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UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**



Preventing Conflicts of Interest  
in the Executive Branch

**2016 Chief FOIA Officer Report**

**Diana J. Veilleux, Chief FOIA Officer,  
Chief, Legal, External Affairs and Performance  
Branch**

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## **About the U.S. Office of Government Ethics**

The U.S. Office of Government Ethics, established by the Ethics in Government Act of 1978, provides overall leadership and oversight of the executive branch ethics program designed to prevent and resolve conflicts of interest. OGE's mission is part of the very foundation of public service. The first principle in the Fourteen Principles of Ethical Conduct is, "[p]ublic service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain." Public servants are expected to make impartial decisions based on the interests of the public when performing their job duties. The executive branch ethics program ensures that employees fulfill this great trust. OGE works with a community of ethics practitioners in more than 130 agencies to implement that program.

To carry out its leadership and oversight responsibilities, OGE promulgates and maintains enforceable standards of ethical conduct for approximately 2.7 million civilian employees in over 130 executive branch agencies and the White House; oversees a financial disclosure system that reaches more than 26,000 public and more than 380,000 confidential financial disclosure report filers; ensures that executive branch ethics programs are in compliance with applicable ethics laws and regulations; provides education and training to the more than 4,500 ethics officials executive branch-wide; conducts outreach to the general public, the private sector, and civil society; and provides technical assistance to state, local, and foreign governments and international organizations.

As part of OGE's outreach and guidance to the ethics community and the general public, each year OGE posts legal advisories, informational memoranda, ethics training resources, and educational material on the OGE website. OGE continues to leverage technology to improve transparency in the executive branch ethics program and to provide more records to the public in an easily accessible fashion. In part, due to the fact that OGE proactively releases documents under EIGA and makes other documents available on the OGE website, OGE continues to have a relatively low volume of FOIA requests compared to larger agencies. In 2015, OGE had a sharp increase in volume and complexity of requests. Despite this increase, however, the requests were generally responded to within the statutory 20-day time limit.

## Section I: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's [FOIA Memorandum](#) and the Attorney General's [FOIA Guidelines](#) is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

### *FOIA Training:*

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

**Yes, OGE's FOIA professionals attended the Advanced FOIA Seminar offered by DOJ's Office of Information Policy (OIP), a presentation by OIP at a meeting of the Interagency Ethics Council, and a multi-day training seminar on the FOIA and Privacy offered by The Graduate School USA.**

2. Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during the reporting period.

**Approximately 83% (five out of six) of OGE's FOIA professionals attended substantive FOIA training during this reporting period.**

3. 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.

**More than 80% of OGE's FOIA professionals attended substantive FOIA training.**

### *Discretionary Releases:*

4. Does your agency have a distinct process or system in place to review records for discretionary release? If so, please briefly describe this process.

**Yes, OGE has a distinct step in its FOIA processing procedures that directs FOIA professionals to determine whether to make a discretionary release of the withheld record or portion of the withheld record by applying the "foreseeable harm" standard.**

5. During the reporting period, did your agency make any discretionary releases of information?

**Yes, OGE made discretionary releases of information during the reporting period.**

6. What exemption(s) would have covered the material released as a matter of discretion?

**OGE released material that could have been withheld under FOIA Exemption (b)(5).**

7. Provide a narrative description, as well as some specific examples, of the types of information that your agency released as a matter of discretion during the reporting year.

**OGE released as a matter of discretion various documents in draft form and other deliberative information, such as draft meeting agendas and handwritten notes regarding the agency's planned approach to processing a particular FOIA request.**

8. If your agency was not able to make any discretionary releases of information, please explain why.

N/A

***Other Initiatives:***

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.

**In addition to the discretionary releases discussed above, OGE's FOIA professionals often "front load" (b)(5) determinations by considering whether there is foreseeable harm before considering the applicability of (b)(5). If the FOIA professional determines that there is no foreseeable harm to releasing the information, the information may be released without ever resolving the question of whether (b)(5) could have been applied. OGE finds that this "front loading" procedure is often more efficient than resolving the applicability of exemption (b)(5) and then considering whether there is foreseeable harm. Consequently, however, not all discretionary releases of information are identified and recorded as such.**

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

The Attorney General's 2009 FOIA Guidelines emphasized that "[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 the 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 2015, 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 2015 Annual FOIA Report.

**OGE's average number of days to adjudicate requests for expedited processing during Fiscal Year 2015 was nine 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.

N/A

3. On July 2, 2015, OIP issued new guidance to agencies on the proper procedures to be used in the event an agency has a reason to inquire whether a requester is still interested in the processing of his or her request. Please confirm here that to the extent your agency may have had occasion to send a "still interested" inquiry, it has done so in accordance with the new guidelines for doing so, including affording requesters thirty working days to respond.

**OGE did not have occasion to send a "still interested" inquiry in Fiscal Year 2015.**

### ***Requester Services:***

4. Agency FOIA Requester Service Centers and FOIA Public Liaisons serve as the face and voice of an agency. In this capacity they provide a very important service for requesters, informing them about how the FOIA process works and providing specific details on the handling of their individual requests. The FOIA also calls on agency FOIA Requester Service Centers and FOIA Public Liaisons to assist requesters in resolving disputes. Please explain here any steps your agency has taken to strengthen these services to better inform requesters about their requests and to prevent or resolve FOIA disputes.

**In accordance with the recommendation of the Administrative Conference for the United States (ACUS) for procedural improvements related to resolving FOIA disputes through targeted ADR strategies, OGE conducted a self-assessment of and made adjustments to OGE's FOIA webpages and FOIA response letter templates to ensure that they call attention to the problem resolution assistance available from FOIA Public Liaisons, and provide direct contact information to reach OGE's Public Liaison.**

***Other Initiatives:***

5. 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.

**OGE continues to conduct regular self-assessments of its FOIA processing procedures and response templates and, when appropriate, makes changes to increase efficiency, improve search processes, increase transparency, and otherwise improve the operation of OGE's FOIA program. For example, OGE conducted a self-assessment of and made adjustments to OGE's FOIA processing procedures in order to improve the process for adjudicating requests for expedited processing. As a result, OGE created a distinct step in OGE's FOIA processing procedures that directs FOIA professionals to screen all requests at time of receipt to determine if expedited processing has been requested.**

### Section III: Steps Taken to Increase Proactive Disclosures

Both the President's and Attorney General's FOIA memoranda 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 websites. 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. Describe your agency's process or system for identifying "frequently requested" records required to be posted online under Subsection (a)(2) of the FOIA. For example, does your agency monitor its FOIA logs or is there some other system in place to identify these records for posting.

**OGE has included a distinct step in its FOIA processing procedures that directs FOIA professionals to determine whether a record has been subject to previous FOIA requests, and, if so, to flag that record for proactive disclosure in OGE's FOIA log.**

2. Does your agency have a distinct process or system in place to identify other records for proactive disclosure? If so, please describe your agency's process or system. Please note that this question is directed towards proactive disclosure of records that go beyond frequently requested records required to be posted under Subsection (a)(2) of the FOIA.

**Yes. OGE's FOIA Office is uniquely situated to gain a sense of the types of materials the public is seeking. As a result, OGE has included a distinct step in its FOIA processing procedures that directs FOIA professionals to determine whether it is likely there will be future interest in a record. If so, OGE's FOIA processing procedures direct FOIA professionals to proactively disclose the record on OGE's website.**

3. When making proactive disclosures of records, are your agency's FOIA professionals involved in coding the records for Section 508 compliance or otherwise preparing them for posting? If so, provide an estimate of how much time is involved for each of your FOIA professionals and your agency overall.

**OGE's FOIA team is involved in reviewing posted documents for releasability, but is not involved in making posted documents compliant with Section 508. Most of OGE's proactive disclosures originate from OGE's Presidential Nominations Branch, which is responsible for the implementation of the nominee financial disclosure program. The Presidential Nominations Branch incorporates OGE's FOIA professionals into its processes for posting documents related to the financial**

disclosures of Presidential appointees confirmed by the Senate (PAS). In particular, financial disclosure report reviewers are required to consult with the OGE FOIA Officer if there are any questions about the proactive release of a nominee's ethics agreement. The FOIA team is asked to consult on other documents regularly proactively posted on OGE's website as well (see, e.g., OGE's response to question 6). OGE estimates that its FOIA Officer spends approximately one hour a month on such consultations. It is impossible to estimate how much time the agency overall spends preparing documents for posting, as this work is inextricably intertwined with other functions performed by OGE employees.

4. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?

**No, OGE has not encountered challenges that make it difficult to post records.**

5. If so, please briefly explain those challenges.

N/A

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

**The following materials were proactively disclosed on OGE's website during the past reporting year:**

**OGE Advisories:** OGE posted all [written guidance](#) to executive branch ethics officials and employees, including legal, education, and program advisories.

**Ethics Program Review Reports:** OGE conducts reviews of agency ethics programs and issues recommendations to improve the ethics program if deficiencies are found. To confirm that the agency has acted on OGE's recommendations, OGE also conducts a follow-up review six months from the date of the report. OGE posted all [program review reports](#) and follow-up reports to its website.

**Ethics Pledge Report and Related Waivers:** On January 21, 2009, President Obama signed [Executive Order 13490](#), which created new commitments for [political appointees](#) entering government service. This Executive Order requires every full-time, political appointee appointed on or after January 20, 2009, to sign an Ethics Pledge. The Executive Order also requires OGE to publish an [annual report](#) on the administration of the pledge. In addition to posting this annual report, OGE posted [waivers](#) of the Ethics Pledge received by appointees.

**Public Financial Disclosures & Ethics Agreements:** OGE has an automated online process for providing public access to [public financial disclosure reports](#) (OGE Forms 278, 278e, and 278-T) for Presidential appointees confirmed by the Senate



(PAS). OGE also posted the [ethics agreements](#) of PAS employees, which describe the steps an appointee will take to avoid any actual or apparent conflicts of interest.

**Travel Reports:** Agencies are required to submit to OGE semiannual reports of payments for travel, subsistence, and related expenses received from non-federal sources in connection with the attendance of employees at certain meetings or similar functions. OGE posted these [travel reports](#) on its website.

**Annual Agency Questionnaire Responses:** This [Questionnaire](#) asks agency ethics offices for information about ethics officials and the administration of agency ethics programs, as well as core elements of the ethics program that assist in the identification and resolution of potential conflicts of interest. The compiled data provides valuable insights about the executive branch ethics program. In 2015, OGE began posting to its website each agency's response in full, in addition to providing an online summary of the combined data from the agency questionnaire responses in a visual format.

7. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe those efforts.

In the past few years, OGE has implemented a new strategy for communicating with the public through Director's Notes posted on the homepage of OGE's website, [www.oge.gov](http://www.oge.gov). The Director's Notes provide a public-friendly explanation of OGE's role in the executive branch ethics program, ethics rules and regulations, OGE's programs and initiatives, and current ethics issues. In addition, OGE created a space on its homepage, called OGE Highlights, to provide current news and information about OGE and the executive branch ethics program in an easy to understand manner.

OGE also uses social media to broaden its reach to key external stakeholders and make the information posted more useful to these stakeholders. Specifically, OGE uses its Twitter account to direct the public to detailed information on its website and to provide an additional way to access OGE's latest publications. OGE also uses its Twitter account to provide information regarding changes in executive branch ethics laws, regulations, and programs. In addition, OGE has expanded its use of social media by creating Google+ and YouTube pages. OGE uses these accounts to live stream ethics education offerings to ethics officials and to live-stream events such as OGE's National Government Ethics Summit.

*Other Initiatives:*

8. If there are any other steps your agency has taken to increase proactive disclosures, please describe them here.

In accordance with OIP's guidance designed to improve agency compliance with the FOIA's proactive disclosure provision in line with the tenets of Attorney General

**Holder's FOIA Guidelines (March 15, 2015), OGE conducted a self-assessment of and made adjustments to OGE's FOIA processing procedures in order to implement OIP's guidance on proactive disclosure of non-exempt agency information. Specifically, OGE amended its FOIA processing procedures to specifically require that OGE identify records of interest to the public on an ongoing basis and to systematically post such records, whether or not they are responsive to a specific FOIA request.**

## 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 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 useable to the public, especially to the community of individuals who regularly access your agency's website?

**Yes, OGE is taking steps to make the posted information more useable to the public.**

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

**As discussed above, OGE uses highlighted features on its website homepage and its Twitter account to provide public-friendly explanations of OGE's mission and direct individuals to newly posted information. Moreover, OGE recently amended its FOIA processing procedures to remind FOIA professionals that FOIA records should be posted in the most useful form available to OGE.**

***OPTIONAL:*** Beyond using technology to redact documents, is your agency taking steps to use 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? If yes, describe the technological improvements being made.

**OGE recently instituted a new, paperless FOIA tracking and document management system, which reduces steps in processing and makes FOIA reporting easier.**

### ***Other Initiatives:***

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2015?

**Yes, OGE successfully posted all of the required quarterly FOIA reports for Fiscal Year 2015.**

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 2016.

N/A

5. Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? If yes, what are the different types of electronic means that are utilized by your agency to communicate with requesters?

**OGE uses e-mail to communicate with requesters whenever feasible. OGE has also implemented a new online "self-service" portal on its website that allows requesters to view the status of their requests.**

6. 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?

N/A

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

The President's FOIA Memorandum and the Attorney General's 2009 FOIA Guidelines 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 2015 Annual FOIA Report and, when applicable, your agency's 2014 Annual FOIA Report.

### ***Simple Track:***

1. Does your agency utilize a separate track for simple requests?

**No. Because of the size of its FOIA program, OGE processes both simple and complex requests in a single track.**

2. If so, for your agency overall in Fiscal Year 2015, was the average number of days to process simple requests twenty working days or fewer?

N/A

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2015 that were placed in your simple track.

N/A

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?

**No, the average number of days to process all non-expedited requests was 24 days.**

### ***Backlogs:***

5. If your agency had a backlog of requests at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

**At the close of Fiscal Year 2014, OGE had one backlogged request. At the close of Fiscal Year 2015, OGE had one backlogged request. As a result, OGE's backlog did not decrease as compared with Fiscal Year 2014.**

6. If not, 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.
- Any other reasons – please briefly describe or provide examples when possible.

**At the close of Fiscal Year 2014, OGE had one backlogged request from Fiscal Year 2013. In Fiscal Year 2015, OGE closed that backlogged request, but had one exceptionally voluminous Fiscal Year 2015 request that remained backlogged at the close of the fiscal year. OGE is a very small agency with limited resources and had a substantial increase in incoming requests in Fiscal Year 2015. Under these circumstances, it was not possible for OGE to reduce its backlog from one request to zero requests in Fiscal Year 2015.**

7. 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 2015.

**OGE's request backlog made up approximately 1.4% (one out of 70) of the total number of requests received by OGE in Fiscal Year 2015.**

8. If your agency had a backlog of appeals at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

**OGE's backlog of appeals remained constant at 0.**

9. If not, explain why and describe the causes that contributed to your agency not being able to reduce backlog.

N/A

10. 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 2015. If your agency did not receive any appeals in Fiscal Year 2015 and/or has no appeal backlog, please answer with "N/A."

N/A

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

11. In Fiscal Year 2015, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

**Yes, in Fiscal Year 2015, OGE closed all three of the three oldest requests that were reported pending in OGE's Fiscal Year 2014 Annual FOIA Report.**

12. 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 2014 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

N/A

13. 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?

**None were closed because the request was withdrawn by the requester.**

14. In Fiscal Year 2015, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

**OGE did not have any pending appeals at the end of Fiscal Year 2014.**

15. 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 2014 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A

16. In Fiscal Year 2015, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

**OGE did not have any pending consultations at the end of Fiscal Year 2014.**

17. 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:***

18. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2014.

N/A

19. 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

20. 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 2016.

N/A

***Interim Responses:***

***OPTIONAL:*** If your agency had a backlog in Fiscal Year 2015, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

**100%. OGE had a backlog of one case at the end of Fiscal Year 2015, for which it provided substantive interim responses during the fiscal year, even though the request was not finally closed until October 2015.**



### **Use of FOIA's Law Enforcement "Exclusions"**

1. Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2015?

**No, OGE did not invoke a statutory exclusion during Fiscal Year 2015.**

2. If so, please provide the total number of times exclusions were invoked.

N/A

### **Success Story**

**In Fiscal Year 2015, OGE issued a final rule revising its FOIA regulation. The new rule extended the time for requesters to file a FOIA appeal to 45 days. Other changes were made to incorporate best practices in FOIA processing, as well as to better reflect the agency's current practices and organizational structure.**