

Chief FOIA Officer Report
U.S. Office of Government Ethics
Kerri A. Cox, Acting Chief FOIA Officer
March 2013

The United States Office of Government Ethics (OGE) is a micro-agency 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. Technology continues to enhance OGE's ability to provide more records to the public in an easily accessible fashion. In 2012, OGE implemented a system to allow the public to electronically request, view, and download public financial disclosure reports (OGE Form 278s) and related documents of the highest level of executive branch Presidential appointees and Presidential candidates through its website. 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 that 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.

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period? Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?

OGE's FOIA professionals attended the FOIA Dispute Resolution Skills Training, which was provided by the Office of Government Information Services in conjunction with the Department of Justice. OGE's new FOIA professionals attended a FOIA and Privacy Act training sessions through Graduate School USA. In addition, OGE's FOIA professionals attended several FOIA Requester Roundtables and FOIA Director's Series at the Department of Justice.

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. OIG encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

2. Did your agency make any discretionary releases of otherwise exempt information?

Yes, OIG made discretionary releases of otherwise exempt information.

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

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

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

Some examples of the discretionary releases made by OIG last year include background and draft materials related to Ethics Program Reviews; and emails between OIG employees.

5. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

In 2012, OIG implemented an online portal that provides immediate access to certified public financial disclosure reports and ethics agreements of the highest level of executive branch Presidential appointees. In addition, OIG continues to proactively release documents on the OIG website, www.oig.gov, to ensure that the ethics laws and policies are open and transparent to Federal government employees and the general public. These documents include legal advisories, informational memoranda, ethics training resources, and educational material, including brochures, videos, and posters.

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."

This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support.

Describe here the steps your agency has taken to ensure that its system for responding to requests 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.

1. Do FOIA professionals within your agency have sufficient IT support?

Yes, the FOIA professionals within OGE have sufficient IT support. OGE is a micro-agency, which allows the FOIA staff to communicate directly with the IT staff regarding the needs of the FOIA program.

2. Do your FOIA professionals work with your agency's Open Government Team?

Yes, the FOIA professionals work closely with OGE's Open Government Team, which allows OGE to have a consistent approach when dealing with transparency and openness issues.

3. Has your agency assessed whether adequate staffing is being devoted to FOIA administration?

Although OGE does not have a backlog, OGE reviewed its system for processing FOIA requests and determined that the system is adequate and functioning efficiently. The number of FOIA staff is sufficient at this time.

4. 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, streamlining consultations, eliminating redundancy, etc.

The FOIA professionals have expanded OGE's FOIA log to more accurately reflect the information needed to complete various FOIA reports, which will increase the efficiency with which those reports can be created. The FOIA professionals have further increased efficiency by creating FOIA response letter templates and eliminated redundancy by employing procedural step charts.

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 2012 to March 2013). 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.

1. Provide examples of material that your agency has posted this past year.

OGE posted a variety of legal, educational, and legislative records this year. For example, OGE began posting on its website the semiannual reports of non-Federal source travel payments accepted by agencies under the authority of 31 U.S.C. § 1353. The new process allows for immediate public access to the reports, thus increasing transparency and improving the efficiency with which OGE provides customer service. OGE also began posting Executive Branch ethics programs reviews. As a result, over 100 reports -- some going back as far as 1982 -- are publicly available on the OGE website.

2. 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 the posted material, improving search capabilities on the site, creating mobile applications, providing explanatory material, etc.?

Yes, OGE continues to leverage technology to make posted information more useful to the public and to improve search capabilities on the site.

3. If so, provide examples of such improvements.

Using OGE's new content management system, each new document is tagged and summarized before it is posted in order to improve online search capabilities.

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

OGE implemented a system to allow the public to electronically request, view, and download public financial disclosure reports and related documents of the highest level of executive branch Presidential appointees and Presidential candidates through its website. This system has resulted in a substantial increase in the number of OGE Form 278s released.

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. In 2010 and 2011, agencies reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2013, as we did in 2012, the questions have been further refined and now also address different, more innovative aspects of technology use.

Electronic receipt of FOIA requests:

1. Can FOIA requests be made electronically to your agency?

Yes, FOIA requests may be sent to OGE by fax or e-mail. OGE has created an electronic FOIA request form that may be accessed on the FOIA section of OGE's website. The

form may be faxed, e-mailed, or sent through the OGE website. In addition, a requester may simply send a FOIA request to the OGE webmaster and that request will be forwarded to the OGE FOIA office.

2. If your agency is decentralized, can FOIA requests be made electronically to *all* components of your agency?

OGE, which has approximately 75 employees, processes FOIA requests on a centralized basis. That component is able to receive requests electronically.

Online tracking of FOIA requests:

3. 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.

4. If so, 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." List the specific types of information that are available through your agency's tracking system.

A FOIA requester cannot track the status of his/her request electronically.

5. In particular, does your agency tracking system provide the requester with an estimated date of completion for his or her request?

A FOIA requester cannot track the status of his/her request electronically.

6. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability?

OGE is a micro-agency that processes a low volume of FOIA requests each year with no backlog. In Fiscal Year 2012, OGE's average response time for processed requests was approximately 11 days. Because of OGE's low volume of FOIA requests and prompt response rate, an electronic tracking system is not justified at this time.

Use of technology to facilitate processing of requests:

7. 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.

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

In order to increase FOIA efficiency, OGE expanded its FOIA log to more accurately reflect the information needed to complete various FOIA reports. In addition, OGE has further increased efficiency by creating FOIA response letter templates and eliminated redundancy by employing procedural step charts.

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reduce 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 and appeals. *For the figures required in this Section, please use those contained in the specified sections of your agency's 2012 Annual FOIA Report.*

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. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.
 - a. 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.
 - b. If so, for your agency overall, for Fiscal Year 2012, 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?

Yes, the average number of days to process non-expedited requests was approximately 11 days.
2. Sections XII.D.(2) and XII.E.(2) of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report – Backlogged Requests/Appeals," show the numbers of any backlog of pending requests

or pending appeals from Fiscal Year 2012 as compared to Fiscal Year 2011. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition, Section VII.E, entitled “Pending Requests – Ten Oldest Pending Requests,” and Section VI.C.(5), entitled “Ten Oldest Pending Administrative Appeals,” from both Fiscal Year 2011 and Fiscal Year 2012 should be used for this section.

- a. If your agency had a backlog of requests at the close of Fiscal Year 2012, did that backlog decrease as compared with Fiscal Year 2011?

OGE does not have a backlog.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011?

OGE does not have a backlog.

- c. In Fiscal Year 2012, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2011?

There were three requests pending at the end of Fiscal Year 2011, and OGE closed all three pending requests.

- d. In Fiscal Year 2012, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2011?

There were no administrative appeals pending at the end of Fiscal Year 2011.

3. If you answered “no” to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation:

Request Backlog:

- a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?

OGE does not have a backlog.

- b. Was the lack of a reduction in the request backlog caused by a loss of staff?

OGE does not have a backlog.

- c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?

OGE does not have a backlog.

- d. What other causes, if any, contributed to the lack of a decrease in the request backlog?

OGE does not have a backlog.

Administrative Appeal Backlog:

- a. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?

OGE does not have a backlog.

- b. Was the lack of a reduction in the appeal backlog caused by a loss of staff?

OGE does not have a backlog.

- c. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received?

OGE does not have a backlog.

- d. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?

OGE does not have a backlog.

4. 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. If your agency had a backlog in Fiscal Year 2012, please provide an estimate of the number of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

OGE does not have a backlog.

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 2012?

No, OGE did not invoke a statutory exclusion during Fiscal Year 2012.

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

OGE did not invoke a statutory exclusion during Fiscal Year 2012.

Spotlight on Success

Since March 2012, OGE has continued to leverage technology to improve transparency and provide more records to the public in an easily accessible fashion. Significantly, OGE implemented a system to allow the public to electronically request, view, and download public financial disclosure reports and related documents of the highest level of executive branch Presidential appointees and Presidential candidates through its website. This system has resulted in a substantial increase in the number of OGE Form 278s released. Likewise, OGE began posting on its website the semiannual reports of non-Federal source travel payments accepted by agencies under the authority of 31 U.S.C. § 1353. The new process allows for immediate public access to the reports, thus increasing transparency and improving the efficiency with which OGE provides customer service. OGE also began posting Executive Branch ethics programs reviews. As a result, more than 100 reports – some going back as far as 1982 – are publicly available on the OGE website.