

## **Content of 2015 Chief FOIA Officer Report**

**SBA's Chief FOIA Officer: Delorice P. Ford**

**Assistant Administrator for Hearings and Appeals**

### **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.

#### *FOIA Training:*

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

Yes, all Agency employees participated in the Mandatory Online FOIA Training. In addition, our office provided FOIA training sessions for individual employees and groups throughout the reporting period.

2. If yes, please provide a brief description of the type of training conducted and the topics covered.

SBA's FOIA Office held training sessions that varied from general FOIA background information to detailed and specific guidance on the FOIA system and process. In the interest of proactive disclosure, the FOI/PA Office held several sessions with the agency's FOIA contacts to identify frequently requested records to be proactively released to requesters.

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

Yes, all of SBA's FOIA professionals attended DOJ FOIA training during the reporting period.

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

100 percent of SBA's FOIA professionals attended DOJ's FOIA training during the reporting period.

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 at least once each year

All of SBA's FOIA professionals attend OIP government-wide training sessions that cover all aspects of the FOIA. The FOIA staff routinely distributes information and guidance from these sessions with the Agency's FOIA contacts. For 2015 SBA's FOIA professionals plan to continue attending all of OIP FOIA training sessions.

*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 that engagement.

SBA's FOIA professionals did not engage in outreach or dialogue with open government groups.

7. If you did not conduct any outreach during the reporting period, please describe why?

While SBA has not participated in outreach, SBA FOIA staff routinely engages in discussion of its FOIA practices with requesters and clients of the Agency.

*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.

8. Does your agency have a distinct process or system in place to review records for discretionary release? If so, please briefly describe this process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases.

SBA's FOIA processing instructions include guidance on the presumption of openness, transparency and accountability. When meeting or consulting with SBA's FOIA contacts, the FOIA Office always encourages the greatest and fullest possible disclosures. Disclosure is always encouraged unless the information is clearly exempt from disclosure pursuant to one or more FOIA exemptions. All FOIA responses are reviewed for compliance and when necessary responses have been revised to provide the greatest disclosure.

9. During the reporting period did your agency make any discretionary releases of otherwise exempt information?

Yes, though the majority of SBA's records pertain to businesses, sole proprietors and individuals, we continue to encourage the presumption of disclosure and openness and provide disclosure of non-commercial and non-personal records to the greatest extent possible.

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

Exemption 5 would have covered the information that was released as a matter of discretion.

11. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.

Internal discussions, analysis, opinions and drafts were released in instances which would not undermine or harm program effectiveness and integrity. Traditionally these types of records were often afforded Exemption 5 protection both at the initial and appellate levels.

Some of the discretionary releases which SBA has made during FY 14 included the disclosure of some pieces of draft correspondence which traditionally would have been withheld pursuant to Exemption 5 because they were drafts. Other discretionary disclosures included the release of

internal discussions and analysis the disclosure of which would have traditionally been withheld solely on the basis of being "internal."

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

N/A

*Other Initiatives:*

13. Describe any effort your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA?

As part of the annual mandatory online Freedom of Information Act (FOIA) training, non-FOIA professionals (all SBA employees and contractors) receive a procedural notice with information regarding their obligations under the FOIA. Their obligations are also encompassed within the FOIA training.

14. 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.

Both the President's and the Attorney General's Memoranda were reissued and disseminated to the Agency's FOIA Service Center Staff (FOIA Contacts) and Public Liaisons due to staff turnovers. Links to the President's Memorandum and Department of Justice (DOJ) guidance are available on SBA's FOIA Home Page. [http://www.sba.gov/about-sba/sba\\_performance/open\\_government/foia](http://www.sba.gov/about-sba/sba_performance/open_government/foia).

All FOIA processing instructions to FOIA Contacts contains guidance on transparency and accountability. The Agency's FOIA responses are reviewed for compliance with the presumption of openness. Responses that do not comply are re-directed to the appropriate FOIA Contact for reassessment.

**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, "[a]pplication 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." It is essential that agencies effectively manage their FOIA program.

Describe here the steps your agency has taken to ensure that your management of your FOIA program 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.

*Personnel:*

In the 2014 Chief FOIA Officer Report Guidelines, OIP asked about the status of converting all eligible FOIA professionals to the new Government Information Series.

1. If your agency reported that its staff was eligible for conversion but had not yet converted all professionals to the new series, what is the current proportion of personnel that has been converted?

100% of the SBA FOIA professional employees are converted to the new job series of Government Information Specialist.

2. If your agency has not converted all of its eligible employees yet, what is your plan to ensure that all FOIA professionals' position descriptions are converted?

N/A

*Processing Procedures:*

3. For Fiscal Year 2014 what was the average number of days your agency reported for adjudicating requests for expedited processing?

For fiscal year 2014, our agency had one expedited request that was adjudicated later than the 10 day timeframe due to the furlough.

4. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

N/A

5. If your agency has a decentralized FOIA process, has your agency taken steps to make the routing of misdirected requests within your agency more efficient?

Yes

6. If your agency is already handling the routing of misdirected requests in an efficient manner, please note that here and describe the process for these requests.

When SBA receives a misdirected request, the FOI/PA Office either processes the referral immediately or refers it within 24 hours to the appropriate SBA office for FOIA processing. The FOI/PA Office has instructed the FOIA contacts within SBA to follow the same steps.

*Requester Services:*

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

Yes, notification of mediation services is included in the agency's outgoing initial response correspondence.

8. When assessing fees, does your agency provide a breakdown of how FOIA fees were calculated and assessed to the requester?

Yes

9. If estimated fees estimates are particularly high, does your agency provide an explanation for the estimate to the requester?

When assessing fees, SBA provides a written fee assessment summarizing the calculations to the requester. In addition, FOIA contacts interact regularly with requesters to ensure their understanding of FOIA fees.

*Other Initiatives:*

10. If there are 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.

The FOI/PA Office interacts on a continuous and daily basis with its FOIA contacts. As the majority of our interaction is electronic, our office is able to provide efficient and automatic guidance and assistance. In addition, the ability to provide simultaneous guidance to all FOIA contacts enhances and improves SBA's FOIA process.

### **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 2013 to March 2014). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

*Posting Material:*

1. Does your agency have a distinct process or system in place to identify records for proactive disclosures? If so, please describe your agency's process or system.

Yes, the FOIA contacts provide copies of all FOIA responses to the FOI/PA Office. As part of our FOIA process, the FOIA professionals review the subject matter in order to identify the subjects of interest.

2. Does your process or system involve any collaboration with agency staff outside the FOIA office?

Yes

3. Describe your agency's process or system for identifying "frequently requested" records that should be posted online.

SBA FOIA professionals have partnered with FOIA contacts to classify "frequently requested" records.

4. Provide examples of material that your agency has posted this past reporting period, including links to the posted material.

[http://www.sba.gov/about-sba/sba\\_performance/open\\_government/other\\_plans\\_reports](http://www.sba.gov/about-sba/sba_performance/open_government/other_plans_reports)

*Other Initiatives:*

5. If there are any other steps your agency has taken to increase proactive disclosures, please describe them here.

SBA uses social media to promote and increase awareness of proactive disclosures.

**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.

*Online tracking of FOIA requests:*

1. Can a member of the public track the status of his/her request or appeal electronically?

Yes

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?

In October 2014, SBA started utilizing the FOIA case tracking system/management tool, FOIAonline. This is a web-based portal system that is used by other Federal agencies and is accessible to the public.

3. If your agency does provide online tracking, please describe the information that is provided to the requester through this feature.

The FOIAonline tracking system allows the requester to follow each stage of their request. It labels the stages of the request in a five (5) step workflow: "submitted", "evaluation", "assignment", "processing", and "closed." SBA's actions move a request through the workflow automatically. The system also provides email notifications of updates or changes.

4. If your agency does provide online tracking for requesters, does this feature provide the requester with an estimated date of completion?

Yes

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

N/A

*Making Material Posted Online More Useful:*

6. 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

7. If yes, please provide examples of such improvements.

To foster efficacy and easier use, the SBA's websites and their home pages have been updated based upon the needs of the agency's clients.

8. Have your agency's FOIA professionals interacted with other agency staff (such as technology specialists or public affairs or communications professionals) in order to identify if there are any new ways to post agency information online?

Yes

9. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe those efforts.

SBA utilizes social media websites like Facebook, Twitter, YouTube and Foursquare to promote public awareness.

10. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?

Yes

11. If so, please briefly explain what those challenges are.

Certain types of data are not compatible with Section 508 of the American with Disability Act of 1990. SBA has developed a 508 Compliance Committee to specifically focus on correcting this issue.

*Use of technology to facilitate processing of requests:*

12. 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? If yes, describe the technological improvements being made.

Yes, SBA employs a FOIAonline Tracking system. This system manages correspondence and has the capability to store and share documents.

13. Are there additional tools that could be utilized by your agency to create further efficiencies?

No

*Other initiatives:*

14. Did your agency successfully post all four quarterly reports for Fiscal Year 2014?

Yes

15. If your agency did not successfully post all quarterly reports, with information appearing on the FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2015.

N/A

16. Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible?

Yes

17. If your agency does not communicate electronically with requesters as a default, are there any limitations or restrictions for the use of such means? If yes, does your agency inform requesters about such limitations?

N/A

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

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations. *For the figures required in this Section, please use those contained in the specified sections of your agency's 2014 Annual FOIA Report and, when applicable, your agency's 2013 Annual FOIA Report.*

### *Simple Track:*

Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

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

No, SBA does not utilize a separate track but does try to respond to all requests as promptly as possible.

2. If so, for your agency overall, for Fiscal Year 2014, was the average number of days to process simple requests twenty working days or fewer?

N/A

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2014 that were placed in your simple track.

N/A

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

Yes

### *Backlogs:*

Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal



year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2013 and Fiscal Year 2014 when completing this section of your Chief FOIA Officer Report.

5. If your agency had a backlog of requests at the close of Fiscal Year 2014, did that backlog decrease as compared with Fiscal Year 2013?

Yes

6. 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 2014.

The percentage of requests that make up the agency's backlog was 1%.

*Backlogged Appeals:*

7. If your agency had a backlog of administrative appeals in Fiscal Year 2014, did that backlog decrease as compared to Fiscal Year 2013?

There was no decrease as for both Fiscal Year 2013 and Fiscal Year 2014. SBA did not have a backlog of administrative appeals for either Fiscal Year.

8. 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 2014. If your agency did not receive any appeals in the Fiscal Year 2014 and/or has no appeal backlog, please answer with "N/A."

N/A

*Backlog Reduction Plans:*

9. In the 2014 guidelines for Chief FOIA Officer Reports, any agency with a backlog over 1000 requests in Fiscal Year 2013 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 2014?

N/A

10. If your agency had a backlog of more than 1000 requests in Fiscal Year 2014, what is your agency's plan to reduce this backlog during Fiscal Year 2015?

N/A

*Status of Ten Oldest Requests, Appeals, and Consultations:*

11. In Fiscal Year 2014, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2013?

Yes

12. 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 2013 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had 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.

N/A

13. Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?

N/A

*Ten Oldest Appeals:*

14. In Fiscal Year 2014, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2013?

N/A

15. If no, please provide the number of these 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 Year 2013 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A

*Ten Oldest Consultations:*

16. In Fiscal Year 2014, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2013?

All Consultations were closed in a timely basis.

17. If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2013 Annual FOIA Report.

N/A

*Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans:*

18. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2013.

N/A

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

N/A

20. 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 Year 2015.

N/A

*Interim Responses:*

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 in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information.

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

Yes, SBA routinely provides interim responses.

22. If your agency had a backlog in Fiscal Year 2014, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

Approximately 40 percent.

**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 Year 2014?

No

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

N/A

**Success Story**

Out of all activities undertaken by your agency since March 2014 to increase transparency and improve FOIA administration, please briefly describe at least one success story that you would like to highlight as emblematic of your agency’s efforts. The success story can come from any one of the five key areas. As noted above, these agency success stories will be highlighted during Sunshine Week by OIP. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to half a page. The success story is designed to be a quick summary of a key achievement. A description of all of your efforts will be contained in the body of your Chief FOIA Officer Report.

SBA’s success story for Fiscal Year 2014 was the total number of initial requests for the current reporting period substantially decreased compared to the previous year. In Fiscal Year 2014 SBA received 1,312 initial requests as compared to the 4,933 initial FOIA requests during Fiscal Year 2013.

SBA prides itself with being forward thinking. In Fiscal Year 2012, SBA's FOI/PA staff collaborated with one of the agency's high volume offices, Office of Disaster Assistance (ODA), and we developed a plan to encourage transparency and promote customer service. The reduction in the number of requests received in Fiscal Year 2014 is partly the result of this plan and the fact that there was no active disaster emergency within the year. In addition, SBA's FOI/PA staff interacts regularly with the Agency's FOIA Contacts and consistently provides customized instruction that stresses the importance of an open government and disclosure. Initial FOIA responses are vetted for proper FOIA accuracy. Initial responses that do not provide the utmost disclosure are selected for a supplemental response or remanded back to the office for a more detailed response. These practices have helped promote proactive interaction and quality responses and we believe they have played a major role in the decrease of FOIA requests received.