UNITED STATES OFFICE OF
GOVERNMENT ETHICS

Preventing Conflicts of Interest in the Executive Branch

2014 Chief FOIA Officer Report
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About the U.S. Office of Government Ethics

The U.S. Office of Government Ethics (OGE) was established by the Ethics in Government Act of 1978 (EIGA) to provide direction and oversight of and accountability for policies designed to prevent and resolve conflicts of interest involving executive branch officers and employees. To carry out these responsibilities, OGE provides advice and guidance to departments, agencies, and Federal employees on executive branch ethics matters. OGE also promotes good governance through mutually informative interactions with the private sector, non-profit groups, and the general public, as well as by sharing good practices with and providing 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 low volume of FOIA requests. These requests are 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.

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.

*FOIA Training:*

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

   *OGE conducted an informal training session and provided one-on-one mentoring opportunities for OGE’s new part-time FOIA professionals on how to carry out their new FOIA duties.*

2. If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.

   *The session provided OGE’s three new part-time FOIA professionals training on OGE’s administrative processing procedures and the application of the FOIA exemptions in order to carry out their new FOIA duties. The session also provided an opportunity to share best practices in outreach, customer service, and related topics.*

3. Did your FOIA professionals attend any FOIA training during the reporting period such as that provided by the Department of Justice?

   *OGE’s part-time FOIA professionals have taken advantage of several outside FOIA training opportunities, including FOIA-related courses offered by the Department of Justice’s (DOJ) Office of Legal Education, briefings hosted by DOJ’s Office of Information Policy (OIP), and FOIA and Privacy Act seminars offered by the Graduate School of America.*

4. Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period.

   *Approximately 87.5% of OGE’s part-time FOIA professionals attended substantive FOIA training during this reporting period.*

5. OIP has issued guidance that every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year. Provide your agency’s
In the spirit of the Attorney General’s emphasis that “FOIA is everyone’s responsibility,” OGE plans to provide all OGE employees with an opportunity to take advantage of DOJ’s upcoming “e-Learning” initiative. In particular, OGE’s part-time FOIA professionals will be required to take the e-Learning module that is targeted at FOIA professionals. OGE’s part-time FOIA professionals will also be encouraged to take advantage of the many FOIA training opportunities available around the government.

Outreach:

6. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement.

   OGE’s outreach was limited to dialogue with individual requesters. This engagement included collaborating on a plan for responding to a complex request; making interim responses to requesters as requests were processed; and providing links to information already available online, which oftentimes satisfied the requester’s need for information. OGE will continue to increase its efforts to raise the visibility of OGE and the executive branch ethics program by conducting outreach with stakeholders both within and outside the Federal government, including the FOIA requester community and open government groups.

Discretionary Disclosures:

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

7. Does your agency have a formal process 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 at your agency have a process in place for making discretionary releases.

   OGE implemented the policy that, whenever possible, all responsive FOIA records that could technically be withheld should be reviewed a second time for possible discretionary release.

8. During the reporting period did your agency make any discretionary releases of otherwise exempt information?
During the reporting period, OGE made discretionary releases of otherwise exempt information.

9. What exemptions would have covered the information that was released as a matter of discretion?

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

10. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.

OGE released as a matter of discretion numerous emails between OGE and members of the White House staff regarding ethics, conflicts of interest, and financial disclosure matters and policy.

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

OGE made discretionary releases of otherwise exempt information.

Other Initiatives:

12. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014.

OGE timely posted all of the required quarterly FOIA reports for Fiscal Year 2013 on the agency’s website; however, due to technical problems, DOJ could not pull the data to its site. The technical problem has been resolved.

13. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please provide links in your description.

OGE continued to leverage technology to improve transparency by making financial disclosure reports and related documents of nominees to Presidentially-appointed, Senate-confirmed positions more readily available through an online portal that provides immediate access to these records once the requester completes an online request form. OGE’s online portal is available at http://www.oge.gov/Open-Government/Presidential-Appointee---Nominee-Records/.

In addition, during Fiscal Year 2013, OGE proactively released documents on the OGE website, www.oge.gov, to ensure that the ethics laws and policies remain open and transparent to Federal government employees and the general public. These documents include the semiannual reports of non-Federal source travel payments.
accepted by agencies under the authority of 31 U.S.C. § 1353, at 
http://www.oge.gov/Open-Government/Travel-Reports/Travel-Reports/, and 
executive branch ethics program reviews, some going back as far as 1982, at 
http://www.oge.gov/Program-Management/Program-Review/Program-Review-
Reports/Program-Review-Reports/. 
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.

Describe here the steps your agency has taken to ensure that your management of your FOIA program is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

Personnel:

During Sunshine Week 2012 OPM announced the creation of a new job series entitled the Government Information Series, to address the work performed by FOIA and Privacy Act professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

1. Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series?

Because of OGE’s limited staffing, resources, and small size, OGE’s FOIA professionals perform their FOIA duties on a part-time basis, as needed, in addition to performing other agency functions. Because of this, OGE has not converted its FOIA professionals to the new Government Information Specialist job series.

2. If not, what proportion of personnel has been converted to the new job series?

OGE’s FOIA professionals perform their FOIA duties on a part-time basis, as needed. As a result, OGE has not converted any proportion of its personnel to the new job series.

3. If not, what is your plan to ensure that all FOIA professionals’ position descriptions are converted?

OGE’s part-time FOIA professionals are not currently, and will not be in the future, eligible for conversion to the new Government Information Specialist job series as outlined in OPM’s Memorandum for Chief Human Capital Officers regarding the creation of the new Government Information job series. No one individual at OGE has FOIA as their only responsibility due to OGE’s small size and limited staff resources, coupled with the low volume of FOIA requests. Rather, OGE’s part-time FOIA professionals perform their FOIA duties on a part-time basis, as needed, in addition to performing other agency functions. This is consistent with OGE’s practice of organizing its multi-disciplinary staff of attorneys, ethics and finance
experts, and support staff into cross-functional teams to perform diverse agency tasks. Processing Procedures:

4. For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

For Fiscal Year 2013, OGE did not adjudicate any requests for expedited processing because OGE responded to the record requests within ten calendar days.

5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.

OGE has taken steps to make the handling of consultations and referrals more efficient and effective by updating procedures to be consistent with OIP’s 2012 guidance on referrals, consultations, and coordination.

Requester Services:

6. Do you use e-mail or other electronic means to communicate with requesters when feasible?

Yes, OGE uses e-mail to communicate with requesters when feasible.

7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?

Yes, OGE notifies requesters of the mediation services offered by OGIS at NARA.

8. Describe 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.

OGE continued to expand the agency’s FOIA log to more accurately reflect the information needed to complete various FOIA reports, including quarterly FOIA reports, which will increase the efficiency with which those reports can be created. In addition, OGE further increased efficiency by conducting self-assessments of and where necessary making adjustments to OGE’s FOIA response letter templates and administrative processes.
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.

Describe here the steps your agency has taken both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2013 to March 2014). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

Posting Material:

1. Do your FOIA professionals have a system in place to identify records for proactive disclosures?

   Yes, OGE’s part-time FOIA professionals have a system in place to identify records for proactive disclosures.

2. If so, describe the system that is in place.

   OGE’s Presidential Nominations Branch, which is responsible for the implementation of the nominee financial disclosure program, incorporates OGE’s part-time FOIA professionals into its processes for posting documents related to the financial disclosure of nominees to Presidentialy-appointed, Senate-confirmed positions. In particular, financial disclosure report reviewers are required to consult with the OGE FOIA Officer if there are any possible questions about the proactive release of a nominee’s ethics agreement.

   For other types of documents, OGE records in its FOIA log the number of times records are requested in order to track “frequently requested records.” Such tracking helps notify OGE’s part-time FOIA professionals that the records are required to be posted in OGE’s electronic reading room.

3. Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.

   OGE makes financial disclosure reports and related documents of nominees to Presidentialy-appointed, Senate-confirmed positions more readily available through an online portal that provides immediate access to these records once the requester completes an online request form. OGE’s online portal is available at http://www.oge.gov/Open-Government/Presidential-Appointee---Nominee-Records/. In addition, OGE proactively released documents on the OGE website, www.oge.gov, to ensure that the ethics laws and policies are open and transparent to Federal government employees and the general public. These documents include

Making Posted Material More Useful:

4. 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, such as soliciting feedback on the content and presentation of posted material, improving search capabilities on the site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.?

OGE continues to leverage technology to promote transparency of the executive branch ethics program and to make posted information more accessible for the public.

5. If so, provide examples of such improvements.

OGE launched a new Twitter account to promote transparency of the executive branch ethics program and to make posted information more accessible for the public. Tweets have included the latest news from OGE regarding executive branch ethics; links to OGE’s latest legal advisories, education materials, program reviews, reports, and other updated information; and general information about OGE and executive branch ethics.

6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized?

Yes, OGE utilized Twitter to highlight important proactive disclosures for public awareness.

7. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.

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

8. Describe any other steps taken to increase proactive disclosures at your agency.

OGE has developed uniform processes for posting many types of records, such as legal advisories, to ensure that the records are posted and to coordinate the posting and publication with the appropriate OGE employees.
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. Over the past several years agencies have reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2014, as we have done over the past years, the questions have been further refined and now also address different, more innovative aspects of technology use.

**Online tracking of FOIA requests:**

1. Can a FOIA requester track the status of his/her request electronically?
   - **No, a FOIA requester cannot track the status of his/her request electronically.**

2. If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?
   - **A FOIA requester cannot track the status of his/her request electronically.**

3. Describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review."
   - **A FOIA requester cannot track the status of his/her request electronically.**

4. In particular, does your agency tracking system provide the requester with an estimated date of completion for his/her request?
   - **A FOIA requester cannot track the status of his/her request electronically.**

5. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability? If not, please explain why.
   - **Due to OGE’s low volume of FOIA requests and prompt response rate, an electronic tracking system is not immediately feasible at this time. For Fiscal Year 2013, OGE processed only 43 requests with an average response time of approximately 8.6 days.**

**Use of technology to facilitate processing of requests:**

6. Beyond using technology to redact documents, is your agency taking steps to utilize 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?

Yes, OGE is using technology to facilitate overall FOIA efficiency.

7. If so, describe the technological improvements being made.

OGE continued to expand its FOIA log to more accurately reflect the information needed to complete various FOIA reports, including quarterly FOIA reports, which will increase the efficiency with which those reports can be created. In addition, OGE continued to conduct self-assessments of OGE’s FOIA response letter templates and administrative processes and, where appropriate to make changes to increase efficiency.

8. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency’s FOIA program?

No, additional technological tools are not necessary at this time. OGE has reviewed its system for processing FOIA requests and has determined that the system is adequate and is functioning efficiently.
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 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.

Simple Track Requests:

1. 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.

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

      Because of the size of its FOIA program, OGE processes both simple and complex requests in a single track.

   b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?

      Because of the size of its FOIA program, OGE processes both simple and complex requests in a single track.

   c. If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?

      The average number of days to process non-expedited requests was 20 working days or fewer. For Fiscal Year 2013, the average number of days to process non-expedited requests was approximately 8.6 days.

Backlogs and “Ten Oldest” Requests, Appeals and Consultations:

2. 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. 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 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.

**Backlogs**

**a.** If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012?

*In Fiscal Year 2012, OGE did not have a backlog. At the close of Fiscal Year 2013, OGE had one backlogged request. As a result, OGE’s backlog did not decrease as compared with Fiscal Year 2012.*

**b.** If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?

*OGE did not have a backlog of administrative appeals in Fiscal Year 2013.*

**Ten Oldest Requests**

**c.** In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?

*OGE did not have any pending requests at the end of Fiscal Year 2012.*

**d.** 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 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed two of them, you should note that you closed two out of seven “oldest” requests.

*OGE did not have any pending requests at the end of Fiscal Year 2012.*

**Ten Oldest Appeals**

**e.** In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?

*OGE did not have any pending administrative appeals at the end of Fiscal Year 2012.*

**f.** If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C.(5) of your Fiscal Year 2012 Annual FOIA Report.
OGE did not have any pending administrative appeals at the end of Fiscal Year 2012.

Ten Oldest Consultations

g. In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012?

OGE did not have any pending consultations at the end of Fiscal Year 2012.

h. If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report.

OGE did not have any pending consultations at the end of Fiscal Year 2012.

Reasons for Any Backlogs:

3. If you answered “no” to any of the questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:

Request and/or Appeal Backlog

a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals?

The lack of a reduction in the request backlog was not a result of an increase in the number of incoming requests or appeals.

b. Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff?

The lack of a reduction in the request backlog was not caused by a loss of staff.

c. Was the lack of a reduction in the request and/or appeal backlog caused by an increase in the complexity of the requests received?

The lack of a reduction in the request backlog was caused by an increase in the complexity of a specific, single request.

d. What other causes, if any, contributed to the lack of a decrease in the request and/or appeal backlog?
In Fiscal Year 2012, OGE did not have a backlog. At the close of Fiscal Year 2013, OGE had a single backlogged request.

“Ten oldest” Not Closed

e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012.

OGE did not have any pending requests, appeals, or consultations at the end of Fiscal Year 2012.

f. If your agency was unable to close any of its ten oldest requests or appeals 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.

OGE did not have any pending requests, appeals, or consultations at the end of Fiscal Year 2012.

Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:

Given the importance of these milestones, it is critical that Chief FOIA Officers assess the causes for not achieving success and create plans to address them.

4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2014.

OGE did not have any pending requests, appeals, or consultations at the end of Fiscal Year 2012.

5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency’s plan for achieving backlog reduction in the year ahead.

OGE did not have a backlog of more than 1000 pending requests.

Interim Responses:

OIP has issued guidance encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information.
6. Does your agency have a system in place to provide interim responses to requesters when appropriate?

**OGE has a system in place to provide interim responses to requesters when appropriate.**

7. If your agency had a backlog in Fiscal Year 2013, 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.

**At the close of Fiscal Year 2013, OGE had a single backlogged request. OGE provided five substantive, interim responses to the request during the fiscal year, even though the request was not finally closed.**
Use of FOIA’s Law Enforcement “Exclusions”

In order to increase transparency regarding the use of the FOIA’s statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to “treat the records as not subject to the requirements of [the FOIA],” 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. Did your agency invoke a statutory exclusion during Fiscal Year 2013?

OGE did not invoke a statutory exclusion during Fiscal Year 2013.

2. If so, what was the total number of times exclusions were invoked?

OGE did not invoke a statutory exclusion during Fiscal Year 2013.
**Spotlight on Success**

Out of all the activities undertaken by your agency since March 2013 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.

In April 2013, OGE launched an official agency Twitter account to promote transparency of the executive branch ethics program and to provide accurate executive branch ethics information to the public and to media. Using the Twitter account “@OfficeGovEthics,” OGE directs its external stakeholders to detailed information on its website. The Twitter account provides its external audiences an additional way to stay current with OGE’s latest proactive disclosures, as well as changes in executive branch ethics laws, regulations, and programs. Tweets have included the latest news from OGE regarding executive branch ethics; links to OGE’s latest legal advisories, education materials, program reviews, reports, and other updated information; and general information about OGE and the executive branch ethics program.