

# 2014 CHIEF FOIA OFFICER REPORT

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### 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.

All staff involved with processing FOIA requests have reviewed, considered, and discussed President Obama’s and Attorney General Holder’s FOIA memoranda, particularly the presumption of openness. The memoranda have also been shared, throughout the Copyright Office, with managers who do not have direct responsibility for processing FOIA requests, for their consideration and understanding of FOIA’s principles and goals.

### 1. Did your agency hold an agency FOIA conference or otherwise conduct training during this reporting period?

A primary function of the U.S. Copyright Office is to be an office of public records, and therefore most records may be obtained without a FOIA request. Consequently, most U.S. Copyright Office staff are involved with maintaining the public record and providing services to make those records publicly available. Only a small percentage of records require a FOIA request to obtain, and each year fewer than 50 requests are typically received, of which a large portion are not processed for administrative reasons. Due to the limited number of FOIA requests received each year, few staff are involved with processing FOIA requests, either routinely or on an occasional basis, which precludes the necessity for establishing training sessions for staff or for developing training materials.

2. **If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.**

Not applicable. See item I.1 above

3. **Did your FOIA professionals attend any FOIA training during the reporting period such as that provided by the Department of Justice?**

Not applicable. See item I.1 above.

4. **Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period.**

Not applicable. See item I.1 above

5. **OIP has issued guidance that every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year. Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your "2015 Chief FOIA Officer Report" that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year.**

FOIA professionals will take advantage of available training modules.

#### **OUTREACH:**

6. **Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss the engagement.**

Not applicable.

**DISCRETIONARY DISCLOSURES:**

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

- 7. Does your agency have a formal process in place to review records for discretionary release? If so, please briefly describe the process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases.**

Yes. The analysis applied by FOIA staff begins from the perspective that a responsive record will be released, unless consideration of its particular content indicates that there is a reasonable and foreseeable harm that requires it to be withheld to protect a legitimate interest identified by one of the exemptions. The U.S. Copyright Office routinely redacts documents in order to release any portion that is not protected by an exemption. Finally, records are not withheld in order to protect the personal interests of government officials, to avoid embarrassment, or to hide errors or failures.

- 8. During the reporting period, did your agency make any discretionary releases of otherwise exempted information?**

No. The Copyright Office did not make any discretionary disclosures in fiscal 2013.

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

Not applicable. See item I.8 above.

- 10. Provide a narrative description of some examples of the types of information that your agency released as a matter of discretion.**

Not applicable. See item I.8 above.

**11. If your agency was not able to make any discretionary releases of information, please explain why.**

There were no instances in which a discretionary release of information would not have resulted in foreseeable harm..

***OTHER INITIATIVES:***

**12. Did your agency post all of the required quarterly FOIA reports for fiscal 2013? If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for fiscal 2014.**

All of the required quarterly FOIA reports for fiscal 2013 were posted on the U.S. Copyright Office's website.

**13. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please provide links in your description.**

Not applicable.

**SECTION II:**

**STEPS TAKEN TO ENSURE THAT YOUR AGENCY HAS AN EFFECTIVE SYSTEM IN PLACE FOR RESPONDING TO REQUESTS**

***PERSONNEL:***

During Sunshine Week 2012, OPM announced the creation of a new job series entitled the government information series to address the work performed by FOIA and Privacy Act professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

**1. Has your agency converted all of its FOIA professionals to the new government information specialist job series?**

Due to the centralized nature of the FOIA process in the U.S. Copyright Office and the minimal number of FOIA requests received each year, the chief FOIA officer evaluates the need for staff to process FOIA requests on an ongoing, informal basis. There is not enough full-time work associated with FOIA requests to warrant creation of positions for FOIA professionals in the new government information specialist job series.

**2. If not, what proportion of personnel has been converted to the new job series?**

Not applicable. See item II.1 above.

**3. If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted?**

Not applicable. See item II.1 above.

***PROCESSING PROCEDURES:***

**4. For fiscal 2013 did your agency maintain an average of ten fewer calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or fewer.**

The U.S. Copyright Office had no requests for expedited processing in fiscal 2013. However, if such requests were to be received, they would be adjudicated within ten days or fewer.

**5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.**

The U.S. Copyright Office does not receive any requests that require consultation and rarely receives those that need to be referred to another agency. When received, these requests are handled efficiently and within ten days time frame. There is no need for agreements with other agencies.

#### **REQUESTER SERVICES:**

**6. Do you use email or other electronic means to communicate with requesters when feasible.**

Yes.

**7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?**

If the U.S. Copyright Office receives a request that warrants these services, the requestor will be notified.

**8. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc.**

We continue to make improvements, such as incorporating the use of spreadsheets to automate tracking, revising form letters to improve communications, and reviewing procedures and practices on an ongoing basis to ensure they appropriately mesh with and take into account adjustments and changes the U.S. Copyright Office makes in its other areas of operations. There also was a new FOIA email address opened in fiscal 2013 to facilitate replies by electronic means.

## 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.

**POSTING MATERIAL:**

1. **Do your FOIA professionals have a system in place to identify records for proactive disclosure?**

Yes.

2. **If so, describe the system that is in place.**

Agency staff embrace openness and continue to identify records to post on the U.S. Copyright Office website.

3. **Provide examples of material that you agency has posted this past reporting period, including links to where this material can be found online.**

Examples include updated circulars, forms, and informational factsheets, *Federal Register* notices, public comments to rulemakings; data about registered works and documents recorded by the U.S. Copyright Office; online service provider “designation agents”; reports and studies; and transcripts of congressional testimony. All these materials can be found on the U.S. Copyright Office’s website: [www.copyright.gov](http://www.copyright.gov).

**MAKING POSTED MATERIAL MORE USEFUL:**

4. **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.?**

The U.S. Copyright Office is undertaking a number of special projects to improve the design of our website, increase searchability of copyright-related documents, and make accessible 70 million copyright registration records dating back to 1790.

**5. If so, provide examples of such improvements.**

See above, III.4.

**6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized.**

Not applicable.

**7. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are:**

Not applicable.

**8. Describe any other steps taken to increase proactive disclosures at your agency.**

Not applicable.

**SECTION IV:**

**STEPS TAKEN TO GREATER UTILIZE TECHNOLOGY**

Online tracking of FOIA requests:

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

No. The requester has no access to his/her request electronically.

2. **If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?**

Not applicable. See item IV.1 above.

3. **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 “document currently in review.” List the specific types of information that are available through your agency tracking system.**

Due to the limited number of FOIA requests received each year as well as few staff involved with processing FOIA requests, the U.S. Copyright Office has no plans to establish a system that would enable the requester to track his/her request electronically.

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

Not applicable. See above Section IV.1.

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

No. See above section IV.3.

#### ***USE OF TECHNOLOGY TO FACILITATE PROCESSING OF REQUESTS:***

6. **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 deduplicate documents?**

As mentioned above, due to the limited number of requests as well as few staff involved with processing FOIA requests, the U.S. Copyright Office is not currently taking any steps to utilize more advanced technology when processing FOIA requests.

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

Not Applicable.

**8. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program?**

As stated above, due to few FOIA requests received in the Copyright Office each year, there is no need for any additional tools as the procedures to process the requests are very efficient.

**SECTION V:**

**STEPS TAKEN TO IMPROVE TIMELINESS IN RESPONDING TO REQUESTS AND REDUCE BACKLOGS**

***SIMPLE TRACK REQUESTS:***

**9. 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 (nonexpedited) 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 nonexpedited requests.**

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

The U.S. Copyright Office is utilizing a multitrack system to process FOIA requests with categories: simple, complex, and

expedited processing. However, as mentioned above, the U.S. Copyright Office receives few FOIA requests every year, and a majority of them are in a “simple” category.

- b. If so, for your agency overall, for fiscal 2013, was the average number of days to process simple requests 20 working days or fewer?**

Yes, the average number of days to process simple requests was 13.4 for fiscal 2013.

- c. If your agency does not track simple requests separately, was the average number of days to process nonexpedited requests 20 working days or fewer?**

Not applicable.

#### ***BACKLOGS AND “TEN OLDEST” REQUESTS, APPEALS AND CONSULTATIONS:***

- 2. Section XII.A of your agency’s annual FOIA report, entitled “Backlogs of FOIA Requests and Administrative Appeals,” shows the numbers of any backlogged requests or appeals from the fiscal year. Section VII.E, entitled “Pending Requests – Ten Oldest Pending Requests,” Section VI.C.(5), entitled “Ten Oldest Pending Administrative Appeals,” and Section XII. C., entitled “Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency,” show the ten oldest pending requests, appeals, and consultations. You should refer to those numbers from your annual FOIA reports for both fiscal 2012 and fiscal 2013 when completing this section of your chief FOIA officer report.**

#### ***BACKLOGS***

- a. If your agency had a backlog of requests at the close of fiscal 2013, did that backlog decrease as compared with fiscal 2012?**

There were four backlogged request at the end of fiscal 2012 and three at the end of fiscal 2013.

- b. If your agency had a backlog of administrative appeals in fiscal 2013, did that backlog decrease as compared to fiscal 2012?**

There were no backlogged administrative appeals in fiscal 2012. There was one in fiscal 2013. It closed after 57 days (December 5th, 2014).

### **TEN OLDEST REQUESTS**

- c. In fiscal 2013, did your agency close the ten oldest requests that were pending as of the end of fiscal 2012?**

There were four pending request at the end of fiscal 2012, and three of them closed in fiscal 2013.

- d. 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 2012 annual FOIA report. If you had fewer than ten total oldest requests to close, please indicate that. For example, if you had only seven requests listed as part of your “ten oldest” in Section VII.E. and you closed two of them, you should note that you closed two out of seven “oldest” requests.**

Three out of four oldest requests closed in fiscal 2013.

### **TEN OLDEST APPEALS**

- e. In fiscal 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of fiscal 2012?**

There were no pending administrative appeals at the end of fiscal 2012.

- f. If no, please provide the number of the appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C. (5) of your fiscal 2012 annual FOIA report.

See above, Section V, 2f.

#### **TEN OLDEST CONSULTATIONS**

- g. In fiscal 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of fiscal 2012?

There were no pending consultations at the end of fiscal 2012.

- h. If no, please provide the number of pending consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your fiscal 2012 annual FOIA report.

Not applicable. See above, Section V, 2g.

#### **REASONS FOR ANY BACKLOGS:**

3. If you answered “no” to any of the above questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, or consultations. In doing so, answer the following questions, then include any additional explanation.

#### **REQUEST AND/OR APPEAL BACKLOG**

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals?

Not applicable.

- b. Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff?

Not applicable.

- c. Was the lack of a reduction in the request and/or appeals backlog caused by an increase in the complexity of the requests received?

Not applicable.

- d. What other causes, if any, contributed to the lack of a decrease in the request and/or appeal backlog?

The increase in the request backlog was caused by lack of necessary resources.

***“TEN OLDEST” NOT CLOSED***

- e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from fiscal 2012.

See above, Section V, 3d.

- f. If your agency was unable to close any of its ten oldest requests or appeals because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

Not applicable.

***PLANS FOR CLOSING OF TEN OLDEST PENDING REQUESTS, APPEALS, AND CONSULTATIONS AND REDUCING BACKLOGS:***

4. If your agency did not close its ten oldest pending requests, appeals and consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during fiscal 2014.

The response to one backlogged request is in progress.

- 5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in fiscal 2013, provide your agency's plan for achieving backlog reduction in the year ahead.**

Not applicable.

#### **INTERIM RESPONSES:**

OIP has issued guidance encouraging agencies to make interim releases whenever they are working on requests that involve voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters, agencies facilitate access to the requested information.

- 6. Does your agency have a system in place to provide interim responses to requesters when appropriate?**

Yes.

- 7. If your agency had a backlog in 2012, please provide an estimate of the number of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.**

Not applicable.

## **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 following questions:

- 1. Did your agency invoke a statutory exclusion during fiscal 2013?**

No.

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

Not applicable.

## SPOTLIGHT ON SUCCESS

- The U.S. Copyright Office continues with a major multiyear project that is making historical copyright records created between 1870 and 1977 searchable and available online. The U.S. Copyright Office has imaged nearly 32 million index cards for copyright registrations and assignments from 1870 to 1977.
- As part of developing a new database for the older records, the U.S. Copyright Office continues to host periodic open forums to facilitate public discussion about the digitization project, particularly metadata capture and keyword indexing, to help ensure that the database meets the needs of users.

# Copyright

United States Copyright Office

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