

Chief FOIA Officer Report for
U.S. Office of Government Ethics
March 2010

The Office of Government Ethics (OGE) is a small agency that provides advice and guidance to departments and agencies and their employees on Government ethics matters. As part of our outreach and guidance to the ethics community and the general public, OGE answers dozens of questions each year and posts advisory letters in a redacted form (with identities deleted) on our website. OGE also publishes informational memorandums as well as ethics training and educational material, brochures, videos and posters for the executive branch on our website. In addition, OGE and other executive branch agencies maintain a separate public financial disclosure system for Public Financial Disclosure Reports, SF 278, filed by high-level executive branch officials. Copies of these reports are available from OGE directly by filing the appropriate access form, Request to Inspect or Receive Copies of SF 278 Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Record, OGE Form 201. These records and other “covered records” are available, not under the Freedom of Information Act (FOIA), but the Ethics in Government Act of 1978 (5 U.S.C. appendix, § 105).

OGE has a low volume of FOIA requests. In a typical year, OGE receives only 20-40 FOIA requests. Usually, OGE responds to these requests within the statutory 20-day time limit. In addition, OGE does not have a backlog of FOIA requests.

Part I. Steps Taken to Apply the Presumption of Openness

President Obama’s FOIA Memorandum and the Attorney General’s FOIA Guidelines were quickly distributed to senior officials at OGE, including the Director, General Counsel, Deputy General Counsel, other managers and staff members responsible for processing FOIA requests, as well as OGE’s press liaison.

OGE’s annual FOIA training was revised to include information about the new directives from the President and Attorney General. The newly revised training was provided to all OGE offices during the summer and fall of 2009.

Throughout 2009, OGE made various discretionary disclosures of records in response to FOIA requests. Some examples of those discretionary disclosures are: (1) in response to an April 2009 FOIA request, OGE released a letter in full that could have been withheld in its entirety or in part under FOIA Exemption (b)(5); (2) in response to a July 2009 FOIA request and an August 2009 FOIA request, OGE released the names and contact information of several mid-level OGE employees that could have been withheld under FOIA Exemption (b)(2); and (3) in response to a November 2009 FOIA request, OGE listed the names and contact information for the OGE staff in a particular office that could have been withheld under FOIA Exemption (b)(2).

It is important to note, that OGE's FOIA statistics for 2009 do not completely reflect OGE's adherence to the new presumption of openness policy. While OGE continued to process FOIA requests expeditiously and still does not have a backlog, in almost every year following a Presidential election, OGE's FOIA numbers increase significantly. In 2009, following the November 2008 Presidential election, OGE's initial FOIA requests increased almost 60% from 2008. This increase is due to FOIA requests for letters or memorandums that accompany the public financial disclosure reports (SF 278) of many incoming high-level executive branch officials. The primary purpose of these documents is to explain what conflicts of interest an individual may have and how the conflicts will be remedied.

OGE processes these documents using a hybrid procedure. The first person to request one of these documents must submit a FOIA request. That request is processed and the responsive document is released either in full or in part, based on the various FOIA exemptions that may apply. Once the document is released, any subsequent requesters seeking the same document may use an OGE Form 201. The requester simply states that he wants the ethics agreement of the named official and he will receive a copy of the document that was released under the initial FOIA request. This hybrid procedure, which OGE has used for many years, expedites all subsequent disclosures of the same record to different requesters.

Report whether your agency shows an increase in the number of records where records have been released in full or where records have been released in part when compared with those numbers in the previous year's Annual FOIA Report.

In 2008, OGE released 8 records in full and 6 records were released in part. In 2009, OGE released 28 records in full and 10 records were released in part. Please see the paragraph above discussing OGE's increase in FOIA requests in the year following a Presidential election.

Part II. Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests

In 1989, OGE designated a senior attorney as the OGE FOIA Officer. Throughout the years, that individual has been able to structure and operate the OGE FOIA office in a manner that has been very effective and efficient. For the past several years, OGE has responded to all FOIA requests within the statutory designated time limit and has never had a FOIA backlog. When FOIA matters, such as an increase in initial requests, administrative appeals or a very rare FOIA lawsuit has arisen, OGE's management assigns additional personnel to the FOIA office until the matters have been successfully resolved.

When the new FOIA guidelines were implemented, OGE undertook a review of its FOIA operations and decided to (1) expand the standard searches throughout the agency to include two secondary offices that could inadvertently receive FOIA related correspondence; (2) expand the FOIA training to all offices with an emphasize on instructing staff on how to conduct searches for any responsive records; (3) discussions with IT staff on how to run more efficient reports from various tracking systems and ensuring that OGE FOIA reports and other relevant FOIA information is quickly posted and updated on the OGE website; and (4) revising the electronic FOIA logs.

Part III. Steps Taken to Increase Proactive Disclosures

A few years ago, OGE revised its website, www.oge.gov, and the FOIA material was placed in a separate section. The FOIA section contains information on how to make a FOIA request, the names and contact information of OGE's FOIA personnel, as well as a list of OGE's Frequently Requested Documents. In addition, a FOIA request is not needed to access other pertinent information on the OGE website, such as OGE Advisory Letters and Memorandum, DAEOgrams, and OGE Newsgrams.

In January 2009, OGE began placing the names of individuals who had been nominated or appointed by President Obama, with the advice and consent of the Senate, on our website. This information also indicates that copies of the individuals Public Financial Disclosure Reports (SF 278s) and Ethics Agreements can be obtained by completing and submitting a form OGE 201 and allows an individual to submit the Form directly from our website.

Part IV. Steps Taken to Greater Utilize Technology

1.) Does your agency currently receive requests electronically?

Yes. Individuals are able to e-mail their FOIA requests to OGE.

2.) If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically?

N/A. See response to Part IV, Question #1.

3.) Does your agency track requests electronically?

Yes. OGE has created an MS Word document that allows the FOIA Officer to track the receipt of a FOIA request, to whom the request is assigned, when the response is finished, and whether any responsive records were located, released in full or in part, or withheld and what exemptions, if any, applied. Given the low

volume of FOIA requests that OGE receives, this MS Word document has proven to be useful.

- 4.) If not, what are the current impediments to your agency utilizing a system to track requests electronically?

N/A. See response to Part IV, Question #3.

- 5.) Does your agency use technology to process requests.

Yes. OGE has created several tracking systems that monitor correspondence that is received by the Agency. These systems are always searched for any responsive FOIA documents. In addition, reports may be run from these systems, when necessary, to assist the FOIA Officer in monitoring FOIA correspondence.

- 6.) If not, what are the current impediments to your agency utilizing technology to process requests?

N/A. See response to Part IV, Question #5.

- 7.) Does your agency utilize technology to prepare your agency Annual FOIA Report?

Yes. OGE uses its Word document (see response to Part IV, Question #3) to assist in preparing the Annual FOIA Report.

- 8.) If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report?

N/A. See response to Part IV, Question #7.

Part V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

1. What is the backlog status of your agency?

OGE did not have a backlog of FOIA requests or administrative appeals for 2008 or 2009.

2. What steps is your agency taking to bring about a reduction in any backlog.

N/A. See response to Part V, Question #1.

3. Describe the steps your agency is taking to improve timeliness in responding to requests and to administrative appeals.

OGE does not have a backlog of FOIA requests or administrative appeals and generally responds to all FOIA requests within the 20-day statutory deadline. However, in an effort to continue to improve our FOIA program, the OGE FOIA personnel take various FOIA training courses throughout the year to keep up-to-date on FOIA guidance and changes and OGE has plans to hire a paralegal whose duties will include working with the FOIA program.