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Office of the Director of National Intelligence

2019 Chief FOIA Officer Report

(March 2018 – March 2019)

ODNI's Chief FOIA Officer – Deirdre Walsh, Chief Operations Officer

Section 1: Steps Taken to Apply the Presumption of Openness

A. FOIA Leadership

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. 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: Deirdre Walsh, Chief Operations Officer.

B. FOIA Training

3. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any substantive FOIA training or conference during the reporting period such as that provided by the Department of Justice?

Response: Yes.

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

Response: ODNI hosted an Intelligence Community (IC) FOIA Officers Information Day in November 2018. The following topics were covered: findings from the IC IG Assessment of the IC FOIA Program; lessons learned from an NRO Requester Survey; the importance of coordination between agency FOIA offices and Offices for Civil Liberties, Privacy, and Transparency; processing tips for FOIA requests in litigation; and DOJ's annual reporting requirements. ODNI FOIA employees also attended the Department of Justice trainings "Advanced FOIA Seminar," "FOIA Litigation Workshop," and "FOIA Professional Seminar," and the American Society of Access Professionals Annual Conference, which covers current FOIA case law, best practices, an overview of FOIA exemptions, and a variety of other FOIA-related information.

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5. 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%.

6. 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.

C. Outreach

7. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA? 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: Yes, ODNI’s FOIA Public Liaison frequently engages with requesters and applies lessons-learned to ODNI’s FOIA Administration. The FOIA Public Liaison reaches back to requesters by email and phone as necessary to clarify the request and provide information to the requester on the FOIA process.

D. Other Initiatives

8. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In 2016, the Department publicized FOIA-related performance standards for employees that have any role in administering the FOIA, including non-FOIA professionals. Please also indicate whether your agency has considered including FOIA-related performance standards in employee work plans for employees who have any role in administering the FOIA.

Response: All new ODNI personnel are briefed on their responsibilities under the FOIA. In addition, FOIA information sessions are provided to components with other mission-related duties upon request. ODNI does not include FOIA-related performance standards for non-FOIA professionals.

9. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

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Response: Our FOIA professionals review all responsive information potentially subject to a FOIA exemption to determine if the information can be released notwithstanding the applicable exemption. We do so in an effort to release as much information as possible, consistent with our obligation to protect classified information and intelligence sources and methods.

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

1. For Fiscal Year 2018, 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 2018 Annual FOIA Report.

Response: 6.33 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.

Response: N/A.

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report data, using active workflows and track management, reviewing and updating processing procedures, etc.

Response: The FOIA Branch reviewed its existing policies, procedures, and practices and updated them to document a more effective process resulting in a more efficient process for handling initial requests, administrative appeals, and requests in litigation. We likewise realigned specific duties for more efficient processing and clarity of responsibilities.

4. 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 FY 2018 (please provide a total number or an estimate of the number).

Response: An estimated 5 times.

5. Please describe the best practices used to ensure that your FOIA system operates efficiently and effectively and any challenges your agency faces in this area.

Response: All newly received requests are searched against prior releases to eliminate redundancy. The FOIA Branch also provides assistance to components regarding appropriate search

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terms to use and databases or systems to search. We also work with requesters to clarify requests or to narrow the scope of a request so that it can be processed correctly and more quickly.

Section III: Steps Taken to Increase Proactive Disclosures

1. Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material

Response: ODNI proactively disclosed a variety of documents in the past reporting year including ODNI reports and publications, press releases, speeches, interviews, congressional testimony, policy documents, and other information about intelligence community activities. These documents are available on the ODNI website at <https://www.dni.gov>, and the newly-released website intel.gov at <https://www.intelligence.gov>.

2. Please describe how your agency identifies records that have been requested and released three or more times (and are therefore required to be proactively disclosed pursuant to 5 U.S.C. § 552(a)(2)(D)).

Response: ODNI continues to follow the “Release to one/Release to all” policy as originally piloted by DOJ. Accordingly, we proactively disclose documents upon their first release; we do not wait for a record to be requested and released three or more times. ODNI’s proactively disclosed documents can be found on our website at <https://www.dni.gov>

3. 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: Yes.

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

Response: Improvements include sub-categorizing ODNI reports, policies, and other documents of interest to allow for ease of retrieval and use; enhancing the ability to conduct keyword searches of our website; and posting documents in .pdf searchable format when possible.

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

Response: In conducting FOIA requests, ODNI components often help identify records for proactive disclosures. In addition, the ODNI FOIA Branch works closely with the ODNI Public Affairs Office and the Civil Liberties, Privacy and Transparency Office to identify items of public interest for

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potential proactive disclosure. This partnership includes work with the IC Historians' Panel to identify material for declassification review, such as records related to the Vietnam War Tet Offensive and other historical events of public interest. As a result of these listed efforts, many of the categories of records posted to intel.gov are informed by public interest on a particular subject matter, including documents recovered from the raid on Abbottabad.

Section IV: Steps Taken to Greater Utilize Technology

1. Is your agency leveraging technology to facilitate efficiency in conducting searches, including searches for emails? If so, please describe the type of technology used. If not, please explain why and please describe the typical search process used instead.

Response: ODNI leverages technology to receive and respond to consults and referrals from other government agencies on classified and unclassified networks. In addition, ODNI utilizes information-sharing platforms to expedite processing of documents within and outside of the Agency. We are learning about other ways we can leverage technology to facilitate efficiency in conducting electronic searches and processing records.

2. 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.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2018?

Response: Yes.

4. 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 2019.

Response: N/A.

5. 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 2017 Annual FOIA Report and, if available, for your agency's Fiscal Year 2018 Annual FOIA Report.

Response: Once posted, the ODNI data will be available on <https://www.dni.gov>.

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

Response: For ODNI, we try to use technology that is compatible with IC and non-IC elements to the greatest extent possible to facilitate efficient referrals, consultations, and coordination.

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

A. Simple Track

1. Does your agency utilize a separate track for simple requests? If your agency uses a multi-track system beyond simple, complex, and expedited to process requests, please describe the tracks you use and how they promote efficiency.

Response: ODNI uses a separate track for simple requests.

2. If your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2018?

Response: The average number of days to process simple requests was 23.81 working days.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2018 that were placed in your simple track.

Response: 30.94% of requests processed by ODNI in Fiscal Year 2018 were placed in the simple track.

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 fewer?

Response: N/A.

B. Backlogs

BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

Response: No.

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6. If not, did your agency process more requests during Fiscal Year 2018 than it did during Fiscal Year 2017?

Response: No.

7. If your agency's request backlog increased during Fiscal Year 2018, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog.

Response: In Fiscal Year 2018, ODNI experienced an increase in the number of incoming requests, an increase in the complexity of the requests, including the number of potentially responsive records and the need for multiple consultations, and a period of resource turnover which delayed processing.

8. 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 2018. If your agency has no request backlog, please answer with "N/A."

Response: 108.23% of requests make up the request backlog.

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

Response: No.

10. If not, did your agency process more appeals during Fiscal Year 2018 than it did during Fiscal Year 2017?

Response: No.

11. If your agency's appeal backlog increased during Fiscal Year 2018, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog.

Response: In Fiscal Year 2018, ODNI experienced an increase in the number of incoming appeals, an increase in the complexity of the requests, including the number of potentially responsive records and the need for multiple consultations, and a period of resource turnover which delayed processing.

12. 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 2018. If your agency did not receive any appeals in Fiscal Year 2018 and/or has no appeal backlog, please answer with "N/A."

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Response: 223.5% of appeals make up the appeals backlog.

C. Backlog Reduction Plans

13. In the 2018 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2017 was asked to provide a plan for achieving backlog reduction in the year ahead. Did you 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 2018?

Response: N/A. Our backlog for 2017 did not exceed 1,000 requests.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2018, what is your agency's plan to reduce this backlog during Fiscal Year 2019?

Response: N/A. Our backlog for 2018 did not exceed 1,000 requests.

D. Status of Oldest Requests, Appeals, and Consultations

OLDEST REQUESTS

15. In Fiscal Year 2018, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

Response: No.

16. 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 2017 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

Response: ODNI did not close any of its ten oldest requests.

17. 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?

Response: N/A.

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

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Response: The FOIA Branch conducted an audit of the backlogged requests and identified requests that could be processed without consultation with other agencies. We also contacted requesters who have been in the processing queue in excess of 2 years to verify their continued interest in the request. Finally, we assigned case officers to work exclusively on consultation requests from other agencies. These efforts resulted in closing backlogged requests.

TEN OLDEST APPEALS

19. In Fiscal Year 2018, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

Response: No.

20. 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 2017 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

Response: ODNI closed 1 of its ten oldest appeals.

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

Response: We contacted requesters to verify their continued interest in pursuing the administrative appeal. We also assigned one employee exclusively to the appeal queue. We were able to close out cases, which reduced the age of the backlog.

TEN OLDEST CONSULTATIONS

22. In Fiscal Year 2018, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

Response: No, the Agency did not close all of its 10 oldest consultations.

23. 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 2017 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

Response: ODNI closed 4 of its 10 oldest consultations.

E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans

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24. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2018.

Response: In Fiscal Year 2018, ODNI experienced an increase in number and complexity of incoming requests, appeals, and consultations. These factors created obstacles to ODNI’s ability to close its ten oldest appeals and consultations from Fiscal Year 2018.

25. 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.

Date Received	Consultation Sent	Last Contact
08-10-2012	11-19-2014	02-01-2019
07-26-2013	11-19-2014	02-01-2019
10-06-2013	11-19-2014	02-01-2019
02-04-2013	03-27-2013	01-10-2019
08-01-2013	03-27-2013	01-10-2019
09-11-2013	04-28-2015	06-06-2017

26. 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 2018.

Response: We have realigned team members for more efficient processing and clarity of responsibilities, and are working more closely with components to keep search and review taskings on track to meet deadlines.

F. Success Stories

Out of all the activities undertaken by your agency since March 2018 to increase transparency and improve FOIA administration, please briefly describe here 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, OIP will highlight these agency success stories during Sunshine Week. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

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Reconstituted the IC FOIA Difficult Issues Forum –

- The ODNI reconstituted the Difficult Issues Forum in November, 2018, to provide the IC with a venue to discuss and collectively resolve issues.
- The Forum meets every 6 – 8 weeks and members communicate findings to their FOIA leadership for agency implementation.

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