

## Federal Mediation and Conciliation Service

### 2024 Chief FOIA Officer Report

#### **Section I: FOIA Leadership and Applying the Presumption of Openness**

The guiding principle underlying the Attorney General's 2022 [FOIA Guidelines](#) is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

##### **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?**

Yes. The Agency's General Counsel serves as Chief FOIA Officer.

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

Anna Davis, General Counsel.

- 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?**

The Agency updated its mandatory annual FOIA training for all employees and has provided specialized FOIA training to various departments' FOIA liaisons. The Agency also created and developed a FOIA App to request and retrieve responsive FOIA records from across the Agency.

##### **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?**

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:

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

N/A

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

N/A

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

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.

## **Section II: Ensuring Fair and Effective FOIA Administration**

The Attorney General’s 2022 FOIA Guidelines provide that “[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of FOIA obligations by the entire agency workforce.” The Guidelines reinforce longstanding guidance to “work with FOIA requesters in a spirit of cooperation.” The Attorney General also “urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency’s FOIA administration” as part of 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 in personnel.

The Office of General Counsel (OGC) meets with FMCS personnel regarding FOIA concerns associated with a virtual environment and issues memoranda and best practices throughout the year. These efforts, as well as briefing supervisors, FOIA

liaisons, and senior leadership, keep personnel informed of their duties and responsibilities pertaining to the FOIA.

- 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?**

Yes, see below.

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

Members of the FOIA Team attended the following trainings during the previous reporting year:

- DOJ OIP Training: Virtual Annual/Quarterly FOIA Report Training
- DOJ OIP Training: Virtual Best Practices Workshop
- DOJ OIP: Chief FOIA Officer Council Meeting

Members of the FOIA Team provided the following training during the previous reporting year:

- New Mediator FOIA Training
- Field Administrative Specialist FOIA Training
- FOIA Basics Training to all employees

- 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.**

100% of the FMCS FOIA processing staff attended FOIA training.

- 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 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.**

This is not applicable to FMCS.

- 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?**

OGC provides interactive virtual trainings, as mentioned above, to all employees throughout the year and when requested. FOIA training is provided through the Agency's Learning Management System for all employees to view and take. Yes, senior leadership receives briefings on FOIA. Also, OGC maintains a FOIA page on our SharePoint site that provides FOIA information and resources for all 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.**

Yes. Our FOIA professionals uses an electronic processing system, FOIAXpress, to contact requesters and we call requesters directly to discuss their requests.

- 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.**

Yes. Our FOIA professionals contacted frequent requesters. FOIA professionals also contacted FOIA requesters to help them amend or edit their requests to identify responsive records.

- 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).**

There has been a total of four (4) times.

### C. 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.**

Yes. We have a new Student Intern who assists OGC in other areas of law that will allow current FOIA professionals to spend more time on the FOIA Program.

- 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.**

FOIA professionals review raw data and Quarterly/Annual reports in FOIAXpress to manage the FOIA workload and assess any trends that would affect the department's allocation of resources for FOIA.

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

### Section III: Proactive Disclosures

The Attorney General's 2022 [FOIA Guidelines](#) emphasize that "proactive disclosure of information is . . . fundamental to the faithful application of the FOIA." The Guidelines direct agencies to post "records online quickly and systematically in advance of any public request" and reiterate that agencies should post records "in the most useful, searchable, and open formats possible."

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

We regularly review FOIA requests to see which materials are repeatedly requested and post documents and reports on our public website.

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

Within a week.

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

- **If so, what information is contained in the logs?**

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

Yes. We post FOIA logs in excel format that contain the FOIA request number, receive date, request type, track type, final disposition, request status, and closing date.

- 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.**

We publish the F-7 report on our public facing website. Requests for F-7 are our most common FOIA requests: <https://www.fmcs.gov/resources/documents-and-data/>.

- 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?**

Yes. We are working with FOIAXpress and the Agency's Office of Information Technology to make our reading room through FOIAXpress and our agency's public-facing website readily accessible to the public.

- 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.**

We are working with the Office of Information Technology to create a FOIA reports section on our agency public-facing site under all Agency reports. Also, we are working with FOIAXpress to allow some of our reports on our Agency public site to link to the reading room in FOIAXpress.

- 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.**

Yes, our FOIA professionals meet with the Office of Information Technology to discuss which reports should be produced and published on the public-facing website. We also coordinate with our Office of Congressional and Public Affairs to determine topics of interest to FOIA requesters.

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

#### **Section IV: Steps Take to Greater Utilize Technology**

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's 2022 [FOIA Guidelines](#) emphasize the importance of making FOIA websites easily navigable and complying with the [FOIA.gov](#) interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

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

Yes. Our FOIA App and FOIAXpress allows us to respond to current and anticipated FOIA demands.

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

The FOIA Office implemented a new internal electronic FOIA PowerApp that is used to send FOIA requests to different departments within the Agency to provide responsive documents. This allows FOIA professionals to respond to FOIA requesters in a timely and more efficient manner. Also, the FOIA Office has created a new email address for the public to send all FOIA Appeals.

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.**

N/A

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?**

Yes.

5. **Did all four of your agency's [quarterly reports](#) for Fiscal Year 2023 appear on FOIA.gov?**

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.

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.

<https://www.fmcs.gov/foia/>.

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?

Yes.

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

#### **Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness in Responding to Requests, and Reduce Backlogs**

The Attorney General's 2022 [FOIA Guidelines](#) instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA 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?

Yes.

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

We permit multiple avenues for FOIA requesters to submit their requests including, email, and regular mail. We will also assist requesters over the phone with filing or submitting written requests.

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



FOIAXpress, the system used to receive, process, and deliver FOIA requests is 508 compliant.

**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.**

2.8

- 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.**

N/A

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

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?**

Yes.

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

N/A

- 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.**

96%

- 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?**

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?**

N/A

**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?**

N/A

**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.

N/A

**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."**

N/A

## 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?

N/A

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?

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.

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."

N/A

### 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?

N/A

**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.**

N/A

#### **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?**

Yes.

**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.**

N/A.

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

The FOIA Office implemented a new FOIA App that helps reduce the age of pending requests.

##### **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?**

N/A

**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.**

FMCS had fewer than ten total oldest appeals.

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

FMCS did not have any pending appeals.

#### **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?**

N/A

**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.**

N/A

#### **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.**

N/A

#### **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

N/A