

# Chief FOIA Officer Report



The Commerce Department's mission is to help make American businesses more innovative at home and more competitive abroad.



# 2016



U.S. Department of Commerce
2016 Chief FOIA Officer Report
Chief FOIA Officer
Ellen Herbst



Table of Contents

Section I: Steps Taken to Apply the Presumption of Openness ..... 2
FOIA Training ..... 2
Outreach ..... 6
Discretionary Releases ..... 7
Other Initiatives ..... 10
Section II: Steps Taken to Ensure that Your Agency has an Effective System in Place for Responding to Requests ..... 13
Processing Procedures ..... 14
Requester Services ..... 15
Other Initiatives ..... 16
Section III: Steps Taken to Increase Proactive Disclosures ..... 17
Posting Material ..... 17
Other Initiatives ..... 23
Section IV: Steps Taken to Greater Utilize Technology ..... 24
Making Material Posted Online More Usable ..... 24
Use of Technology to Facilitate Processing of Requests ..... 27
Other Initiatives ..... 28
Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs ..... 29
Backlogged Requests ..... 30
Backlogged Appeals ..... 30
Backlog Reduction Plans ..... 31
Ten Oldest Requests ..... 32
Ten Oldest Appeals ..... 32
Ten Oldest Consultations ..... 33
Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans ..... 33
Interim Responses ..... 34
Use of the FOIA’s Law Enforcement Exclusions ..... 34
Success Story ..... 35

## 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 agency conduct FOIA training during the reporting period for FOIA professionals?

**Yes. The Department of Commerce did provide substantive FOIA training during the reporting period.**

2. If yes, please provide a brief description of the type of training conducted and the topics covered.

**Training was conducted for FOIA professionals at the bureau and operating unit level, some bi-weekly, some monthly, some bi-monthly, and at the agency level during quarterly FOIA Officer Roundtable meetings. Topics of the training sessions included:**

- in-depth application of FOIA exemptions
- communicating with the public
- processing and responding to FOIA requests
- maintaining records electronically
- electronic redaction tools
- steps to processing FOIA requests
- overview of agency FOIA regulations
- FOIA best practices
- classifying simple versus complex FOIA requests
- backlog reduction
- proactive disclosure
- conducting proper searches
- FOIA records retention
- summary of the FOIA

- exemption 3 statutes- standardization of selections
- “still interested” letters
- maintaining data in FOIAonline (the Department’s FOIA tracking system)

Additionally, Census Bureau FOIA staff continued its monthly FOIA Lunch and Learns series for Census Bureau employees covering topics such as: What Every Agency Should Know About FOIA; Helpful Hints to Program Areas for Processing FOIA Requests; An Overview of the FOIA Exemptions; and FOIA Requests for Title 13 Protected Records (A Discussion of How FOIA Exemption 3 Applies). Further training conducted by Census Bureau FOIA staff included FOIA training for supervisors and managers, which allowed qualifying individuals to gain management credit for each hour of class attended. Those individuals have a mandatory requirement to attain a specific number of management credit hours per year. The classes offered to managers and supervisors were:

- “Freedom of Information Act (FOIA) Requests for Title 13 Records,” a class that provided an opportunity to supervisors and managers to become familiar with various FOIA laws and regulations, as they pertain to daily Census activities. As part of the class, the aforementioned individuals were taught the agency requirements to answer FOIA requests that may include Title 13 records. They were also taught the basic steps involved in fulfilling FOIA requests, how the FOIA office responds to requests that include Title 13 protected records, and the general rules every program area should know about the FOIA.
- “Master the Freedom of Information Act (FOIA) Series – Part 1,” a class that provided an opportunity to supervisors and managers to become familiar with various FOIA laws and regulations, as they pertain to daily Census activities. As part of the class, the aforementioned individuals were taught the agency requirements to answer FOIA requests, how to prepare Fee Estimates, how to search for and retrieve responsive documents, how to handle and answer Privacy Act requests, the definition of proactive disclosure, the requirements for making a FOIA request, and the general rules every program area should know about the FOIA.

The National Oceanic and Atmospheric Administration (NOAA) has also instituted FOIA training for all new employees upon “Entrance on Duty” during the Orientation Briefing. The training covers the underlying statutory obligations

pursuant to the FOIA, and gives general guidance on the expectations of employees in complying with the duties of processing FOIA requests and increasing transparency. NOAA has also instituted specialized FOIA “Boot Camp” training sessions for all FOIA staff professionals that provide an overview and refresher of key FOIA statutory obligations and detailed FOIAonline user administration training. Additionally, NOAA conducts a Monthly FOIA Legal Experts training, wherein new developments in request processing, case law, and guidance for NOAA FOIA professionals is given.

Similarly, the National Technical Information Agency (NTIA) FOIA staff trained and educated NTIA staff on a regular basis, particularly new employees, regarding their FOIA responsibilities. This included periodic email to all staff with FOIA updates. Another type of training given was by the Office of Inspector General (OIG) FOIA Officer, who provided an overview to OIG staff of a recent significant federal appellate court decision regarding fee waivers and fees to agency staff during an office staff meeting.

The United States Patent and Trademarks Office (USPTO) FOIA Office conducted a training session for the USPTO’s senior leadership. In addition, the USPTO FOIA Office conducted a training session for new Supervisory Patent Examiners (50+ people), for senior leadership within Patents, and for personnel with the Patent Trial and Appeal Board. Moreover, the USPTO FOIA Office makes itself available at all times for requests for group or one-on-one FOIA training.

3. If no, please explain why your agency did not hold training during the reporting period, such as if training offered by other agencies was sufficient for your agency’s training needs.

**Not applicable.**

4. Did your FOIA professionals attend any FOIA training or conference during the reporting period such as that provided by the Department of Justice? Such training or events can include offerings from OIP, your own agency or another agency or organization.

**Yes. FOIA training events attended:**

- **The FOIA for Attorneys and Access Professionals hosted by DOJ/OIP**
- **Advanced FOIA Seminar hosted by DOJ/OIP**
- **Introduction to the FOIA hosted by DOJ/OIP**
- **FOIA Litigation Seminar hosted by DOJ/OIP**
- **FOIA/Privacy Training hosted by American Society for Access Professionals (ASAP), Annual Training Conference**



## U.S. Department of Commerce 2016 Chief FOIA Officer Report



- **FOIA Sunshine Week Refresher hosted by Census and the Department of Commerce (DOC)**
- **FOIAonline training hosted by the DOC and the EPA**
- **ASAP webinars, to include: Introduction to the FOIA; FOIA Exemptions Overview; Fees and Fee Waivers; Exemption 4; Exemption 5; and FOIA and Privacy Act Interface**
- **The FOIA and Privacy Act for Entry-Level FOIA/PA Professionals hosted by AINS**
- **Census Bureau FOIA training, to include: FOIA – Back to the Basics; FOIA Processing Overview; FOIA Case Recordkeeping; FOIA Cases – Introduction to Redacting Documents; and How to Apply FOIA Exemptions**

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

**For the Department overall, we estimate an average of 70% of FOIA professionals attended substantive FOIA training during this reporting period.**

**The following bureaus reported 100% of FOIA professionals attended substantive FOIA training during this reporting period: Office of the Secretary, Bureau of Industry and Security (BIS), Census Bureau, Bureau of Economic Analysis/Economic and Statistics Administration (ESA), National Telecommunications and Information Administration (NTIA), Office of Inspector General (OIG).**

**The Economic Development Administration reported 90% of FOIA professionals attended substantive FOIA training during this reporting period. The United States Patent and Trademark Office (USPTO) reported 50 % of FOIA professionals attended substantive FOIA training during this reporting period. The National Oceanic and Atmospheric Administration (NOAA) reported 71% of FOIA professionals attended substantive FOIA training during this reporting period. The International Trade Administration (ITA), Minority Business Development Agency (MBDA), National Technical Information Service (NTIS), and National Institute of Standards and Technology (NIST) reported none of their FOIA professionals attended substantive FOIA training during this reporting period.**

6. 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.

**While overall The Department of Commerce did not achieve the goal of ensuring 80% or more of its FOIA professionals attended substantive FOIA training, the Department continues to emphasize the importance of such training during**

quarterly FOIA Roundtable meetings and other communications. For instance, the Department was successful in providing core, substantive FOIA training to its FOIA Officers and Contacts, offered by the Office of General Counsel, General Law Division, to all agency FOIA professionals during a FOIA Officers Roundtable meeting.

As another example of increasing visibility of available core, substantive FOIA training, NOAA has begun sending out notification of new available FOIA training events directly to the FOIA Liaisons to inform them of opportunities to receive FOIA training. Additionally, the in-house FOIA “Boot Camp” training session is offered to all NOAA FOIA professionals and is mandatory for new FOIA professionals.

### *Outreach*

7. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA? This question addresses outreach that is conducted outside of the individual request or appeal process. Outreach activities can include engaging with frequent requesters by holding meetings or events which include them, conducting surveys or otherwise soliciting requester feedback, or participating in any other requester initiative coordinated by your agency or by others, such as OIP. For example, an agency receives numerous requests from one organization seeking similar types of records. The organization does not know how the agency organizes its records or how its FOIA professionals must conduct searches. When submitting FOIA requests, the organization often submits broad requests that take a long time to process and that result in the review of a lot of records that are ultimately of no interest to the requester. The agency holds a meeting with the organization to discuss its record keeping system, search capabilities, and overall FOIA process to assist the organization in the formulation of future FOIA requests. Because of the meeting, the organization now submits more targeted requests that result in the agency being able to provide the requester the records it is interested in more quickly.

A major outreach accomplishment in 2015 was the third annual Sunshine Week event that was held on March 18-19, 2015 in the Census Bureau Library. On day one of the event, guest speakers gave presentations about the FOIA, Privacy Act, and Open Government to a cross-section of individuals from the Federal government and the requester community. As a way to place greater emphasis on the relationship between the requester community and the Federal government, a guest speaker, who submits requests on behalf of a civil society group, was invited to discuss her views of the FOIA and how the Federal government responds to requests. In turn, a speaker from the Federal government discussed providing more information to requesters quickly through proactive disclosures.



## U.S. Department of Commerce 2016 Chief FOIA Officer Report



The 2015 Sunshine Week event also received international recognition, with Television Maldives, the public service broadcasting TV channel of the Maldives' creating a documentary of the event. Due to the success of the event, the Department of Commerce and the Census Bureau are partnering to hold another Sunshine Week event in 2016 that will span two days and include twice as many quest speakers from both the federal and public communities.

The Department amended its system of records notice (SORN) for Freedom of Information Act and Privacy Act Requests, COMMERCE/DEPT-5, to include a routine use for disclosure to the National Archives and Records Administration, Office of Government Information Services (OGIS), for mediation services. With this in mind, the NOAA has begun reaching out directly to requesters in backlogged or voluminous cases offering to mediate any disputes in the request through OGIS in an effort to improve bureau outreach, decrease response times, and increase transparency within NOAA. Additionally, NOAA has begun a standard practice of contacting requesters prior to issuing denials of fee waiver requests if their requests simply appear to be missing relevant information required under the Departmental FOIA regulations, 15 C.F.R. Section 4.11, in instances where the requester likely would otherwise qualify for a fee waiver.

The ITA FOIA Public Liaison has constantly dialogued with the requester community regarding how ITA administers the FOIA. ITA FOIA professional also have worked with open government groups regarding ITA's administration of the FOIA. These conversations have indirectly led to increased resources being devoted to ITA's FOIA program for the next reporting period.

Furthermore, NTIA FOIA professionals attended outreach events hosted by the Census Bureau and OIP in 2015. Attendance helped to enhance staff knowledge of outreach opportunities, as well as to network with the requester and Federal FOIA communities. The OIG FOIA Officer participated in outreach/dialogue with the requester community and open government groups during sessions held at the American Society of Access Professionals National Training Conference.

8. If you did not conduct any outreach during the reporting period, please explain why?

Not applicable.

### *Discretionary Releases*

9. Does your agency have a distinct process or system 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 of your agency have such a process or system in place?



## U.S. Department of Commerce 2016 Chief FOIA Officer Report



All FOIA professionals actively engage their operating unit from the outset of the request to help determine whether or not discretionary releases may be made. All components of the Department have a process in place for making discretionary releases.

The Office of the Secretary, ESA, MBDA, NIST, NOAA, and NTIS require the originator of the document or a qualified subject matter expert to conduct document reviews. A secondary document review is conducted by the FOIA Officer or an assigned FOIA professional to ensure that the exemption is appropriately applied and with an eye toward presumption of openness. If during the secondary review, a foreseeable harm cannot be identified, the document is referred back to the originator or subject matter expert for additional review. If an agreement cannot be reached, then both the subject matter expert and the FOIA Officer/FOIA professional seek assistance for the Office of the General Counsel.

As a way to ensure that the presumption of openness is being applied, the Census Bureau FOIA Office conducts group reviews of responsive records to which FOIA Exemptions 2, 5 U.S.C. § 552(b)(2), 5, 5 U.S.C. § 552(b)(2), or 7, 5 U.S.C. § 552(b)(7) apply. These types of reviews serve two main purposes: a) they help train FOIA professionals on the definition and application of the presumption of openness, and b) they help to ensure the presumption of openness is being applied, whenever and as much as possible. FOIA staffs are also required to complete a harm analysis and review for the portions of the responsive records to which FOIA Exemptions 2, 5, or 7 apply. Individuals in the offices where the records originated are consulted in determining if any specific harm would be caused by the release.

To determine whether a discretionary release is possible, ITA first requires a document review by a qualified subject matter expert (SME). The SME often created or, at least, maintains control of the record that is being reviewed. The SME conducts a foreseeable harm review of the portions of the record that could be protected under the FOIA. Afterward, ITA's FOIA Officer conducts a secondary review to see what information could be discretionarily released. The review consists of two steps. First ITA's FOIA Officer inquires why the SME is not requesting information that normally falls under Exemption 5 to be protected. The SME then provides rationale on whether: the information would not inhibit open, frank discussion; the draft reflects final agency action; or the information would not cause public confusion. Second, ITA's FOIA Officer reviews the suggested withholdings for possible discretionary disclosure. If the FOIA Officer cannot reasonably identify a foreseeable harm, the portion of the record in question is referred back to the SME for a second review. If an agreement cannot be reached, then both the SME and the FOIA Officer seek assistance from the Departmental Office of Privacy and Open Government and/or the Office of the General Counsel.

All NTIA FOIA requests are processed by the NTIA's Office of the Chief Counsel (NTIA/OCC). All responsive documents are reviewed by an attorney in the Office of



## U.S. Department of Commerce 2016 Chief FOIA Officer Report



the Chief Counsel to ensure that the exemption is appropriately applied to each FOIA requested document. As a part of this process the attorney also determines whether even if an exemption were to apply there would be harm in releasing the record. Finally, these recommendations are reviewed by the Chief Counsel to ensure compliance with the law and these requirements.

While the OIG does not have a distinct process or system in place to review records for discretionary release during the process of FOIA, all records processed under FOIA are reviewed as part of the normal review process to ensure that discretionary release takes place when appropriate. Moreover, outside the context of FOIA, the OIG has a formal public release review process that covers OIG audit and certain public investigative reports and correspondence and facilitates the public release and posting to the OIG website of these reports.

USPTO has a tracking system for marking requests that involve discretionary release in its electronic FOIA tracking system. In other words, each time a request is completed, the program asks the user if a discretionary release was made. It does not, however, have an automatic trigger for identifying records that could be discretionarily released. Instead, the FOIA professionals handling each request manually determine whether there are any records appropriate for discretionary release.

At NOAA, in instances where FOIA exemption (b)(5) is being invoked, a risk of harm analysis must be conducted by the FOIA Professional applying the exemption, and a General Counsel review occurs any time this privilege is invoked. In the alternative that there is no risk of harm to the agency in the disclosure of the information, the FOIA Professionals are instructed to release the information, despite the ability to assert the privilege. NOAA is decentralized, and all staff and line office FOIA Professionals utilize this process.

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

**The following bureaus reported discretionary disclosures of records that fell within the scope of a FOIA exemption: OS, Census, ITA, NIST, NOAA, NTIA, USPTO, and OIG.**

11. What exemption(s) would have covered the material released as a matter of discretion? For a discussion of the exemptions that allow for discretionary releases, please see OIP's guidance on [implementing the President's and Attorney General's 2009 FOIA Memoranda](#).

**Discretionary releases have been made for information that would have been covered under FOIA Exemption 5, 5 U.S.C. § 552(b)(5).**

12. 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.

**The types of documents that were released are draft or pre-decisional documents in which the agency determined there would be minimal or no harm with public release.**

**An example of the type of information the Census Bureau released as a matter of discretion is portions of emails that discussed preplanning of a risk assessment project for the 2020 Decennial.**

**Examples of the types of information that OIG released as a matter of discretion are certain draft documents, e-mail discussions, internal OIG policies, and investigative case notes (the portions not protected by privacy-related exemptions) that otherwise might have been subject to the deliberative process privilege.**

**For NOAA, draft documents within Fisheries that illustrated the deliberations of the staff on several different draft memorandum and draft project-related documents were discretionarily released in lieu of the assertion of (b)(5) in instances where it was determined that there would not be a risk of harm to the agency despite the availability of exemption (b)(5).**

**USPTO made discretionary releases in FY 2015 of records covered by Exemption 5. In one example, the Agency released documents containing recommendations and opinions, including draft documents, concerning a program that had been implemented to help improve patent quality. Case law squarely supports Exemption (b)(5) applicability to such recommendations and opinions, but after careful review, the USPTO opted to share this material with interested requesters in the spirit of transparency and to benefit the stakeholder public.**

13. If your agency was not able to make any discretionary releases of information, please explain why. For example, you should note here if your agency did not have an opportunity to make discretionary disclosures because you provided full releases in response to all requests or the only exemptions that were applied were those that do not lend themselves to discretionary release (i.e. Exemptions 1, 3, 4, 6, 7A, 7B, 7C, 7F).

**The following bureaus reported no discretionary disclosures of records that fell within the scope of a FOIA exemption: BIS, EDA, ESA, MBDA and NTIS.**

### *Other Initiatives*

14. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. Efforts can include training for non-FOIA professionals, distributing memoranda on the FOIA, announcements on FOIA matters, making available OIP's [FOIA for Senior Executive's](#) briefing video, distributing the



## U.S. Department of Commerce 2016 Chief FOIA Officer Report



[FOIA infographic](#) developed by OIP, having your agency staff take OIP's [FOIA for all Federal Employees eLearning module](#), etc.

Many of the Department's components provided monthly FOIA presentations at new employee orientation. The Department's FOIA staff also educates its program offices as part of the tasking and fulfillment of each FOIA request.

Monthly FOIA Lunch and Learns for FOIA and Census Bureau staff covered topics such as: What Every Agency Should Know About FOIA, Helpful Hints to Program Areas for Processing FOIA Requests, An Overview of the FOIA Exemptions, and FOIA Requests for Title 13 Protected Records (A Discussion of How FOIA Exemption 3 Applies).

FOIA training for supervisors and managers allowed qualifying individuals to gain management credit for each hour of class attended. Those individuals have a mandatory requirement to attain a specific number of management credit hours per year. This was our second year of offering classes about the FOIA to managers and supervisors, as follows:

- **“Freedom of Information Act (FOIA) Requests for Title 13 Records,”** a class that provided an opportunity to supervisors and managers to become familiar with various FOIA laws and regulations, as they pertain to daily Census activities. As part of the class, the aforementioned individuals were taught the agency requirements to answer FOIA requests that may include Title 13 records. They were also taught the basic steps involved in fulfilling FOIA requests, how the FOIA office responds to requests that include Title 13 protected records, and the general rules every program area should know about the FOIA.
- **“Master the Freedom of Information Act (FOIA) Series – Part 1,”** a class that provided an opportunity to supervisors and managers to become familiar with various FOIA laws and regulations, as they pertain to daily Census activities. As part of the class, he aforementioned individuals were taught the agency requirements to answer FOIA requests, how to prepare Fee Estimates, how to search for and retrieve responsive documents, how to handle and answer Privacy Act requests, the definition of proactive disclosure, the requirements for making a FOIA request, and the general rules every program area should know about the FOIA.

Census Bureau FOIA staff also distributed pamphlets that provide an overview of the FOIA, including how to search for responsive records, and how to provide information for a fee estimate.

Additionally, Census Bureau staff “manned” a FOIA program booth during the Census Bureau's Privacy Day event at which FOIA staff answered questions



## U.S. Department of Commerce 2016 Chief FOIA Officer Report



employees had about the FOIA. Staff also handed out information brochures about the FOIA.

NTIA FOIA professionals work with NTIA staff regarding their FOIA obligations. Each request for fee estimate or search includes detailed instructions regarding how to conduct a proper fee estimate or search. On a case by case basis, FOIA training materials are provided to new staff or those that are seeking particular information regarding their FOIA obligations.

The ITA FOIA Officer conducted a number of private and small group training sessions with non-FOIA professionals. In addition, ITA now publishes a FOIA related article in its internal, monthly newsletter. Also, FOIA topics were presented in various non-FOIA training sessions by OGC and the ITA business unit of Global Markets.

The BIS FOIA Officer provides on the job training to non-FOIA professionals as well as distributing FOIA information and making announcement related to FOIA matters.

The NIST FOIA Officer and FOIA staff provided training on FOIA practices for new NIST Management. NIST FOIA staff also conducted FOIA training upon request to operating units for groups and individuals. NIST Records Management presentations also included FOIA training as it relates to record retention.

NOAA conducted monthly “Huddles” with the National Marine Fisheries Service staff, including non-FOIA professionals, regarding the need to decrease the backlog, and to improve response timeliness. Also, as mentioned above, all new employees are now trained on their obligations under the FOIA

In addition to the training provided to USPTO personnel as described in the response to Question 2, *supra*, FOIA training materials are available to USPTO employees on the USPTO intranet at:  
<http://ptoweb.uspto.gov/ptointranet/ogc/foiaservice.htm>.

The OIG FOIA Officer has circulated items of interest to various groups of non-FOIA professionals in the OIG. These efforts included sending OIP’s FOIA for Senior Executive’s briefing video and the Acting Associate Attorney General’s memorandum on FOIA training to senior executives and managers, as well as making available to all OIG employees the FOIA infographic developed by OIP, OIP’s FOIA for Federal Employees eLearning module, the President’s FOIA Memorandum, and the Attorney General’s FOIA guidelines. The FOIA Officer provides a weekly status update on FOIA activities each week to the Inspector General and other selected OIG personnel for general awareness and generally alerts relevant personnel of items of interest related to FOIA when they arise.

15. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

The use of General Counsel review of all (b)(5) material by the NOAA FOIA Office is premised on the initiative to increase disclosures through releasing information that otherwise would be exempt, and by presuming that such information is releasable absent a risk of harm. The involvement of General Counsel review of Exemptions is located in NOAA Administrative Order (NAO) 205-14, located here: [http://www.corporateservices.noaa.gov/ames/administrative\\_orders/chapter\\_205/205-14.html](http://www.corporateservices.noaa.gov/ames/administrative_orders/chapter_205/205-14.html).

The USPTO continues to proactively release frequently requested records and other records of interest such as government contracts (following review by submitters), notices of suit, judicial decisions of interest, and data points related to patents and trademarks. Available at: [http://www.uspto.gov/ip/boards/foia\\_rr/index.jsp](http://www.uspto.gov/ip/boards/foia_rr/index.jsp). Finally, the USPTO FOIA Office always highlights the presumption of openness in its training materials and training presentations for Business Units and individual employees.

Outside the context of FOIA, the OIG has a formalized process to ensure that OIG audit and certain investigative reports and correspondence undergo a public release review process to allow these OIG work products to be public released and posted on the OIG website; this process ensures that the presumption of openness is applied.

NTIA is proactive in posting grant agreement documents and other documents such as reports, agreement and contract documents, filings, press releases, and testimony on its website. For example, this year NTIA continued posting grant agreement documents for its State and Local Implementation Grant Program (SLIGP) grant program. These grant award documents for each state are available at: <http://www.ntia.doc.gov/slignp/slignp-awards>.

As a way to enhance readability of proactively disclosed information, ESA supports Plain Language in the content management of the ESA Website, in review of documents submitted by ESA staff, as well as in the review of documents submitted by the Office of the Chief Economist, the Census Bureau and the Bureau of Economic Analysis for public information and publication. ESA posts the ESA Plain Language Policy on our website at: <http://www.esa.gov/content/esa-plain-language>.

## 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.

Please answer the following questions to describe the steps your agency has taken to ensure that your 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. Please note here if your agency did not adjudicate any requests for expedited processing during Fiscal Year 2015.

**Agency overall average: 8.**

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.

**For Fiscal Year 2015, the Department of Commerce average number of days for adjudicating expedited processing was less than ten calendar days.**

3. If your agency has a decentralized FOIA process, has your agency taken steps to make the routing of misdirected requests within your agency more efficient? If so, please describe those steps. If your agency is already handling the routing of misdirected requests in an efficient manner, please note that here and describe your process for these requests.

**All FOIA requests are promptly reviewed upon receipt by the receiving FOIA Office to determine whether the appropriate component within the agency received the request. If the request is misdirected, the receiving FOIA office routes the misdirected request to the proper FOIA office within the agency within ten working days.**

**Additionally, routing of misdirected requests received in the Department of Commerce are handled in an efficient manner. Department of Commerce FOIA professionals work closely with other Operating Units FOIA Officers as needed to insure that misdirected requests are assigned to the proper lead Operating Unit. As an example, FOIA requests misdirected to NOAA that arrive via mail or fax are routinely sent to the NOAA FOIA Officer in Silver Spring Maryland for intake, routing, or referral, as necessary. The Department also has the ability to redirect FOIA requests within the agency through its automated FOIA tracking system, FOIAonline.**

4. 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.

**Yes, requesters were contacted with “still interested” letters by the Department of Commerce and its components in accordance with the July 2, 2015 OIP guidance. For example, Department FOIA professionals sent “still interested” letters to approximately 35 requesters. As another example, NOAA FOIA professionals contacted requesters in approximately 15 instances where their request was severely backlogged to confirm their continued interest in their requests. In all instances, requests remained open at least 30 days and, the requests were not administratively closed in any case where the requester indicated a continued interest in receiving the requested records.**

### *Requester Services*

5. 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. If your agency has not taken any steps recently to strengthen these services, either because there has been no need to due to low demand or because these services are already robust, please briefly explain that that here.

**The Department of Commerce and its components have FOIA Requester Service Centers, as well as FOIA Public Liaisons. Contact information for both can be found at <http://www.osec.doc.gov/omo/FOIA/servicecenters.htm>, and on foia. gov at <http://www.foia.gov/report-makerequest.html>.**

**While the Department of Commerce considers that its FOIA Requester Service Centers already provides robust service to FOIA requesters, at its quarterly FOIA Officer Roundtable meetings, the Department frequently discusses best business practices for improving services offered to FOIA requesters. The Department also plans to continue emphasizing during Fiscal Year 2016, the import role that Service Centers, as well as FOIA Public Liaisons play in working with requesters and mitigating their concerns about the service they receive, if any.**

### *Other Initiatives*

6. 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.

**Following a practice started in FY2015, Census Bureau FOIA supervisors and managers conducted FOIA case audits on all completed FOIA cases. The audits are used to ensure FOIA professionals are following established FOIA laws, regulations, policies, and procedures. FOIA managers and staff also continually review established FOIA business processes to determine where changes, if any, can or need to be made to help its FOIA program run more efficiently and effectively. Processes are then updated, when required. Another way that the Census Bureau FOIA staff has improved the efficient processing of requests is by adding an acronym extension to its standardized naming structure for electronic FOIA case folders. The acronym identifies the type of records requested, which improves FOIA analyst search processes, as well as provides examples for processing similar requests, when necessary.**

**The Office of Chief Counsel, which oversees FOIA processing for NTIA, meets quarterly to assess the current status of all pending FOIAs, make assignments to staff to complete older complex FOIAs, and discuss ways to improve FOIA processing. Based upon feedback from agency personnel, NTIA FOIA professionals revised and improved fillable PDF form for fee estimates and search requests that is provided to agency staff via email with each new request. This electronic process provides a more efficient processing for fee estimates and search requests especially when searches are across multiple offices.**

**The OIG FOIA Officer has moved to processing, whenever possible, FOIA requests electronically, including sending correspondence via e-mail. Search taskers and fee estimate taskers are sent to OIG offices electronically and completed forms and records are routinely returned in the same fashion, improving efficiency and conserving resources. When an individual is very likely to have responsive documents, the search request is sent directly to the individual (with notification to the office FOIA search point of contact) to expedite search and allow for the individual to directly interact with the FOIA Officer regarding any questions.**

**NOAA requires a completed tasker, signed by the FOIA Coordinator, General Counsel, and Senior Official, indicating the proper processing, search, and records disposition. Additionally, a search log, indicating the locations and search methods or terms, is now required to be included in the administrative file loaded into FOIAonline. During the monthly FOIA Legal Experts meeting, professionals routinely conduct self-assessments and discuss processing efficiencies. One example of a recent efficiency is maintaining a complete set of all records, including fully**



## U.S. Department of Commerce 2016 Chief FOIA Officer Report



withheld records, within the FOIAonline repository for instances where the fully withheld records are sought later after the exemption no longer applies and the records can be reasonably segregated.

In addition to continued training for records custodians, the USPTO FOIA Office has also been striving to improve communications with records custodians during the course of processing FOIA requests to resolve issues that arise in the course of preparing fee estimates or executing a search for documents. At NIST, Senior Management at NIST emphasized the importance of FOIA's to the entire organization.

### 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.

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?

**The Department of Commerce identifies those records that are likely of interest to the public and its constituents such as grant documents, reports, etc. and posts those using either a blog and/or on its individual bureau main web pages and by topic for ease of access. FOIA Officers work with program offices, office of public affairs and the webmaster to ensure that records from the programs are routinely made available on the Department's website. As an example, the OIG FOIA Officer keeps track of the records that have been frequently requested. Once a previously-released record has been requested a total of 3 or more times, the FOIA Officer works collaboratively with the OIG office responsible for the OIG website and posting of public documents to ensure that a copy of the properly FOIA-processed record is posted in a timely manner.**

**The Department of Commerce also uses FOIAonline to both identify and make available records for proactive disclosure. The ways that FOIA professionals use the system to assist them include: reviewing responses to requests to determine if material disclosed may be of use to other requesters and discussing how to make responsive records available through the FOIAonline system, which is available to**

the public. Through the FOIAonline system, individuals can access posted FOIA requests and agency responses to those requests. Those responses include disclosed responsive records.

NOAA continuously adds tens of thousands of data sets, graphical representations of data, research, findings, memoranda, satellite images, weather alerts, budget disclosures, fishery data sets, Marine and Aviation Operations, fleet schedules, and administrative documents to the online repositories of documents that are publicly available. Ongoing meetings with each office's respective Chief Information Officer and the OCIO Council occur to determine ways to continue and increase disclosures and to make the information available more meaningfully accessible.

USPTO and other Department of Commerce component FOIA professionals identify "frequently requested" records based on their knowledge about what FOIA requests have been made.

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, see the answer for question number 1 above. Further, NOAA in instances where records are released in their entirety, or with minimal redactions, and where General Counsel has indicated that their review for that specific type of record is not needed prior to release, the program office has been contacted to discuss the feasibility of proactively disclosing that material. A meeting has been held on multiple occasions to discuss the amenability of those types of records to be routinely compiled and disclosed absent the submission of a FOIA request.**

**The OIG posts new information on its website on a rolling basis as reports and other written products are issued and as new information becomes available. For instance, the website contains Semi-annual reports to Congress, audit, inspection, evaluation, and public investigative reports, the OIG top management challenges report on issues facing the Department, congressional testimony, and information on current and planned activities. As another example, the BIS FOIA Officer works with representatives from the Office of Congressional Public Affairs to be familiarized with the current hot topics and further ensure the frequently inquired information is being proactively disclosed.**

**NTIA identifies those records that are likely of interest to the public and its constituents such as grant documents, reports, and posts those on the NTIA website for ease of access. NTIA's Office of the Chief Counsel works with program offices, office of public affairs and the webmaster to ensure that records from the programs are routinely made available on NTIA's website.**



## U.S. Department of Commerce 2016 Chief FOIA Officer Report



**USPTO makes large numbers of records related to patents and trademarks, including applications, available through proactive disclosures. Documents filed by applicants or USPTO official actions with respect to these applications are typically filed electronically and are available to the public through means such as USPTO websites.**

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. Please note that this question is directed at the efforts of actually posting the records online once all disclosure determinations have been made. For example, efforts to load the records in your web content platform or making the releasable documents accessible in compliance with Section 508 of the Rehabilitation Act.

**Many of the Department of Commerce's proactive disclosures of records are done through its FOIA request tracking system, FOIAonline. Records posted in this system are accessible in compliance with Section 508 of the Rehabilitation Act.**

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

**Yes.**

5. If so, please briefly explain those challenges.

**NOAA FOIA staff expressed how records are maintained and archived in different file types that are not readily amendable to redaction for ease in processing to post online. As such, for voluminous records that are maintained at times outside of .pdf format, processing and redaction of the record for proactive disclosure is not feasible without laborious extraction, conversion, or case recognition activities in order to reasonably segregate frequently requested records.**

**The OIG has encountered challenges that make it difficult to post records we would otherwise like to post. In particular, for OIG investigative records, staff consistently must balance the importance of transparency with the need to protect personal privacy of complainants, subjects, witnesses, and investigative personnel. These records are very frequently protected by the Privacy Act, which limits the types of information we can proactively disclose or even release under a FOIA request. Even those records that are released under FOIA may not be appropriate for public posting to the extent that the requester was a first-party requester seeking his or her own records. In addition, because of the OIG's oversight role within the agency, many OIG records pertain to other components which may require additional coordination and levels of approval from other Department components in certain situations.**

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

BIS posts all finalized export violations as well as all antiboycott violations to the public website: <http://efoia.bis.doc.gov/index.php/electronic-foia/index-of-documents>.

The Census Bureau consistently posts and organizes information to make it more accessible and useful:

- On <http://www.census.gov/topics.html>, Census Bureau statistics are now organized by themes, or topics, making it easier for individuals to find what they need. Topics include: business; economy, education; employment; family and living arrangements; health; housing; income and poverty; international trade; population; and public sector.
- On <http://www.census.gov/about/business-opportunities/opportunities/sub-contract.html>, contract awardees on the Census Bureau's Multi-tiered Acquisition Framework for Systems Engineering and Integration are listed.
- On [http://www.census.gov/about/policies/foia/foia\\_library/congressional\\_correspondence\\_logs.html](http://www.census.gov/about/policies/foia/foia_library/congressional_correspondence_logs.html), Congressional Correspondence Logs are posted.
- On [http://www.census.gov/about/policies/privacy/data\\_stewardship.html](http://www.census.gov/about/policies/privacy/data_stewardship.html) Data Stewardship Policies are posted.
- On [http://www.census.gov/about/policies/foia/foia\\_library/custom\\_tabulations.html](http://www.census.gov/about/policies/foia/foia_library/custom_tabulations.html), Custom Tabulations are posted.

One example of material ITA has posted proactively includes the Tariff Tool system that consolidates and distills thousands of pages of U.S. Free Trade Agreement (FTA) tariff commitments down into a simple, online database. The link for the FTA Tariff Tool is located at <http://export.gov/fta/ftatarifftool/ftamain.aspx>. Another example is ACCESS. ACCESS is the repository for all records filed in anti-dumping and countervailing duty (AD/CVD) proceedings. ACCESS provides the capability for registered E-Filers to submit documents to the record of an AD/CVD proceeding and it allows the public to view public versions of all documents submitted. The website for this is <https://access.trade.gov/login.aspx> and registration is free.

NTIA provides a large amount of documentation on its website regarding its highly visible programs such as the Broadband Technology Opportunities Program (BTOP). NTIA posts regular updates to project amendments, letters, environmental documentation, quarterly reports, ARRA reports, filings, meeting minutes. See, <http://www2.ntia.doc.gov/>. See for example NTIA's new page in 2015 – Data Central. This page is intended to provide NTIA data and analysis on computer and Internet use in the United States. This includes the raw data sets so that others



## U.S. Department of Commerce 2016 Chief FOIA Officer Report



may explore the data and provide additional research and analysis. This page is available at: <https://www.ntia.doc.gov/data>.

NTIA also regularly posts all filings, reports, speeches, testimony, etc. See, <http://www.ntia.doc.gov/publications>. For another example, NTIA continued posting grant agreement documents for its State and Local Implementation Grant Program (SLIGP) grant program. These grant award documents for each state are available at: <http://www.ntia.doc.gov/slignp/slignp-awards>.

NIST's postings include:

- NIST publishes news about its research results and other activities almost daily: <http://www.nist.gov/allnews.cfm>.
- Examples of records, datasets, videos, photos, and computer simulated models: <http://wtcdata.nist.gov/>.
- The NIST Computer Security Resource Center has a mailing list and issues updates on withdrawn standards and guidance: <http://csrc.nist.gov/>.

The OIG has proactively disclosed Semi-annual reports to Congress, audit, inspection, evaluation, and public investigative reports, the OIG top management challenges report on issues facing the Department, congressional testimony, and information on current and planned activities. These materials can be found at: <http://www.oig.doc.gov/Pages/default.aspx>. In addition, the OIG has proactively disclosed frequently requested records under FOIA. These records can be found at <http://www.oig.doc.gov/Pages/FOIA-Electronic-Reading-Room.aspx>.

The USPTO FOIA Reading Room include all new Patent Trial and Appeal Board decisions (current to date), new Trademark Trial and Appeal Board decisions (current to date), new final disciplinary actions by the Office of Enrollment and Discipline (current to date), new notices of suit filed with U.S. District Courts (current to date), and new intellectual property judicial decisions of interest. Available at: [http://www.uspto.gov/ip/boards/foia\\_rr/index.jsp](http://www.uspto.gov/ip/boards/foia_rr/index.jsp). Information concerning published patent applications is available at: <http://portal.uspto.gov/pair/PublicPair>. Information concerning trademark registrations and applications is available at: <http://www.uspto.gov/trademarks-application-process/search-trademark-database>.

Significant steps by NOAA are continuously being made to update and release the following information that is routinely made available to the public:

- Weather and Climate Data (<http://www.ncdc.noaa.gov/>).
- Ocean Data (<http://www.nodc.noaa.gov/>).
- Coastal Data (<http://www.ncddc.noaa.gov/>).
- Geophysical Data (<http://www.ngdc.noaa.gov/>).

- Fisheries Data across the Alaska (<http://www.alaskafisheries.noaa.gov/>), Greater Atlantic (<http://www.greateratlantic.fisheries.noaa.gov/>), Pacific Island (<http://www.fpir.noaa.gov/>), Southeast and Caribbean Island (<http://sero.nmfs.noaa.gov/>), and West Coast (<http://www.westcoast.fisheries.noaa.gov/>) regions, as well as Program-related data, scientific research, observer program data, National Marine Mammal Laboratory information, Habitat and Ecological Process data, and International Research data. Programmatic information is routinely released regarding: Sustainable Fisheries, Protected Resources, Habitat Conservation, Science and Technology and Data Portals International Affairs and Seafood Inspection, Law Enforcement, and Aquaculture. (<http://www.nmfs.noaa.gov/>).
- Nautical Charts and the NOAA Coast Survey data (<http://oceanservice.noaa.gov/facts/find-charts.html>), NOAA Tides and Currents Data from the Center for Operational Oceanographic Products and Services (<http://oceanservice.noaa.gov/facts/find-tides-currents.html>), Marine Debris (<http://oceanservice.noaa.gov/hazards/marinedebris/>) and Infographic representations (<http://oceanservice.noaa.gov/infographics/>) and Story Maps (<http://oceanservice.noaa.gov/map-stories/welcome.html>)
- National Weather Service Alerts (<http://www.weather.gov/alerts>), Forecast Maps (<http://www.weather.gov/forecastmaps>), Doppler Radar National Mosaic (<http://www.weather.gov/Radar>), River, Lake, and Rainfall data (<http://water.weather.gov/ahps/>), Air Quality (<http://airquality.weather.gov/>), Satellite Images (<http://www.weather.gov/satellite>), and past weather data (<http://www.weather.gov/climate>).
- Marine and Aviation Operations Accident Investigations and Lessons Learned, including Safety News, Diving Incident Reports, Environmental Spill Reports, and Marine Investigations and Lessons Learned ([http://www.oma.noaa.gov/accident\\_investigations\\_lessons\\_learned/index.html](http://www.oma.noaa.gov/accident_investigations_lessons_learned/index.html)).
- NOAA Research activities, including NOAA Research Laboratories, National Sea Grant College Programs, NOAA Office of Ocean Exploration and Research, NOAA Climate Program Office, Office of Weather and Air Quality, NOAA Unmanned Aircraft Systems, and NOAA Ocean Acidification Programs (<http://research.noaa.gov/AboutUs/WhoWeAre.aspx>).



## U.S. Department of Commerce 2016 Chief FOIA Officer Report



7. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe those efforts. For example, this can be done through social media or with the offering of e-mail subscription services.

**Yes. The Department of Commerce uses venues such as news releases and social media to highlight proactive disclosures for public awareness.**

NOAA has utilized online highlights of recent bureau activities, records, and data that have been proactively disclosed, including, for example “Recent News and Hot Topics” within the office of Protected Resources to highlight disclosures of particular interest to the public. (<http://www.nmfs.noaa.gov/pr/index.htm>). Similar highlights of important proactive disclosures include “Latest NOAA Research News” postings that show current, important disclosures in research results and activities within the Oceanic and Atmospheric Research to underscore important disclosure activities within that Office, and slideshows with links to updates in NOAA mission-related actions that would significantly increase the public’s understanding of NOAA activities (<http://research.noaa.gov/>).

NTIA regularly utilizes a blog to highlight policy positions or release of important statements or reports or other important announcements. For example, on December 23, 2014, NTIA highlighted its work with states to plan for the building of a nationwide public safety network. Included in this blog is a link to a page that includes presentations, past webinars, workshop agendas, and best practice documents as a proactive disclosure of this information. See NTIA Grant Program Ensuring States are Planning for FirstNet, available at: <http://www.ntia.doc.gov/blog/2014/ntia-grant-program-ensuring-states-are-planning-firstnet>.

The OIG utilizes social media and its website to publicize proactive disclosures for public awareness, and the Legislative and Public Affairs Officer will send e-mails to members of the media and stakeholders in Congress when certain proactive disclosures are posted to the OIG website.

### *Other Initiatives*

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

**The Department of Commerce Open Government team has taken the lead in identifying new ways to make more information publicly available. For example, the Open Government team has taken the lead in identifying new ways to make more information publicly available.**

The Census Bureau is accessing data through products and tools including data visualizations, mobile apps, interactive web apps and other software at <http://www.census.gov/data.html>.

The USPTO FOIA Office continues to monitor and examine the nature of FOIA requests received each year on an ongoing basis to determine if and whether it has repeat requests or popular categories that are not already addressed in the FOIA Reading Room. In addition, the USPTO's FOIA Reading Room contains document repositories that are fully text-searchable so that the public can quickly access the records that are proactively disclosed.

NOAA held special meetings on multiple occasions to discuss the possibility of certain types of records, such as congressional correspondence logs, to be routinely extracted and disclosed absent the submission of a FOIA request despite the need for possible reasonable segregation. This is being considered due to the significant public interest in these types of records and the value they have for increasing the public's understanding of bureau activities.

## 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 Usable*

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? Steps can include soliciting feedback on the content and presentation of posted material, improving search capabilities on your agency website, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.

**Yes.**

2. If yes, please provide examples of such improvements. If your agency is already posting material in its most useful format, please describe these efforts.

**The Census Bureau data has a wealth of information that American citizens, policy makers, and businesses rely on in their decision making processes. For that reason,**



## U.S. Department of Commerce 2016 Chief FOIA Officer Report



the Census Bureau is an enthusiastic proponent of disseminating valuable data that the public can use. For example, the Census Bureau is in the midst of a digital transformation that aims to make its data more accessible than ever before via the Internet and digital tools. Major upgrades were made to [Census.gov](http://Census.gov) so that the more than 40 million annual visitors to its website can more easily find the information they want. The re-designed census.gov allows customers to use the “smart search” feature to more easily find key statistics such as income, poverty, health, and population for U.S. locations directly on our search page. The revamped QuickFacts site has fully interactive, customized tables that let users compare statistics for up to six locations side by side, and to share those statistics in social media. Additionally, interactive data tools such as the [Population Clock](#), Census Flows Mapper, [My Congressional District](#), and [Easy Stats](#) on the Census Bureau’s website allow us to actively engage our customers. An [API](#) was created for developers, and three [mobile apps](#) and many [interactive data tools](#) for casual data users. The Census Bureau is also continuing to develop [City Software Development Kit \(SDK\)](#), a user-friendly “toolbox” for civic hackers and developers to connect the Census Bureau’s local and national public data from the bureau’s and any other open API.

The Census Bureau’s latest digital transformation effort targets another audience: entrepreneurs and small business owners. Every day, businesses large and small use Census Bureau data to make important decisions. Talking to entrepreneurs from across the country, staff heard many requests for more Census Bureau data in an easier-to-use format. In response, the Census Bureau developed [Census Business Builder: Small Business Edition](#). It’s an easy-to-use tool that combines economic and demographic data in ways that are meaningful to the small business owner. The result is an innovative data tool that will help entrepreneurs make an informed decision about what type of business to open and where to locate it.

Entrepreneurs can select their business type from a list of more than 50 categories – such as a restaurant, construction company or beauty salon – and where they’re considering setting up shop. The tool then shows a map view of the selected location with relevant demographic, economic and housing characteristics for that area’s residents

Users can pull up features of other businesses like theirs – such as number of establishments or similar businesses, average payroll and consumer spending. They can also see potential customers’ income, education, poverty and employment characteristics based on aggregated information from the American Community Survey. Finally, Census Business Builder will generate a detailed report on the desired geography’s residents and businesses that can be incorporated into a business plan, a business loan application or shared with others. Census Business Builder increases the availability and usefulness of the statistics the Census Bureau collects, and it’s a valuable tool for small business owners across America.



## U.S. Department of Commerce 2016 Chief FOIA Officer Report



As evident in this report, the Census Bureau has developed several initiatives aimed at making data more accessible to our customers than ever. Ultimately, making data more accessible to the public is a critical component of the FOIA.

Finally, since we submitted the last Chief FOIA Officer Report, the Census Bureau has changed the name of its Freedom of Information Act Branch to the Freedom of Information Act and Open Government Office. We are committed to leading the way in Open Government goals and objectives

NTIA's new page in 2015 – Data Central: this page is intended to provide NTIA data and analysis on computer and Internet use in the United States. This includes the raw data sets so that others may explore the data and provide additional research and analysis. This page is available at: <https://www.ntia.doc.gov/data>.

The USPTO FOIA Reading Room provides several options to submit feedback and/or report any problems in an effort to maintain efficiency and utility. The Reading Room has a link to the general USPTO Contact Center as well as a dedicated “webmaster” e-mail address for submitting comments or concerns. In the past, the webmaster has been extremely expedient in letting the FOIA Office know when a member of the public has submitted a comment or is having trouble accessing records. The FOIA team works directly with the Office of General Law IT staff to alleviate the problem or address the suggestion. In addition, an e-mail address and phone number for the USPTO FOIA Office are provided on the website and the FOIA Officer may be reached directly for any questions or concerns. The USPTO FOIA Officer routinely responds to questions from members of the public related to accessing Agency records. The USPTO also provides several resources related to both understanding the FOIA and accessing publicly available patent/trademark information.

When documents are published in the FOIAonline system, ITA assigns key words to the documents. By doing this, the public is able to search FOIAonline and find information that is already publicly available easier.

NOAA, like several other Department of Commerce components, has a “provide feedback” solicitation that seeks website user feedback. Additionally, NOAA FOIA has reached out to the White House Office of Science and Technology regarding potential external reviews of their public website for user functionality and usability.

3. Have your agency's FOIA professionals interacted with other agency staff (such as technology specialists or public affairs or communications professionals) in order to identify if there are any new ways to post agency information online?

**Yes. FOIA Officers regularly communicate with public affairs/communications professionals as well as the Office of Chief Information Officer to determine**



## U.S. Department of Commerce 2016 Chief FOIA Officer Report



**whether there are new ways to post agency information online. At this time, FOIAonline is the FOIA professionals' medium for posting relevant FOIA information.**

### *Use of Technology to Facilitate Processing of Requests*

4. Did your agency conduct training for FOIA staff on any new processing tools during the reporting period, such as for a new case management system, or for search, redaction, or other processing tools? Please note that this question is focused on training provided to your FOIA professionals for the use of technology and IT tools that assist them in their day-to-day work of processing requests. Your agency's efforts to provide substantive training on the FOIA itself and the requirements of the law should be addressed in response to Question 1 of Section I of your Chief FOIA Officer Report.

**Yes. The Department of Commerce and the Environmental Protection Agency provided training on the FOIAonline system to Department FOIA professionals. Those individuals use FOIAonline to facilitate overall FOIA efficiency. FOIAonline is an electronic tracking and processing tool developed by a partnership of federal agencies that allows anyone to submit a FOIA request, correspond with FOIA professionals processing the request, track the status of a request, and download the responsive documents once they are released to the requester.**

5. 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.

**Some FOIA professionals are using Adobe to de-duplicate documents when appropriate in processing certain complex FOIAs. The Department of Commerce also utilizes a Secure File Transfer system to share large quantities of documents for entity B4 review and for agency consultation and referral to speed receipt and transfer.**

**NOAA has also recently submitted the NOAASafe workflow to the Department of Commerce for approval to allow SSL transmission of PII and other sensitive, non-classified information directly from the Google Apps for Government environment for ease of transfer of information between programs within the NOAA Google ecosystem. This would allow a less laborious process for transmission of records between staff, and would speed the process of FOIA production.**

6. Are there additional tools that could be utilized by your agency to create further efficiencies?

**The Department of Commerce will continue to explore the software and other web or electronic tools available to improve processing and shorten response times as permitted by budget and other resources. For instance, components are using an electronic redaction tool to facilitate with the paperless reviewing process**

### *Other Initiatives*

7. Did your agency successfully post all four quarterly reports for Fiscal Year 2015? Please see OIP's [guidance](#) for posting of quarterly reports to ensure that your agency is following all required steps (including using the correct file type and URL structure) so that your quarterly reports are properly appearing on FOIA.gov. (If your reports are posted to your website, but not appearing on FOIA.gov, please contact OIP in order to resolve the issue.)

**Yes, all four quarterly reports for Fiscal Year 2015 have been posted at:**  
<http://www.osec.doc.gov/omo/foia/ereadingroom.htm>.

8. 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.

**Not applicable.**

9. Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? See *OIP Guidance*, "[The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications](#)." (Nov. 22, 2013) If yes, what are the different types of electronic means that are utilized by your agency to communicate with requesters? If decentralized, please indicate whether all components use email or other electronic means to communicate with requesters. Please note that this includes all types of communications throughout the FOIA process.

**Yes. The Department of Commerce uses email and FOIAonline to communicate electronically with all requesters who accept this type of communication.**

10. If your agency does not communicate electronically with requests 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? See *id.* If decentralized, please indicate whether any of your agency's components have specific limitations or restrictions for the use of such means and if those components have informed requesters of such limitations.

**Not applicable.**

## 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:** 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.

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

**Yes.**

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?

**No, the agency overall the average number of days to process simple requests was 45.41 days.**

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

**83% of the agency overall processed requests were placed in the simple track.**

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?

**Not applicable.**

**Backlogs:** 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. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2013 and Fiscal Year 2014 when completing this section of your Chief FOIA Officer Report.

### *Backlogged Requests*

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?

**Yes. The Department of Commerce's overall backlog of requests at the close of Fiscal Year 2015 decreased compared with the backlog reported at the end of Fiscal Year 2014. The backlog of requests at the end of Fiscal Year 2014 was 360 and the backlog of requests at the end of Fiscal Year 2015 was 343.**

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

**Not applicable.**

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. To calculate your agency's percentage, you must divide the number of backlogged requests reported in Section XII.A. of your Fiscal Year 2015 Annual FOIA Report by the number of requests received in Fiscal Year 2015, which can be found in Section V.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.

**15.38% of requests make up the backlog out of the total number of requests received by the Department of Commerce in Fiscal Year 2015.**

### *Backlogged Appeals*

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?

**No. The Department of Commerce's overall backlog of appeals at the close of Fiscal Year 2015 increased compared with the backlog reported at the end of Fiscal Year 2014. The backlog of appeals at the end of Fiscal Year 2014 was 35 and the backlog of appeals at the end of Fiscal Year 2015 was 59.**

9. If not, explain why and describe the causes that contributed to your agency not being able to reduce backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming appeals.
- 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.

**The Department of Commerce’s General Law Division had a significant increase of FOIA appeals and litigations and a loss of three reviewing attorneys in Fiscal Year 2015.**

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.". To calculate your agency’s percentage, you must divide the number of backlogged appeals reported in Section XII.A. of your Fiscal Year 2015 Annual FOIA Report by the number of appeals received in Fiscal Year 2015, which can be found in Section V.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.

**The Department of Commerce had an appeals backlog in Fiscal Year 2015. The percentage of appeals that made up the backlog out of the total number of appeals received by the Department was 68.6%.**

### *Backlog Reduction Plans*

11. In the [2015 guidelines for Chief FOIA Officer Reports](#), any agency with a backlog of over 1,000 requests in Fiscal Year 2014 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency’s efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2015?

**Not applicable.**

12. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2015, what is your agency’s plan to reduce this backlog during Fiscal Year 2016?

**Not applicable.**

**Status of Ten Oldest Requests, Appeals, and Consultations:** 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 2014 and Fiscal Year 2015 when completing this section of your Chief FOIA Officer Report.

### *Ten Oldest Requests*

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

**No.**

14. 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. For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed six of them, you should note that you closed six out of seven "oldest" requests.

**The Department of Commerce closed four of the ten oldest agency overall requests that were reported pending in Fiscal Year 2014 Annual FOIA Report.**

15. 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 of the four requests from the ten oldest agency overall requests were closed because the request was withdrawn by the requester.**

### *Ten Oldest Appeals*

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

**No.**

17. 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. For example, if you only had seven appeals listed as part of your "ten oldest" in Section VII.C.(5) and you closed six of them, you should note that you closed six out of seven "oldest" appeals.



## U.S. Department of Commerce 2016 Chief FOIA Officer Report



**The Department of Commerce closed three of the ten oldest agency overall appeals that were reported pending in Fiscal Year 2014 Annual FOIA Report.**

### *Ten Oldest Consultations*

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

**No.**

19. 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 2014 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that. For example, if you only had seven consultations listed as part of your "ten oldest" in Section XII.C. and you closed six of them, you should note that you closed six out of seven "oldest" consultations.

**The Department of Commerce had ten pending consultations from Fiscal Year 2014 and of those none were closed in Fiscal Year 2015.**

### *Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans*

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

**For requests, the obstacles in closing the remaining ten requests are, the requests are complex and the documents are voluminous. In addition, these requests require extensive outside submitter notification.**

**For consultations, the obstacle in closing the remaining oldest consultations is several separate operating units are required to review the consultations for disclosure determinations.**

**For appeals, the obstacle in closing three of the ten oldest appeals involves review of thousands of pages and documents and coordination with the client.**

21. 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.

**Not applicable.**

22. 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.

**For requests: additional staffing will assist with voluminous documents and submitter notifications. The Department of Commerce will also discuss and develop best business practices for reducing its ten oldest requests.**

**For consultations: frequent follow-ups and status updates with offices conducting consultation reviews to speed the consultation process. The Department of Commerce will also discuss and develop best business practices for reducing its ten oldest consultations.**

**For appeals: staff is working with the requester to narrow the scope of the request.**

### *Interim Responses*

23. Does your agency have a system in place to provide interim responses to requesters when appropriate? See *OIP Guidance*, "[The Importance of Good Communication with FOIA Requesters](#)." (Mar. 1, 2010)

**Yes. As an example, FOIAonline provides a mechanism for interim responses to requesters when appropriate. Further, separately from FOIAonline, the OIG has issued interim responses where appropriate (e.g. when voluminous records are being reviewed, certain records are subject to outside consultation, certain records subject to submitter notice).**

24. 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.

**Approximately 40%.**

### *Use of the 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 2014? If so, please provide the total number of times exclusions were invoked.

**No, the Department of Commerce did not invoke a statutory exclusion during Fiscal Year 2015.**

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

**Not applicable.**

## Success Story

Out of all the activities undertaken by your agency since March 2015 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. As noted above, these agency [success stories](#) will be highlighted during Sunshine Week by OIP. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

## Backlog Reduction

The Department of Commerce achieved an overall 5% decrease in its backlogged FOIA requests from Fiscal Year 2014 to Fiscal 2015, while experiencing a 17.6% increase in new FOIA requests.

- The largest contributors to the decrease were the Office of the Secretary at the Department level and NOAA at the component level, with 30% and 49% decreases, respectively.
- As an example of how backlogged requests were reduced, NOAA instituted an intensive effort to decrease the FOIA backlog and improve agency responsiveness to FOIA requests:
  - Included monthly FOIA Legal Expert calls, monthly FOIA Professionals discussions with all FOIA Liaisons, regular meetings with program office FOIA leadership to encourage enhanced FOIA processing, and significant guidance on FOIA best practices.
  - Efforts have led to a decrease in the bureau's FOIA request backlog of more than 49% from Fiscal Year 2014 to Fiscal Year 2015, despite a 14% increase in requests received over the same timeframe.

## Outreach

The Sunshine Week event hosted by the Census Bureau in March 2015 brought together individuals from the requester community and the Federal government to hear ideas and share experiences about the FOIA, proactive disclosures, and other topics on Open Government. The event was so successful that it has been expanded for 2016 to include multiple days of keynote presentations open to the public at the Department of Commerce, along with other workshops on the FOIA and Open Government at the Census Bureau