

## **U.S. Environmental Protection Agency**

### **Chief FOIA Officer Report for 2013 (March 2012 - March 2013)**

To build upon improvements already made and to ensure full implementation of the President's Memorandum on transparency and open government, EPA's Deputy Administrator convened a workgroup in July 2010 and charged it to conduct a review of the Environmental Protection Agency's Freedom of Information Act policies and practices. The workgroup reported in June 2011 that:

- Across-the-board policies and procedures needed to be updated or created to promote transparency;
- An expanding volume of electronic documents needed to be searched and provided to requesters because of the growing use of email;
- Integrated processing tools needed to efficiently manage FOIA processes; and,
- Training needed to improve overall understanding of FOIA requirements and improve management accountability.

While many actions have been taken to implement the workgroup's findings including the launch of FOIAonline, recent reviews of EPA's FOIA program have shown that a renewed commitment to the workgroup's action plan is required. Therefore, the Acting Administrator has charged the Assistant Administrator for the Office of Environmental Information with:

- Issuing interim FOIA policy and procedures to all EPA staff by September 30, 2013, and publishing a proposed rule revising EPA regulations by December 31, 2013 to ensure consistency of decision-making on the use of exemptions and consistency in the materials provided to FOIA requesters. Final rule will issue after appropriate public comment period.
- Providing for mandatory in-depth training of FOIA coordinators, officers, employees and managers who make decisions on the release of documents, by December 31, 2013, with a focus on exemptions, redactions and discretionary release.

- Providing FOIA training for all EPA staff in FY 2014 with the training to focus on what is a FOIA, roles and responsibilities in responding to FOIAs, timeliness of response, and exemptions and discretionary release.
- Establishing an implementation schedule for all FOIA recommendations made by the workgroup and reporting quarterly to the Deputy Administrator on the progress made in implementing the recommendations.

## **Part I: Section I: Steps Taken to Apply the Presumption of Openness**

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is 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?**

EPA's FOIA Coordinators and FOIA officers attended a training session in the fall of 2012. Because the training was also open to all employees, a number of Agency managers, legal staff and other employees with an interest in learning more about FOIA attended. The training was attended by approximately 450 staff, from 12 departments and agencies. Participation was broadened through the use of Adobe Connect technology, which allowed attendees to participate remotely.

Topics at the training conference included sessions on recent FOIA decisions; processing FOIA requests for data bases/data sets; the use of e-discovery tools for FOIA processing; the nuts and bolts of FOIA and a presentation on FOIAonline. A FOIA requester panel was also on the agenda.

In addition,, the Agency FOIA Officer holds one- hour monthly meetings with the Agency's FOIA Coordinators and regional FOIA Officers, to provide guidance and updates on FOIA related matters. These monthly meetings provide, the key FOIA personnel ongoing training relevant to the performance of their duties, including information on Agency FOIA processes and procedures, how to apply FOIA exemptions, estimating fees, making discretionary disclosures, along with guidance on other administrative processing matters and FOIA related topics.

The Office of General Counsel holds monthly meetings with its regional FOIA counterparts similar to the meetings held by the National FOIA Officer. These meetings provide an opportunity for headquarters and regional attorneys to discuss the latest developments in FOIA law and guidance,

As the Agency moves forward with implementing the FOIA Workgroup's recommendations, the National FOIA Office is developing specific training modules for managers, FOIA Coordinators and Officers, reviewers and employees who make decisions regarding the releasability of records. In

addition, a general awareness training will be made mandatory for all employees. These trainings will be available to employees in FY14.

**Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?**

Yes. EPA FOIA professionals attended trainings offered by the Department of Justice, the Office of Agency will develop continuing education requirements for its FOIA Officers and Coordinators. They will be required to report their FOIA trainings annually to the Agency FOIA Officer. This FOIA Workgroup recommendation is scheduled to be implemented in FY14.

**2. Did your agency make any discretionary releases of otherwise exempt information?**

Yes.

**3. What exemptions would have covered the information that was released as a matter of discretion?**

Exemptions 5 and 7

**4. Provide a narrative description, or some examples of, the type of information that your agency released as a matter of discretion.**

In keeping with the policies of the Administration, EPA policy requires that all records under FOIA be released, unless FOIA prohibits their release or the agency determines a harm that would result from their disclosure. At EPA, we receive a significant number of requests for information that is both internal to the agency and pre-decisional, thereby qualifying it as exempt from mandatory disclosure under FOIA exemption 5. Specific examples include requests for documents related to rulemakings or other significant actions. When responding to these requests, the agency works to make the discretionary release of many of these internal, pre-decisional documents, unless the agency articulates a harm that would result from their disclosure.

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

FOIA-related meetings and training sessions include a discussion on “openness” to ensure that all records are reviewed with a presumption of disclosure and that training is provided to attendees who must make these decisions. FOIAonline that provides the public with easier access to FOIA requests and releases was launched.

Additionally, all records reviewed by EPA in processing FOIA requests, follow the guidance set forth in an Agency-wide Memorandum on Transparency in EPA Operations, which clearly states that “all Agency personnel should ensure that the principle of openness is applied to the extent possible when responding to FOIA requests.”

[http://epa.gov/foia/docs/Transparency\\_in\\_EPAs\\_Operations.pdf](http://epa.gov/foia/docs/Transparency_in_EPAs_Operations.pdf)

Accordingly, records reviewed by EPA in processing FOIA requests and appeals are reviewed with this presumption in mind. Also, based on frequent requests, we included a session in our Annual

FOIA Training on the topic, titled: "How are we doing? Openness, Transparency, Accountability in FOIA." [http://epa.gov/foia/foia\\_trainings\\_and\\_conferences.html](http://epa.gov/foia/foia_trainings_and_conferences.html)

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

As the Attorney General emphasized in his FOIA Guidelines, "application of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests."

This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support.

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?**

EPA deployed a new FOIA system in October 2012 to provide better IT support to its FOIA professionals. The agency also procured a suite of e-Discovery tools that were piloted this past year to search, de-duplicate and process electronic records in response to a FOIA request involving large numbers of responsive records and multiple custodians.

EPA is using its new FOIA system to support its FOIA administrative responsibilities. FOIAonline (<https://foiaonline.regulations.gov>) is an end-to-end FOIA solution which allows the public to submit, track and communicate with the Agency about their FOIA requests electronically. FOIA professionals can manage FOIA requests from "cradle to grave" with FOIAonline. This solution also provides a repository of released documents which the public can search before submitting a request.

### **2. Do your FOIA professionals work with your agency's Open Government Team?**

Yes. EPA's National FOIA Program Office and the Open Government Directive Project Management Office are in the same organization and report to the same senior leader. The National FOIA Officer and FOIA staff actively participates on the Open Government and Data Strategy Workgroup.

### **3. Has your agency assessed whether adequate staffing is being devoted to FOIA administration?**

The FOIA Workgroup established by the EPA Deputy Administrator in July 2010, that examined the Agency's FOIA program and related business processes, identified the need to ensure that FOIA staff have the knowledge, skills and abilities to perform their assigned duties and that adequate resources are allocated to meet the organization's FOIA responsibilities (See FOIA Workgroup Report, June 10, 2011 at [http://epa.gov/foia/docs/FOIA\\_Workgroup\\_Report.pdf](http://epa.gov/foia/docs/FOIA_Workgroup_Report.pdf).) EPA is planning

**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, streamlining consultations, eliminating redundancy, etc.**

The Deputy Administrator's comprehensive FOIA Workgroup Report included 22 recommendations for improving the FOIA program at EPA. All of these recommendations were approved, and a sequencing approach is being used for implementation based on their criticality and associated resource requirements. Quarterly reports will now be made to the Acting Administrator on the progress made in implementing these recommendations. This year's priorities include deploying and fully implementing a new FOIA system "FOIAonline", revising the Agency's FOIA regulations, policies and procedures, and developing and implementing in-person and online training modules for FOIA professionals and other staff. One of the recommendations of the Workgroup, when implemented in FY 14, will require organizations to conduct self-assessments to determine if business process changes, resource allocations, training, etc. are needed to obtain greater efficiencies in all aspects of their FOIA processing activities. The Agency is working on business process changes to ensure uniform compliance across the Agency. ( [http://epa.gov/foia/docs/FOIA\\_Workgroup\\_Report.pdf](http://epa.gov/foia/docs/FOIA_Workgroup_Report.pdf))

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

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Describe here the steps your agency has taken both 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 2011 to March 2012). In doing so, answer the questions listed below and describe any

**1. Provide examples of material that your agency posted in the past year.**

In addition to news releases and environmental information, including our response to Hurricane Sandy, and tips on how people can help to protect the environment, EPA has posted more than 7,000 pages of response information to FOIA requests on FOIAonline since its launch on October 1, 2012. The Agency also posts frequently requested records to its FOIA Website. With the full implementation of FOIAonline, all responsive records will be posted in FOIAonline and available to the public.

EPA provided numerous of other sources of information ranging from scientific studies to data sets in the past year. Specifically EPA has provided 1,543 of the 2,935 data sets posted on DATA.gov in 2012, comprising 53% of the data sets published on that Website in 2012. For additional information, visit <http://www.data.gov/list/agency/monthly/4/2013>.

**2. Beyond posting new material, is your agency taking steps to make the 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, providing explanatory material, etc.?**

Yes. EPA is rebuilding its website under the One EPA Web project, focusing on supporting audiences' top tasks with the most directly relevant content. One EPA Web will provide easier access to information about environmental issues and the agency's work. After a test period that ran from September 2010 to December 2012, EPA began full implementation in January 2013 by

developing the list of topics to address next. EPA also uses its social media channels to disseminate information beyond its own website, including our response to Hurricane Sandy, news releases, tips on what people can do to protect the environment, etc.

### **3. If so, provide examples of such improvements.**

Through the restructure of EPA's website, EPA.gov, the Agency will better meet the needs of web

is doing; improving EPA's transparency and openness; providing a single, consolidated resource for priority topics; and creating more relevant content for specific audiences.

During the reporting year, EPA launched many transformed topic-based websites under One EPA Web test phases, including national topics such as:

- Climate change: <http://www.epa.gov/climatechange>
- Lead: <http://www.epa.gov/lead>
- Asbestos: <http://www.epa.gov/asbestos>
- Reduce, reuse, recycle: <http://www.epa.gov/recycling>

And more regional topics, such as:

- Columbia River: <http://www.epa.gov/columbiariver>
- San Francisco Bay Delta Watershed: <http://www.epa.gov/sfbaydelta>

Examples of using social media to proactively disseminate information related to Hurricane Sandy include:

- Twitter posts about how to manage debris from Hurricane Sandy: <https://twitter.com/EPAgov/status/269254780407398400>
- Facebook post about where to drop off hazardous waste after Hurricane Sandy: <https://www.facebook.com/EPA/posts/470059553032500>
- Flickr photo set about our response to Hurricane Sandy: <http://www.flickr.com/photos/usepagov/sets/72157632009118155>

### **4. Describe any other steps taken to increase proactive disclosure at your agency.**

EPA is implementing its new FOIA management system, FOIAonline, which allows the public access to FOIA responsive records released in the system without filing a new request. EPA also developed the MyProperty tool a few years ago. MyProperty allows the public to access and print reports on site-specific locations at the push of a button. MyProperty is receiving approximately 18,000 search requests a year and the number continues to increase. See <http://www.epa.gov/enviro/html/fii/myproperty.html>

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

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. In 2010 and 2011, agencies reported widespread use of

technology in handling FOIA requests. For 2012, the questions have been further refined and now

Electronic receipt of FOIA requests:

**1. Can FOIA requests be made electronically to your agency?**

Yes, through FOIAonline. <https://foiaonline.regulations.gov/foia/action/public/home>.

**2. If your agency processes requests on a decentralized basis, do all components of your agency receive requests electronically?**

Yes. FOIA requests submitted to EPA electronically through FOIAonline are assigned electronically

Agency component.

**3. Can a FOIA requester track the status of his/her request electronically?**

Yes, through FOIAonline, registered users have a dashboard of all requests submitted, and guest

**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. If not, is your agency taking steps to establish this capability**

FOIAonline provides the requester a complete access to the status of the cases. Requesters can:

- Submit FOIA requests
- Receive automatic acknowledgements
- Create profiles
- Generate dashboards of their requests
- Search and view FOIA requests and responses
- Track Agency progress
- Communicate with Agency staff and
- File an appeal

**5. In particular, does your agency tracking system provide the requester with an estimated date of completion for his or her request?**

Yes.

**6. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability?**

N/A

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.

**8. If so, describe the technological improvements being made.**

In addition to the deployment of our shared service solution FOIAonline, EPA has deployed a host of e-discovery tools to search, store, de-duplicate and process records in response to discovery and FOIA requests. FOIAonline provides a repository for publishing these records so the public has immediate access in a full text searchable medium.

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

The President and the Attorney General have emphasized the importance of improving timeliness reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests and appeals. For the figures required in this Section, please use those contained in the specified sections of your agency's 2011 Annual FOIA Report.

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 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. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for 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 twenty working days or fewer?**

Fewer (19 working days).



**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?**

N/A

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 or pending appeals from Fiscal Year 2011 as compared to Fiscal Year 2010. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition, Section VII.E, entitled "Pending Requests - Ten Oldest Pending Requests," and Section VI.C. (5), entitled "Ten Oldest Pending Administrative Appeals," from both Fiscal Year 2010 and Fiscal Year 2011 should be used for this section.

**a. If your agency had a backlog of requests at the close of Fiscal Year 2012, did that backlog decrease as compared with Fiscal Year 2011?**

No. It did not decrease as compared to FY11. EPA successfully reduced its backlog of over 25,000 overdue cases in the 1990s to 326 in FY 11. However, the backlog increased to 468 by the end of FY12 due the size and complexity of requests.

**b. If your agency had a backlog of administrative appeals in Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011?**

Yes. This continues a multi-year trend of decreases in backlogged administrative appeals, even in the face of more appeals, in an average year, than the agency received several years ago.

**c. In Fiscal Year 2012, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2011?**

No.

**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. In addition to reducing the overall backlog of pending appeals, the Agency closed six of the ten oldest appeals in the last fiscal year.

3. If you answered "no" to any of the above questions, describe why that has occurred. In doing so,

Request Backlog:

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

No.

**b. Was the lack of a reduction in the request backlog caused by a loss of staff?**

We are uncertain if the lack of a reduction was caused by a loss in staff. Our belief is the backlog increased due the size and complexity of requests.

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

EPA believes that several factors contributed to the increase in the number of backlogged FOIA requests. The sheer complexity and size of the requests is the primary cause for the backlog. EPA has also received more requests of significant complexity (e.g., all correspondence with members of Congress or their staffs for multiple years; requests seeking all records on complex rulemakings;

of requests increases, the amount of time necessary to process those requests naturally increases as

**d. What other causes, if any, contributed to the lack of a decrease in the request backlog?**

As stated, the increases in the size and complexity of the FOIA requests were important factors impacting our ability to decrease the backlog.

Administrative appeals:

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

N/A. The appeal backlog was reduced.

**b. Was the lack of a reduction in the appeal backlog caused by a loss of staff?**

N/A. The appeal backlog was reduced.

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

N/A. The appeal backlog was reduced.

**d. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?**

N/A. The appeal backlog was reduced.

**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 of multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information. If you agency has 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 fully closed.**

It is difficult to estimate the number of requests where interim releases were made. The Agency has not tracked this statistic. However, based upon conversations with FOIA professionals across EPA, we understand that the Agency routinely makes interim releases.

### **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]," 5 U.S.C. § 552(c) (1), (2), (3), please answer the

#### **1. Did your agency invoke a statutory exclusion during Fiscal Year 2012?**

Yes.

#### **2. If so, what is the total number of times exclusions were invoked?**

One.

### **Spotlight on Success**

In 2010, EPA's current Acting Administrator, Bob Perciasepe, convened a workgroup to examine the agency's administration of FOIA and Confidential Business Information (CBI) regulations and supporting processes to determine if changes were needed to increase openness, transparency, and accountability. In June 2011, the workgroup released its findings, including 22 recommendations. These recommendations were classified into five groupings: Enhancing FOIA Processes, Enhancing CBI Processes, Leveraging Tools and Technology, Improving Staff Training, and Establishing Greater Accountability. EPA continued to make incremental progress on implementing these recommendations including revising our FOIA regulation and the companion FOIA policy and procedures, as well as leveraging new technology in order to better respond to FOIA requests.