



U.S. Small Business Administration

**If you have any questions regarding this report, please contact SBA's FOIA Chief Oreoluwa Fashola at oreoluwa.fashola@sba.gov.*

Content of Fiscal Year 2024 Chief FOIA Officer Reports (High-Volume Agencies)

Eric S. Benderson, Associate General Counsel for Litigation & Claims, Office of General Counsel

(SBA Chief FOIA Officer)

EXECUTIVE SUMMARY

Within the Small Business Administration (SBA) day-to-day FOIA operations are decentralized. As a result, each of the agency components has been given flexibility to design a program that meets its needs. Each component headquarters office, field office and loan center have its own FOIA point of contact that process requests and responds directly to requesters.

The Office of Hearings and Appeals (OHA) is responsible for providing Agency-wide guidance regarding FOIA compliance, making administrative appeal determinations, assigning requests, as well as monitoring FOIA performance measurement, including the statutorily mandated FOIA Annual Report. The Office of General Counsel (OGC) provides legal advice on substantive complex FOIA matters and represents the Agency during FOIA litigation.

Section I: FOIA LEADERSHIP AND APPLYING THE PRESUMPTION OF OPENNESS

The guiding principle underlying the Attorney General's 2022 [FOIA Guidelines](#) is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and

describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

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.

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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?

N/A

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?

No

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. If your agency tracks Glomar responses, please provide:

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

10

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

7(A) – 3

7(B) – 1

7(C) – 6

7(D) – 0

7(E) – 0

7(F) – 0

6. If your agency does not track the use of Glomar responses, what would your agency need to do to track in the future?

N/A

7. 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.

N/A

Section II: ENSURING FAIR AND EFFECTIVE FOIA ADMINISTRATION

The Attorney General's FOIA Guidelines provide that "[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of FOIA obligations by the entire agency workforce." The Guidelines reinforce longstanding guidance to "work with FOIA requesters in a spirit of cooperation." The Attorney General also "urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency's FOIA administration" as part of 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.

Online training has been made to Agency personnel via its learning portal.

2. 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.

- FOIA Advisory Committee Meeting
- Chief FOIA Officers Council Meeting
- FOIA Advisory Committee Meeting
- Introduction to the FOIA Workshop

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.

100%

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.

N/A

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 SBA FOIA Office provides email notifications Agency-wide regarding FOIA trainings through the SBA Daily newsletter. Also, the Senior Legal Counsel for FOIA and Privacy Act, provides briefings to senior managers regarding their responsibilities under the FOIA.

B. Outreach

7. 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.

Yes, on many occasions the SBA FOIA Office in partnership with the Office of General Counsel (OGC) have assisted various program offices in contacting requesters to clarify or narrow the scope of the request, in particular complex requests made by news media and non-profit advocacy organizations such

as the Washington Post, Wall Street Journal, Bloomberg, The Project on Government Oversight (POGO), and American Oversight.

8. Outside of the standard request process or routine FOIA Liaison or FOIA Requester Service Center interactions, did your FOIA professionals engage in any outreach or dialogue, with the requester community or open government groups regarding your administration of the FOIA? For example, did you proactively contact frequent requesters, host FOIA-related conference calls with open government groups, or provide FOIA training to members of the public? 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.

N/A

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).

Estimate - 1800

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.

Yes, the FOIA Office has hired a GIS this year. OGC hired three attorneys to assist the program offices with FOIA.

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.

Quality control metrics reporting is being provided to the program offices with highest case load.

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

No

Section III: PROACTIVE DISCLOSURES

The Attorney General's 2022 [FOIA Guidelines](#) emphasize that “proactive disclosure of information is . . . fundamental to the faithful application of the FOIA.” The Guidelines direct agencies to post “records online quickly and systematically in advance of any public request” and reiterate that agencies should post records “in the most useful, searchable, and open formats possible.”

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

In consultation with the Office of General Counsel (OGC) and the program offices, we frequently identify requested records that are of importance to the public, such as loan data, congressional correspondence, etc. Opinions, pleadings, and orders are all posted to the SBA's website. The website is regularly updated by the relevant program office with new items posted based on the actions of the program office(s). Similarly, administrative staff manuals, statements of policy and interpretations adopted by SBA are also posted and intermittently updated by the appropriate program offices.

2. How long after identifying a record for proactive disclosure does it take your agency to post it?

Typically occurs within a few business days.

3. Does your agency post logs of its FOIA requests?

No

4. Provide examples of any 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.

The Agency's most significant proactive disclosure postings are SBA's complete loan level 7(a) and 504 data sets and data dictionary from January 1, 1990, to present found here:

<https://www.sba.gov/about-sba/sba-performance/open-government/foia/frequently-requested-records/sba-7a-504-loan-data-reports>

These data sets represent the agency's most frequently requested information.

In addition, SBA has also posted data from the Paycheck Protection Program:

<https://sba.box.com/s/5myd1nxutoq8wxecx2562baruz774si6>

SBA has also posted information on various funding programs authorized by the CARES Act for small businesses:

Economic Injury Disaster Loans (EIDL)

<https://www.sba.gov/document/report-covid-19-eidl-reports-2020>

<https://www.sba.gov/document/report-covid-19-eidl-advance-reports-2020>

<https://www.sba.gov/document/report-covid-19-eidl-advance-reports-2020>

<https://www.sba.gov/document/report-covid-19-eidl-reports-2022>

<https://data.sba.gov/dataset/covid-19-eidl>

Restaurant Revitalization Fund

<https://data.sba.gov/dataset/rrf-foia>

Shuttered Venue Operators Grant

<https://www.sba.gov/funding-programs/loans/covid-19-relief-options/shuttered-venue-operators-grant/svog-data>

5. 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

6. 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 Office of Communications and Public Liaison (OCPL) which is responsible for maintaining www.sba.gov, continuously evaluates agency websites and provides guidance for improvement. OCPL recently assisted our office to make the SBA FOIA web page in alignment with the plain language standard.

<https://www.sba.gov/about-sba/open-government/about-sbagov-website/accessibility>

<https://www.sba.gov/about-sba/open-government/foia>

[Welcome - U.S. Small Business Administration \(SBA\) | Open Data](#)

[SBA Public Access Link-Home](#)

7. 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.

Yes, for records that have not been previously disclosed OGC does an assessment prior to posting to ensure sensitive data is not released.

The Office of Capital Access (OCA) updates loan data on a quarterly basis.

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

N/A

Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's 2022 [FOIA Guidelines](#) emphasize the importance of making FOIA websites easily navigable and complying with the [FOIA.gov](#) interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

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

Yes

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

The FOIA Office utilizes FOIAXpress, an electronic document management and tracking system. This system is updated intermittently to account for anticipated FOIA issues and demands – and to simply make processing more efficient.

In support of FOIA litigation, the Office of the General Counsel utilizes an eDiscovery platform called Relativity, which allows for de-duplication to reduce the number of potentially responsive records. It also provides search functions to enable staff to work with requesters to identify records of interest and to narrow the scope of requests.

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.

The FOIA Offices uses FOIAXpress to automate its record processing. Records are integrated into this platform and search and redact functions are employed for record processing. Upgrades are consistently implemented to SBA's FOIA processing system, FOIAXpress. The FOIAXpress application undergoes regular updates to enhance current features and implement security patches.

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 2021 appear on your agency's website and on FOIA.gov?

No.

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

Due staffing shortages, time was not devoted to completing the quarterly reports, however we have trained a new FTE who will assisting in posting the Quarterly reports.

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://data.sba.gov/dataset/foia-annual-report-data-files>

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.

N/A

Section V: STEPS TAKEN TO REMOVE BARRIERS TO ACCESS, IMPROVE TIMELINESS IN RESPONDING TO REQUESTS, AND REDUCE BACKLOGS

The Attorney General's 2022 [FOIA Guidelines](#) instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA 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?

Yes,

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

Once a requesters identity has been verified, certain documents in loan files can accessed outside of FOIA such individual loss reports.

3. Please describe any other steps your agency has taken to remove barriers to accessing government information.

SBA procured the FOIAXpress case management system in an effort to remove barriers to accessing government information. The system has functionality that includes the Public Access Link, which enables the general public to submit FOIA requests directly to the agency by creating accounts within the system. The general public also has the ability to communicate directly with SBA staff who are processing requests via the FOIAXpress built in messaging system. Requesters are also able to obtain processing status updates, as well as receive responsive documents directly from the system.

B. Timeliness

4. For Fiscal Year 2023, 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 2023 Annual FOIA Report.

32.69

5. 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 2023 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.

Although the Agency has improved in this area, our office will continue to provide reminders to the program offices to adjudicate requests for expedited processing 5 days after the request has been assigned.

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

Yes.

7. 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 2023?

No

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

Yes

9. 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.

80.2%

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

N/A

C. Backlogs

BACKLOGGED REQUESTS

11. If your agency had a backlog of requests at the close of Fiscal Year 2023, 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 2022?

No

12. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2023 than it did during Fiscal Year 2022?

No

13. If your agency's request backlog increased during Fiscal Year 2023, 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).
- Litigation.
- Any other reasons – please briefly describe or provide examples when possible.

In FY2023, many SBA program offices reported an increase in the number of FOIA requests seeking access to voluminous amounts of electronic data, including emails. Even searches for FOIA requests that appeared on their face to be simple in nature required offices to negotiate over search terms and leverage e-discovery tools to search for responsive records among emails and other electronic records platforms. Additionally, electronic searches produced records that required deduplication, the identification and coordination of reviews for sensitive equities and other unique processing issues that extended processing time frames. All of these factors impacted the SBA's ability to timely respond to some requests and limited additional resources. In addition, there were a small number of requests with litigation equities that could not be closed because litigation was ongoing.

14. 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 2023. 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."

17.9%

BACKLOGGED APPEALS

15. If your agency had a backlog of appeals at the close of Fiscal Year 2023, 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 2022?

Yes

16. 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?

N/A

17. 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:

N/A

18. 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."

N/A

D. Backlog Reduction Plans

19. In the 2023 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2022 were 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 2023?

N/A

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

N/A

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

21. In Fiscal Year 2023, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2022 Annual FOIA Report?

No

22. 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.

0

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

N/A

TEN OLDEST APPEALS

24. In Fiscal Year 2023, 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.

25. 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.

N/A

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

N/A

TEN OLDEST CONSULTATIONS

27. In Fiscal Year 2023, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2022 Annual FOIA Report?

Yes

28. 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.

N/A

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

29. 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.

Steps have been taken to reduce the oldest requests. Additional resources have assisted in reducing the appeals and requests backlogs. Additionally, the hiring of an FTE for the FOIA Office should be able to assist the program offices in reducing the 10 oldest requests.

F. Additional Information about FOIA Processing

30. 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.

7 requests, email communications from the Administrators Office

- Common causes leading to litigation.

Timeliness, Fee waiver denials, challenges to the use of Exemptions 4 and 5

- Any other information to illustrate the impact of litigation on your overall FOIA administration.