

Office of the Director of National Intelligence

2013 Chief FOIA Officer Report

This report covers the period beginning with March 1, 2012 through February 28, 2013 and outlines the steps the ODNI has taken to “improve FOIA operations and facilitate information disclosure.” The ODNI is deeply committed to transparency to the best of our abilities without harming national security.

Section I: Steps Taken to Apply 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.

- 1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?** Yes. A FOIA PowerPoint presentation continues to be available through our internal website. In addition, we teamed up with other agencies within the Intelligence Community to provide FOIA process and equity recognition training to a wider audience. Also, our OIG office sponsored a FOIA presentation given by DOJ for their office and all interested parties.

Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice? Yes. ODNI FOIA professionals attended FOIA training provided by the Department of Justice and American Society of Access Professionals.

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.

- 2. Did your agency make any discretionary releases of otherwise exempt information?** Yes. The ODNI has chosen to release unclassified but otherwise exempt information in several cases.
- 3. What exemptions would have covered the information that was released as a matter of discretion?** Exemption 5 would have covered the material that was released as a matter of discretion.
- 4. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.** Under the FOIA, ODNI conducts a line by line review of responsive records to determine what information may be reasonably segregated and released. In addition, many documents are proactively reviewed prior to receipt of a FOIA request and are made available to the public through posting on our public website. The ODNI continued to make available on its public website DNI statements, speeches, photographs, policy documents and technical standards to name a few.

5. **Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.** ODNI continues to routinely review and post records to our public website. Although the website has been revised since the stand-up of the ODNI, the content has been maintained in an “archive” dating from 2005.

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

Describe here the steps your agency has taken to ensure that its system for responding to requests is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

1. **Do FOIA professionals within your agency have sufficient IT support?** Yes. ODNI utilizes a FOIA case management system that allows the staff to open and track cases electronically. In addition, the ODNI FOIA office continues to apply all redactions electronically. This enables the staff to work more efficiently by promoting electronic review and recommendations by the subject matter experts.
2. **Do your FOIA professionals work with your agency’s Open Government Team?** ODNI’s FOIA program and Open Government Team are aligned to the same group within the ODNI. ODNI’s FOIA professionals work directly with the ODNI Open Government Team by providing input to Open Government releases and also by working with the Open Government team to shape policy and guidance.
3. **Has your agency assessed whether adequate staffing is being devoted to FOIA administration?** The Chief, Information and Data Management Group routinely reviews the FOIA workload to determine if staff should be re-allocated to the FOIA program. In addition, non-FOIA professionals in the Information Management Office are frequently cross-trained to provide backup support to the FOIA office when necessary.
4. **Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, streamlining consultations, eliminating redundancy, etc.** During this reporting period, I have had several communications with the Information and Data Management Group and the Office of General Counsel regarding ways to improve the work of the FOIA Office. With support from the Principal Deputy DNI, the Chief, Information and Data Management Group has increased the FOIA staff and is looking at ways to outsource the scanning of voluminous documents into our system to another government agency. This has allowed the FOIA staff to process these types of cases in a more expeditious manner.

Section III: Steps Taken to Increase Proactive Disclosures

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 2012 to March 2013). 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.

1. Provide examples of material that your agency has posted this past year.

- FOIA Logs (January – July 2012)
- Chief FOIA Report (2012)
- Annual Report (2012)
- 2008 and 2012 NCTC AG Guidelines (four documents) in response to a litigation (2013)
- Information Paper on the updated National Counterterrorism Center (NCTC) Guidelines - February 2012
- Global Trends 2030: Alternative Worlds - December 10, 2012
- Global Trends 2030: Alternative Worlds - Interactive Le Menu - December 1, 2012
- Remarks by Chris Kojm, Chairman, National Intelligence Council - July 24, 2012
- Section 803 - Privacy and Civil Liberties Officers, Periodic Reports - Sep 2012 to Nov 2012
- ODNI Overview Brochure - October 16, 2012
- Senate Committee on Homeland Security and Government Affairs - Statement for the Record by Matthew G. Olsen, Director National Counterterrorism Center - The Homeland Threat Landscape and U.S. Response - September 19, 2012
- Summary of the Reengagement of Detainees Formerly Held at Guantanamo Bay, Cuba - September 5, 2012
- Section 803 - Privacy and Civil Liberties Officers, Periodic Reports - June 2012 to Aug 2012
- Data Mining Report - August 10, 2012

- House Committee on Homeland Security - Statement for the Record by Director of National Counterterrorism Center Matthew Olsen - Understanding the Homeland Threat Landscape - July 25, 2012
- 2012 ISE Annual Report to the Congress - July 24, 2012
- 2011 Report on Security Clearance Determinations - July 19, 2012
- Geospatial Intelligence Forum Interview with Robert Cardillo - July 01, 2012
- Senate Committee on Homeland Security and Governmental Affairs - Statement for the Record by Deputy Assistant Director for Special Security for ODNI Charles Sowell - Security Clearance Reform - June 21, 2012
- DNI Clapper: Our Expectations of Senior National Intelligence Service Officers - June 06, 2012
- Background briefing on the state of Al-Qaida Media Conference Call - April 27, 2012
- Section 803 - Privacy and Civil Liberties Officers, Periodic Reports - March 2012 to May 2012
- 2012: Global Water Security: Intelligence Community Assessment - March 22, 2012
- 2012: Global Water Security Map - March 22, 2012
- Summary of the Reengagement of Detainees Formerly Held at Guantanamo Bay, Cuba - March 1, 2012
- Intelligence Community Legal Reference Book - 2012

2. **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, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities on the ODNI site, creating mobile applications, providing explanatory material, etc.?** While we have not actively solicited feedback, etc., we are proactive with individuals who regularly access our website when new information is posted, or when a periodic report is posted that we know an individual or organization is interested in. We also respond to all inquiries to our DNI-PAO public email address, which is identified on our dni.gov public website. The ODNI also has a Facebook page; and posts content via YouTube where comments from the public may be posted.

Additionally, we use commercial digital communication management system, which allows the ODNI to provide citizens with better service and access to relevant information by proactively communicating official content through an RSS feed. This system supports the OMB's open government directive and offers transparency through the monitoring of the ODNI's website for updates and automatically created email alerts, proactively communicating new information to citizens. The ODNI currently has more than 48,000 subscribers to its website and generates an average of 250,000 messages monthly to those subscribers.

3. **If so, provide examples of such improvements.** (See Above)
4. **Describe any other steps taken to increase proactive disclosures at your agency.**
ODNI's public website is continually under review to determine what improvements can be made in order to achieve greater transparency.

Section IV: Steps Taken to Greater Utilize Technology

Electronic receipt of FOIA requests:

1. **Can FOIA requests be made electronically to your agency?** Yes
2. **If your agency is decentralized, can FOIA requests be made electronically to all components of your agency?** ODNI has a centralized FOIA program.

Online tracking of FOIA requests:

3. **Can a FOIA requester track the status of his/her request electronically?** Not at this time.
4. **If so, describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.** The ODNI does not have an online tracking system wherein a requester can check on the status of their request at this time.
5. **In particular, does your agency tracking system provide the requester with an estimated date of completion for his or her request?** The ODNI does not have an online tracking system wherein a requester can check on the status of their request at this time. The ODNI will provide an estimated date of completion, in writing, upon request.
6. **If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability?** Not at this time.

Use of technology to facilitate processing of requests:

7. **Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?**
Yes. The ODNI is participating in a technology working group hosted by the Office of Government Information Services (OGIS) to find better ways to use technology to make the FOIA process more efficient.
8. **If so, describe the technological improvements being made.** This is still being determined.

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

- 1. Section VII.A of your agency’s Annual FOIA Report, entitled “FOIA Requests – Response Time for All Processed Requests,” includes figures that show your agency’s average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for “simple” requests, which are those requests that are placed in the agency’s fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.**
 - a. Does your agency utilize a separate track for simple requests? Yes**
 - b. If so, for your agency overall, for Fiscal Year 2012, was the average number of days to process simple requests twenty working days or fewer? Yes, the average number of days to process simple requests was 16.54 days.**
 - c. If your agency does not track simple requests separately, was the average number of days to process non- expedited requests twenty working days or fewer? N/A**

- 2. Sections XII.D.(2) and XII.E.(2) of your agency’s Annual FOIA Report, entitled “Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report – Backlogged Requests/Appeals,” show the numbers of any backlog of pending requests or pending appeals from Fiscal Year 2012 as compared to Fiscal Year 2011. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition, Section VII.E, entitled “Pending Requests – Ten Oldest Pending Requests,” and Section VI.C.(5), entitled “Ten Oldest Pending Administrative Appeals,” from both Fiscal Year 2011 and Fiscal Year 2012 should be used for this section.**
 - a. If your agency had a backlog of requests at the close of Fiscal Year 2012, did that backlog decrease as compared with Fiscal Year 2011? No**
 - b. If your agency had a backlog of administrative appeals in Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011? No**
 - c. In Fiscal Year 2012, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2011? No, but we did manage to close three of our ten oldest appeal cases.**
 - d. In Fiscal Year 2012, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2011? No, but we did manage to close four of our ten oldest appeal cases.**

3. If you answered “no” to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation:

Request Backlog:

- a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests? No
- b. Was the lack of a reduction in the request backlog caused by a loss of staff? Yes
- c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received? Yes
- d. What other causes, if any, contributed to the lack of a decrease in the request backlog? We have had a significant increase in litigations and non-FOIA litigations, and other competing priorities which means we had to depend on the same staff resources to get work done.

Administrative Appeal Backlog:

- a. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals? Yes
 - b. Was the lack of a reduction in the appeal backlog caused by a loss of staff? Yes
 - c. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received? Yes
 - d. What other causes, if any, contributed to the lack of a decrease in the appeal backlog? We have had a significant increase in litigations and non-FOIA litigations, and other competing priorities which means we had to depend on the same staff resources to get work done.
4. OIP has issued **guidance** encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information. If your agency had a backlog in Fiscal Year 2012, please provide an estimate of the number of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed. During FY12, the ODNI provided interim rolling release response in approximately two FOIA cases.

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 2012? No**
- 2. If so, what was the total number of times exclusions were invoked? N/A**

Spotlight on Success

Out of all the activities undertaken by your agency since March 2012 to increase transparency and improve FOIA administration, describe here 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.

The ODNI has increased its FOIA staff in response to the increase of litigations, non-FOIA litigations, and complexity of cases. This will allow the staff to process these cases in an expeditious manner.