2021 Annual FOIA Report?*

No.

21. *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 2021 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.*

Seven.

22. *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 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

23. *In Fiscal Year 2022, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2021 Annual FOIA Report?*

Yes.

24. *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 2021 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.*

Not Applicable.

25. *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

26. *In Fiscal Year 2022, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2021 Annual FOIA Report?*

Yes.

27. *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 2021 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.*

Not applicable.

Additional Information regarding Ten Oldest

28. *If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2023.*

The DFO has met with each of the bureaus to discuss the status of the Department's ten-oldest requests. Each bureau was asked to provide their plans to help ensure closure of the requests this FY, and the DFO will monitor the progress and provide support is needed.

F. Additional Information about FOIA Processing

29. *Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency's overall FOIA request processing and backlog. If possible, please indicate the number and nature of requests subject to litigation, common causes leading to litigation, and any other information to illustrate the impact of litigation on your overall FOIA administration.*

Yes. Our bureaus and offices that have FOIA litigation indicate that processing the underlying requests pursuant to demanding production schedules issued by the courts strains FOIA staff and compromises their ability to timely respond to non-litigated requests, leading to additional litigation.

30. *How many requests during Fiscal Year 2022 involved unusual circumstances as defined by the FOIA? (This information is available in your agency's FY22 raw data).*

Unusual circumstances were used for approximately 354 requests.