

Office of the Director of National Intelligence

2015 Chief FOIA Officer Report

ODNI's Chief FOIA Officer – Mark Ewing, Chief Management Officer

This report covers the period beginning with March 17, 2014 through March 15, 2015 and outlines steps the ODNI has taken to improve FOIA operations and facilitate information disclosure. The ODNI is deeply committed to transparency to the best of its 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.

*FOIA Training*

1. **Did your agency conduct FOIA training during the reporting period for FOIA professionals?**  
Yes.
2. **If yes, please provide a brief description of the type of training conducted and the topics covered.** FOIA training slides continue to be available to the ODNI workforce through our internal website. In addition, ODNI teamed with other agencies within the Intelligence Community to provide FOIA process and equity recognition training to a wider audience. Within the ODNI, we briefed approximately 128 people on the FOIA process, the fundamentals of FOIA, and explained the nine exemptions and how they are used to protect information. External to the ODNI, we provided training to a combined total of 154 personnel in two separate IC FOIA Officer Information Days. We discussed FOIA commitments in the Second U.S. National Action Plan, redaction protection profile; equity briefings from five agencies; and panel discussions on standardizing/expediting procedures for IC consultations, high volume requestors and trends in FOIA requests.
3. **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 Defense and the American Society for Access Professionals.
4. **Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.** Approximately 100% of the ODNI's FOIA professionals attended substantive training during this reporting period.
5. **In the 2014 Chief FOIA Officer Report Guidelines, OIP asked agencies to provide a plan for ensuring that core, substantive FOIA training is offered to all agency FOIA professionals at least once a year. Please provide the status of your agency's implementation of this plan.** ODNI is developing in-house FOIA slides. Upon completion, they will be posted on the IMD Outreach and Training website. The slides will be used by its public access professionals for training purposes. Until the FOIA slides are in place, ODNI provides in-house training to its FOIA professionals. High-level training is made available to the workforce. ODNI also provides

community outreach, inviting speakers from other agencies to discuss topics of interest as part of our IC FOIA Day. ODNI has partnered with other agencies such as DoD to leverage existing training. ODNI implemented a plan from last year and provided brown bag training regularly for non-FOIA professionals who are routinely tasked with conducting FOIA search and review.

***Discretionary Releases:***

- 6. 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 of your agency have such a process or system in place?** ODNI routinely reviews material for discretionary releases and posts publicly available information both on the ODNI website ([www.dni.gov](http://www.dni.gov)) and on the IC On The Record website ([www.icontherecord.tumblr.com](http://www.icontherecord.tumblr.com)). The ODNI CIO Information Management Branch works closely with ODNI Office of Public Affairs and other stakeholders to ensure the broadest level of transparency possible.
- 7. During the reporting period did your agency make any discretionary releases of otherwise exempt information?** Although ODNI, itself, did not make any discretionary releases during this reporting period, ODNI did play a key role in guiding the ongoing transparency initiative in the Intelligence Community. To date, this transparency initiative has resulted in the declassification and discretionary disclosure of several thousand pages of documents (and well over a thousand during this reporting period).
- 8. What exemptions would have covered the information that was released as a matter of discretion?** The information described in Questions 7 above and 9 below would have been subject to Exemption 1 of the FOIA. Some of this information also would have been subject to Exemption 7 of the FOIA.
- 9. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.** As described in the response to Question 7, ODNI has played a key role in declassifying and disclosing a variety of documents about Intelligence Community activities. Many of these documents involve current and historical activities conducted under the Foreign Intelligence Surveillance Act that have been the subject of significant public interest – such as the bulk collection of telephony metadata.
- 10. If your agency was not able to make any discretionary releases of information, please explain why.** Again, ODNI, itself, technically did not make any discretionary releases during the reporting period, but it was instrumental in the broader Intelligence Community effort to declassify and discretionarily release documents to the public. ODNI continues to lead this transparency effort and it continues to review its own records for potential discretionary release when they are the subject of FOIA requests.

***Other Initiatives***

- 11. If there are any other initiatives undertaken by our agency to ensure that the presumption of openness is being applied please describe them here.** ODNI continues to routinely review and post records to its 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**

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. Please answer the following questions to describe the steps your agency has taken to ensure that your management of your FOIA program is effective and efficient. You should also include any additional information that describes your agency’s efforts in this area.

### ***Processing Procedures:***

1. For Fiscal year 2014, 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 2014 Annual FOIA Report. 63.25 days.
2. 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. ODNI instituted an administrative process to address this issue and updated the process to ensure consistency. Upon receipt of an expedited request, the ODNI immediately opens a case file that is given to a FOIA Team Lead to review.

### ***Requester Services***

3. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at the National Archives and Records Administration? See OIP Guidance, “Notifying Requesters of the Mediation Services Offered by OGIS.” (July 9, 2010) Yes.
4. When assessing fees, does your agency provide a breakdown of how FOIA fees were calculated and assessed to the FOIA requester? For example, does your agency explain the amount of fees attributable to search, review and duplication? See OIP Guidance, “[The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications.](#)” (Nov. 22, 2013) No fees were assessed during this reporting period.
5. If estimated fees estimates are particularly high, does your agency provide an explanation for the estimate to the requester? No fees were assessed during this reporting period.

### ***Other Initiatives***

6. 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., please describe them

here. ODNI FOIA Branch conducts self-assessments on a regular basis in weekly meetings to review processes, efficiencies, and effectiveness.

### 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. Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency website. In addition to the questions, below, you should also 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 disclosure? If so, please describe your agency's process or system.** Yes. The ODNI has been successful in making routine proactive disclosures. ODNI has posted information on [icontherecord.tumblr.com](http://icontherecord.tumblr.com) as well as at [www.dni.gov](http://www.dni.gov).
- 2. Does your process or system involve any collaboration with agency staff outside the FOIA office? If so, describe this interaction.** All ODNI components, working with both PAO and IMD, help identify records for proactive disclosures and often review the records prior to disclosure.
- 3. Describe your agency's process or system for identifying "frequently requester" records that should be posted online.** ODNI posts records when we receive more than one request for the same records within a two-week period. Additionally, based on public interest or world events that are high profile, we may identify records that should be posted.
- 4. Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.** Under the FOIA, ODNI released the Security Executive Agent Directive and the Strategy and Schedule for Security Clearance Reciprocity Report. In addition, many documents are proactively reviewed prior to receipt of a FOIA request and are made available to the public through posting on its public website. The ODNI continued to make available on its public website items such as statements and speeches by the DNI, and ODNI photographs, policy documents, and technical standards. For example, ODNI posted on its public website The 2014 National Intelligence Strategy; the Interim Progress Report on Implementing PPD-28; the Joint Statement from the ODNI and the DOJ on the Declassification of Renewal of Collection Under Section 501 of the FISA; and a Summary of the Reengagement of Detainees Formerly Held at Guantanamo Bay, Cuba. ODNI has posted information on [icontherecord.tumblr.com](http://icontherecord.tumblr.com) as well as at [www.dni.gov](http://www.dni.gov).

#### *Other Initiatives:*

- 5. If there are any other steps your agency has taken to increase proactive disclosures, please describe them here.** There were no other initiatives taken during this reporting period.

## 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.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that describes your agency's efforts in this area.

### ***Making Material Posted Online More Useful:***

- 1. 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?** Nothing directly at this time; however, we are brainstorming ideas to enhance our Agency's website.
- 2. If yes, please provide examples of such improvements.** N/A.
- 3. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?** Not at this time.
- 4. If so, please briefly explain what those challenges are.** N/A.

### ***Other Initiatives***

- 5. Did your agency successfully post all four quarterly reports for Fiscal Year 2014?** The ODNI posted the first quarterly report for Fiscal Year 2014.
- 6. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2015.** ODNI was unable to complete all quarterly reports due to employees departing the FOIA Branch. Vacant positions have been filled and Fiscal Year 2015 quarterly reports should be completed and posted on the Agency's website.
- 7. Do your agency's FOIA professional use email or other electronic means to communicate with requesters whenever feasible? If yes, what are the different types of electronic means are utilized by your agency to communicate with requesters?** Yes. ODNI FOIA professionals communicate with requesters by email and by telephone.
- 8. 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?** ODNI does not have any issues.

## 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 of your Chief FOIA Officer Report 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 the numbers 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? Yes.
2. If so, for your agency overall in Fiscal Year 2014, was the average number of days to process simple requests twenty working days or fewer? No, ODNI overall average was 20.52.
3. Please provide the percentage of requests processed by your agency in Fiscal Year 2014 that were placed in your simple track. 66%
4. 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 few? N/A.

**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.

### BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013? No.
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. 44.96%

### BACKLOGGED APPEALS

7. If your agency had a backlog of appeals at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013? No.
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 Fiscal Year 2014 and/or has no appeal backlog, please answer with "N/A." 185.71%

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

#### **TEN OLDEST REQUESTS**

9. In Fiscal Year 2014, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2013 Annual FOIA Report? No.
10. 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. ODNI closed nine of the ten oldest requests.
11. 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 requester was withdrawn, did you provide any interim responses prior to the withdrawal? N/A.

#### **TEN OLDEST APPEALS**

12. In Fiscal Year 2014, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2013 Annual FOIA Report? No.
13. 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 2013 Annual FOIA Report. If you had less than ten oldest appeals to close, please indicate that. ODNI closed five of the ten oldest appeals.

#### **TEN OLDEST CONSULTATIONS**

14. In Fiscal Year 2014, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2013 Annual FOIA Report? ODNI did not have ten oldest consultations in Fiscal Year 2013 Annual FOIA Report.
15. 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 2013 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that. N/A.

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

16. **Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2013.** Increased number of requests, loss of staff, and increasing backlog.
17. **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 your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.** N/A.
18. **If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2015.** ODNI now tracks the ten oldest pending requests for each category. Each quarter, we review the pending cases and set objectives for the next quarter. Cases are crossed off the lists that are posted in the FOIA Branch as they are completed.

#### **Use of the FOIA’s Law Enforcement Exclusions**

1. **Did your agency invoke a statutory exclusion, 5 U.S.C. Section 552(c)(1),(2), (3), during Fiscal Year 2014?** No.
2. **If so, please provide the total number of times exclusions were invoked.**