

Chief FOIA Officer Report for U.S. Office of Government Ethics March 2012

The Office of Government Ethics (OGE) is a micro-agency that provides advice and guidance to departments, agencies, and Federal employees on executive branch ethics matters. As part of OGE's outreach and guidance to the ethics community and the general public, each year OGE posts legal advisories in a redacted form (with identities deleted) on the OGE website. OGE also publishes informational memoranda, ethics training resources, and educational material, including brochures, videos, and posters, for the executive branch on the OGE website. In addition, OGE and other executive branch agencies maintain a separate public financial disclosure system for Public Financial Disclosure Reports, OGE 278, filed by high-level executive branch officials. Copies of the public financial disclosure reports of Presidential appointees subject to Senate confirmation, designated agency ethics official, and certain other officials are available from OGE directly by filing the appropriate access form, Request to Inspect or Receive Copies of OGE 278 Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Record, OGE Form 201. These records and other "covered records" are available under the Ethics in Government Act of 1978 (5 U.S.C. appendix, § 105), and not under the Freedom of Information Act (FOIA). In 2011, OGE made more than 1,000 Public Financial Disclosure Reports available upon request.

OGE continues to have a low volume of FOIA requests, which may be due in part to the fact that OGE proactively releases so many documents under the Ethics in Government Act and makes so many other documents available on the OGE website, www.oge.gov. Despite a significant increase in FOIA requests over the last three years, OGE continues to have no backlog and responds to requests generally 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?

In 2011, OGE revised its annual FOIA training to specifically include information on records management and the Privacy Act. The training discussed issues that have arisen under the new presumption of openness guidelines, encouraged all program offices to begin writing material that can be immediately released on the OGE website, and provided examples of records that are being released as either proactive or discretionary disclosures under the FOIA.

2. Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?

OGE's two new FOIA professionals attended the Department of Justice's two-day FOIA training for attorneys and access professionals, as well as FOIA and Privacy Act training sessions through the American Society of Access Professionals and Graduate School USA. In addition, OGE's Alternate FOIA Officer attended the Department of Justice's FOIA Fee Summit and FOIA Town Hall.

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.

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

OGE has adopted the policy that, whenever possible, all responsive FOIA records that could technically be withheld should be reviewed a second time for possible discretionary release. Some examples of the discretionary releases made by OGE last year include: travel records of OGE's Director; portions of Ethics Program Reviews; numerous emails between OGE and the U.S. Commodity Futures Trading Commission; a 2009 letter written to the U.S. Department of the Interior Office of Inspector General concerning the application of a criminal statute to employees of that particular agency; and FOIA letter templates in draft form.

4. 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 Exemptions (b)(2) and (b)(5).

5. Describe your agency's process to review records to determine whether discretionary releases are possible.

In determining whether to make a discretionary release, OGE has developed a practice of considering the following factors: the sensitivity of the document's content, the date of the document, the identity of the parties involved, whether the parties are current Federal government employees, and whether the issues involved have been resolved or the recommendations taken.

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

To ensure that the ethics laws and policies are open and transparent to Federal government employees and the general public, OGE purchased a content management system and redesigned its website. These steps improve the search function and make

additional documents easily available to the public. In addition, OGE provides immediate online access to the semiannual reports of non-Federal source travel payments accepted by agencies. OGE is in the process of implementing an online portal that will provide immediate access to certified public financial disclosure reports.

In Section V.B.(1) of your agency's Annual FOIA Report, entitled "Disposition of FOIA Requests – All Processed Requests" the first two columns list the "Number of Full Grants" and the "Number of Partial Grants/Partial Denials." Compare your agency's 2011 Annual FOIA Report with last year's Annual FOIA Report, and answer the following questions:

7. Did your agency have an increase in the number of responses where records were released in full?

In 2011, OGE released records in full at the same rate as 2010, with approximately 30% of processed FOIA requests released in full. In 2010, OGE processed 87 FOIA requests. In response to the 87 requests, OGE released 26 records in full. In 2011, OGE processed 72 FOIA requests. In response to the 72 requests, OGE released 22 records in full.

8. Did your agency have an increase in the number of responses where records were released in part?

In 2011, OGE's release of documents in part increased from the prior year. In 2010, OGE processed 87 FOIA requests. In response to the 87 requests, OGE released 16 records in part. In 2011, OGE processed 72 FOIA requests. In response to the 72 requests, OGE released 26 records in part.

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. Is there regular interaction between agency FOIA professionals and the Chief FOIA Officer?

Yes, the FOIA professionals within OGE regularly interact with the Chief FOIA Officer. OGE is a micro-agency, which allows the FOIA staff to communicate directly with the Chief FOIA Officer regarding the needs of the FOIA program. OGE's Chief FOIA Officer is an active contributor to the agency's FOIA program and often participates in the review of responsive documents.

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

Yes, OGE's Alternate FOIA Officer is a member of the Open Government Team, which allows OGE to have a consistent approach when dealing with transparency and openness issues. For example, when the Open Government Team reviewed various categories of records to determine whether they should be placed on the newly-redesigned OGE website, the Alternate FOIA Officer was able to provide valuable assistance in determining which documents could be immediately posted and which documents would require additional review.

4. Describe the steps your agency has taken to assess 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 while the system is adequate and functioning efficiently, additional staff resources would be beneficial. In 2011, OGE hired two new attorneys whose duties include working with the FOIA program.

5. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.

The FOIA staff is in the process of creating a searchable internal FOIA procedures guide. In addition to information about OGE's FOIA process, the guide will include links to the Department of Justice website. The guide will also include letter templates and copies of other relevant FOIA material.

Section III: Steps Taken to Increase Proactive Disclosures

Both the President and the 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 2011 to March 2012). 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. Has your agency added new material to your website since last year?

Yes, OGE has added new material to the OGE website.

2. Provide examples of the records, datasets, videos, etc., that have been posted this past year.

OGE posted a variety of legal, educational, and legislative records this year. For example, OGE posted on the website – more than 200 comments on the proposed lobbyist gift ban within days of receipt, OGE’s 2011 Congressional correspondence, the list of Presidential candidates whose financial disclosure reports have been certified by OGE, and new educational resources for both ethics officials and Federal employees. In addition, OGE added several new documents to the OGE FOIA website, including ethics program review reports, OGE’s 2011 Chief FOIA Officer Report, and OGE’s 2011 Annual FOIA Report.

3. Describe the system your agency uses to routinely identify records that are appropriate for posting.

OGE’s FOIA staff reviews all responsive records to determine whether the records will add to the understanding of the Federal ethics program as well as determining whether OGE will receive subsequent requests for the same records. In addition, OGE proactively posts records that are likely to be of interest to the public, including ethics program review reports as they are issued.

4. Beyond posting new material, is your agency taking steps to make the 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, providing explanatory material, etc.?

OGE overhauled its website to significantly increase transparency and dramatically improve public access to thousands of government ethics documents. Using a new content management system, each document is tagged and summarized to improve online search capabilities. In addition, OGE is in the process of implementing an online portal

that will process requests for certified public financial disclosure reports and ethics agreements online, resulting in immediate online access to these records.

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

Future improvements to the website include a plan to continue to provide immediate public access to semiannual reports of non-Federal source travel payments accepted by agencies. In addition, OGE expects to continue posting ethics program review reports as they are issued.

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 handling FOIA requests. For 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 processes requests on a decentralized basis, do all components of your agency receive requests electronically?

OGE, which has only 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 not, is your agency taking steps to establish this capability?

Because of OGE's low volume of FOIA requests, generic spreadsheets and word processing software are currently sufficient to track the FOIA requests.

Use of technology to facilitate processing of requests:

5. 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.

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

In order to increase FOIA efficiency, OGE is currently overhauling its FOIA request log, creating response letter templates, and drafting an interactive FOIA procedures guide that links users to the latest Department of Justice guidance.

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 2011 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 2011, 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 12 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 2011 as compared to Fiscal Year 2010. 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 2010 and Fiscal Year 2011 should be used for this section.

- a. If your agency had a backlog of requests at the close of Fiscal Year 2011, did that backlog decrease as compared with Fiscal Year 2010?

OGE does not have a backlog.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2011, did that backlog decrease as compared to Fiscal Year 2010?

OGE does not have a backlog.

- c. In Fiscal Year 2011, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2010?

There were six requests pending at the end of Fiscal Year 2010, and OGE closed all six pending requests.

- d. In Fiscal Year 2011, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2010?

There were no administrative appeals pending at the end of Fiscal Year 2010.

- 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:

- e. 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.

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

OGE does not have a backlog.

- g. 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.

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

OGE does not have a backlog.

All agencies should strive to both reduce any existing backlogs of requests and appeals and to improve their timeliness in responding to requests and appeals. Describe the steps your agency is taking to make improvements in those areas. In doing so, answer the following questions and then also include any other steps being taken to reduce backlogs and to improve timeliness.

1. Does your agency routinely set goals and monitor the progress of your FOIA caseload?

Yes. Generally, OGE is able to respond to all FOIA requests and administrative appeals within the 20 working day deadline. However, over the past two years, the number and complexity of the FOIA requests received by OGE has increased. As a result, OGE will be creating more uniform processes, such as an internal FOIA guide and FOIA letter templates, to meet the increasing FOIA demands.

2. Has your agency increased its FOIA staffing?

Yes. OGE hired two additional attorneys whose assignments include the FOIA.

3. Has your agency made IT improvements to increase timeliness?

Yes. In order to increase timeliness and efficiency in responding to FOIA requests, OGE is overhauling its FOIA request log and creating response letter templates.

4. If your agency receives consultations from other agencies, has your agency taken steps to improve the efficiency of the handling of such consultations, such as utilizing IT to share the documents, or establishing guidelines or agreements with other agencies on the handling of particular information to speed up or eliminate the need for consultations?

Yes. OGE will be creating more uniform processes for handling consultations consistent with recent OIP guidance on referrals, consultations, and coordination.

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 2011?

No, OGE did not invoke a statutory exclusion during Fiscal Year 2011.

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

OGE did not invoke a statutory exclusion during Fiscal Year 2011.

Spotlight on Success

The September 2011 launch of OGE's new website significantly increased transparency and improved FOIA administration. By overhauling the agency's website and its search capabilities, OGE dramatically improved public access to thousands of government ethics documents. In addition to aesthetic and navigation improvements, OGE added and improved a significant amount of content for the site through the development of an advanced content management system. Significantly, OGE is in the process of implementing an online portal that will provide immediate access to certified public financial disclosure reports and ethics agreements of the highest level of executive branch Presidential appointees. In addition, OGE will continue to post the semiannual reports of non-Federal source travel payments accepted by agencies and the ethics program review reports as they are issued.