

Office of the Director of National Intelligence

2024 Chief FOIA Officer Report

(March 2023–March 2024)

SECTION I: FOIA LEADERSHIP AND APPLYING THE PRESUMPTION OF OPENNESS

A. Leadership Support for FOIA

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. See 5 U.S.C. § 552(j)(1) (2018). Is your agency's Chief FOIA Officer at or above this level?

Response: Yes.

2. Please provide the name and title of your agency's Chief FOIA Officer.

Response: Lora A. Shiao, Chief Operating Officer.

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?

Response: During her confirmation hearing, the Director of National Intelligence (DNI) made building trust with the public a top priority, and transparency plays an important role in this. In late 2020, the Office of the Director of National Intelligence's (ODNI) Information Management Office (IMO), of which the FOIA group is a part of, was aligned directly under my office, elevating it from its previous position.

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?

Response: Yes.

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:

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

Response: 30 full Glomar responses and 4 partial Glomar responses.

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

Response: Exemption 1: 28 times; Exemption 3: 34 times.

6. If your agency does not track the use of Glomar responses, are you planning to track this information in the future?

Response: 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.

Response: N/A.

SECTION II: ENSURING FAIR AND EFFECTIVE FOIA ADMINISTRATION

A. FOIA Training

1. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

Response: All incoming ODNI personnel (staff and contractors) are briefed on their responsibilities under the FOIA as part of their Entrance on Duty (EOD). Additionally, all employees hired by the ODNI IMO have specific FOIA-related performance standards listed in their employee work objective and complete Department of Justice's (DOJ) FOIA Training for Federal Employees on an annual basis. ODNI FOIA Officers regularly convey FOIA processes to non-FOIA staff to alleviate any confusion when searches and reviews are sent to those components.

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?

Response: Yes.

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

Response: All employees with FOIA-related duties were encouraged to access the DOJ's Office of Information Policy (OIP) website to review current FOIA guidance, and all attended at least one of OIP's virtual training session. We also conducted numerous in-house training sessions for FOIA personnel.

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.

Response: 100 percent of all FOIA Officers working full-time on FOIA case processing attended the in-house training sessions, and at least one external DOJ or other FOIA-

related training. Though ODNI did not track the number of ODNI employees with FOIA responsibilities who took FOIA trainings in this reporting period, as of January 2024, FOIA training is mandatory for all ODNI employees.

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.

Response: 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?

Response: At the EOD orientation, all incoming ODNI personnel are briefed on their obligations under the FOIA. In addition, FOIA professionals provide guidance and answer questions when non-FOIA staff are searching for and/or reviewing documents responsive to FOIA requests. Information Management Liaisons (non-FOIA officers embedded in various ODNI components) receive additional FOIA training, and all ODNI officers take DOJ’s FOIA Training for Federal Employees.

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.

Response: Yes, ODNI FOIA professionals routinely proactively engage with requesters on FOIA requests. Upon receipt, if a request is identified as having the potential to be either exceedingly voluminous or potentially unsearchable, ODNI FOIA professionals work together with the requester to clarify and, at times, narrow the scope of the request. This proactive engagement takes many forms—to include email, telephone calls, and postal mail—depending on the preferred method of the requester. For those requests that are identified as complex, ODNI includes reference to the potential of follow-on communication in the acknowledgment letter, as often times, a request that seems searchable ultimately results in thousands of potentially false hits. Even once the request is perfected, ODNI FOIA professionals continue to connect with requesters over the life of the request to provide updates upon request and to ensure that the documents processed are those most responsive to the requesters’ needs. This collaborative engagement with the requester community ensures that ODNI processes these cases in the most efficient manner possible with the most input from the requester.

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.

Response: No.

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 2023 (please provide a total number or an estimate of the number for the agency overall).

Response: ODNI estimates 45 times in Fiscal Year (FY) 2023.

B. 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.

Response: Yes, ODNI evaluated the need for additional resources to process FOIA requests and prioritized the hiring of additional FOIA staff officers. Additionally, ODNI continues to investigate new technological applications to enhance the FOIA process and to improve the internal processes in order to search and review records more accurately and consistently.

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.

Response: ODNI does not use any data analysis in its FOIA workload.

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

Response: N/A.

SECTION III: PROACTIVE DISCLOSURES

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

Response: Almost all documents provided to requesters in response to a FOIA request are posted to the ODNI FOIA Reading Room. In addition, ODNI proactively declassifies and publicly releases a wealth of information to the public.

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

Response: Unclassified records identified for proactive disclosures are typically posted within a week. Records which require redactions may take longer.

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

Response: Yes.

If so, what information is contained in the logs?

Response: Case Tracking Number, Subject, Requester Name, and the date opened.

Are they posted in CSV format? If not, what format are they posted in?

Response: ODNI's FOIA logs are posted in PDF format.

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.

Response: ODNI has proactively declassified and released several records in this past reporting period including: Reporting on the Origins of COVID-19, Reporting on Unidentified Aerial Phenomena, ODNI policy directives, speeches, interviews, and reports. The full collection of declassified and released proactive disclosures are available at: <https://www.odni.gov/index.php/read-released-records>.

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?

Response: No.

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.

Response: N/A.

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.

Response: Proactive disclosures are posted on ODNI's public website through the Office of Public Affairs. In addition, the Civil Liberties, Privacy, and Transparency Office is informed of new FOIA requests, to help that office determine areas of high public interest that may benefit from proactive release.

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

Response: N/A.

SECTION IV: STEPS TAKE TO GREATER UTILIZE TECHNOLOGY

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

Response: Yes, ODNI has reviewed the FOIA-related technological capabilities and has identified resources needed to expand those abilities to better respond to FOIA demands.

2. Please briefly describe any new types of technology your agency uses to support your FOIA program.

Response: None.

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.

Response: ODNI utilizes a discovery tool to conduct targeted email searches. No data is available on how much time and/or financial resources the tool saves the agency.

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?

Response: Yes.

5. Did all four of your agency's quarterly reports for Fiscal Year 2023 appear on FOIA.gov?

Response: Yes.

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2024.

Response: N/A.

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 2022 Annual FOIA Report and, if available, for your agency's Fiscal Year 2023 Annual FOIA Report.

Response: <https://www.odni.gov/index.php/download-odni-foia-reports>.

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

Response: Yes.

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

Response: N/A.

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

A. Remove Barriers to Access

1. Has your agency established alternative means of access to first-party requested records, outside of the typical FOIA or Privacy Act process?

Response: No.

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

Response: ODNI is able to close most first-party requests within 20 days of receipt, utilizing the standard FOIA process.

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

Response: ODNI proactively releases many of its final reports.

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.

Response: 8.08 days.

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.

Response: N/A.

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

Response: 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?

Response: No.

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

Response: No.

9. Please provide the percentage of requests processed by your agency in Fiscal Year 2023 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.

Response: 55.4 percent.

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?

Response: 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?

Response: 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?

Response: 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

Response: During FY 2023, ODNI took significant steps to increase quality of FOIA responses. IMO implemented an additional Quality Assurance step prior to a final response, which resulted in slightly slower processing times. Additionally, most of

ODNI's backlog cases continue to be complex, high-volume, and require multiple consultations with other agencies.

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."

Response: 170 percent.

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?

Response: Yes.

16. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2023 than it did during Fiscal Year 2022?

Response: N/A.

17. If your agency's appeal 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 appeals
- A loss of staff
- An increase in the complexity of the requests received (if possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase)
- Litigation
- Any other reasons—please briefly describe or provide examples when possible

Response: 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 2023. 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 2023 and/or has no appeal backlog, please answer with "N/A."

Response: 126.7 percent.

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 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 2023?

Response: ODNI's FOIA backlog is under 1,000.

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 2024.

Response: ODNI's FOIA backlog is under 1,000.

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

Ten Oldest Requests

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?

Response: 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 2022 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

Response: One.

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

Response: IMO has developed a plan to move the oldest cases forward as quickly as the interagency consultation process allows. IMO is working with its most consulted agencies to explore options for improved efficiency with interagency consultations.

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 2022 Annual FOIA Report?

Response: No.

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 2022 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

Response: Three.

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

Response: The interagency consultation process continues to impact the pace of appeals. IMO is working with its most consulted agencies to explore options for improved efficiency with interagency consultations.

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?

Response: No.

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 2022 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that

Response: Eight.

Additional Information Regarding Ten Oldest

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 2024.

Response: ODNI closed eight of its ten oldest consultations. Additionally, ODNI is continuing to prioritize appeals and is in the process of delegating its FOIA appellate authority to a different position, which should result in faster processing times. ODNI has prioritized our oldest initial cases for FY 2024 and has elevated some of the reviews pending with other agencies to the management level.

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
- Common causes leading to litigation
- Any other information to illustrate the impact of litigation on your overall FOIA administration

Response: Yes, ODNI actively processes approximately 25 FOIA litigation cases at any given time. Almost all of the FOIA litigations from FY 2023 were due to a failure to respond within the statutory deadline. FOIA litigations put an inequitable burden on ODNI’s FOIA office; despite accounting for less than 5 percent of ODNI’s FOIA open cases, approximately 25 percent of IMO’s FOIA resources are devoted to litigations.