

U.S. Department of Commerce

Chief Freedom of Information Act Officer Annual Report March 2010

Office of the Secretary:

I. Steps Taken to Applying the Presumption of Openness

1. Description:

- Department FOIA Officers and FOIA contacts attended. Department of Justice training on new FOIA guidance in March 2009.
- New FOIA Guidance memorandum from the Assistant General Counsel for Administration and the Director, Office of Management and Organization was distributed to all Department staff in April 2009.
- FOIA Officers Roundtable Meeting was held in June 2009 regarding the new FOIA guidance.
- Department FOIA Officers amended the form used to assign FOIA requests for action to require that the senior official responsible for processing a request certify that a foreseeable harm analysis has been applied to responsive documents. This revised form was transmitted from every bureau FOIA Officer to all offices within their operating unit with instructions on the new standard of review to which it refers.
- Office of the Assistant General Counsel for Administration provided FOIA training to all agencies located in the headquarters building in Washington. The training explicitly described the foreseeable harm standard and the requirements to release information proactively, before FOIA request was generated.
- All records responsive to FOIA requests now must be reviewed from the perspective of disclosing the maximum amount of information possible under FOIA.

- Discretionary disclosures must be made whenever possible and exemptions asserted only after a determination has been made that there would be foreseeable harm to government or private interests, or that disclosure is prohibited by law.

2. Disclosure Comparisons:

The Office of the Secretary Annual reports indicates an increase in the release of records in full, from 45 in FY 08 to 58 in FY 09. There was a slight decline in the number of records released in part, from 37 in FY 08 to 32 in FY 09. The number of records entirely withheld decreased from 4 in FY 08 to 1 in FY 09. Annual reports from FY 08 and FY 09 indicate the most frequently cited FOIA exemption is (b)(6), a non-discretionary exemption.

II. Steps Taken to Ensure That Your Agency Has an Effective System for Responding to FOIA Requests

The FOIA office recently acquired a scanner to enable electronic transmission of FOIA requests to operating units and transmission electronic responses to FOIA requestors. This increases efficiency in assigning and responding to FOIA requests.

Office staff members assigned to other programs are available to assist part time during peak workloads.

We also provided FOIA training to all OS employees in FY 09.

III. Steps Take to Increase Proactive Disclosures

Proactive disclosures of information are made through the Department website, which contains comprehensive information about the Department. The Department has created a new Open Government webpage, a Recovery Act link on the agency website, and is a participating agency in providing datasets to data.gov.

Discussions with the operating units are ongoing to identify information for proactive disclosure.

IV. Steps Taken to Greater Utilize Technology

1. Does your agency currently receive requests electronically?

Yes, both initial FOIA requests and appeals are received electronically.

2. If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically?

N/A

3. Does your agency track requests electronically?

Yes, both initial FOIA requests and appeals are tracked electronically.

4. If not, what are the current impediments to your agency utilizing a system to track requests electronically?

N/A

5. Does your agency use technology to process requests?

Yes, technology is used to process both initial FOIA requests and appeals.

6. If not, what are the current impediments to your agency utilizing technology to process requests?

N/A

7. Does your agency utilize technology to prepare your agency Annual FOIA Report?

Yes, technology is utilized to prepare both the data on initial FOIA requests and appeals for the Annual FOIA Report.

8. If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report?

N/A

IV. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

1. Backlog Status:

The backlog of initial FOIA requests was decreased from 15 in FY 08 to 6 in FY 09.

The backlog of appeals was decreased from 87 in FY08 to 60 in FY 09.

2. Backlog Reduction Steps:

We are devoting more resources and staff time, to reduce the backlog of initial FOIA requests.

The goal is to reduce the backlog of appeals from 60 to 40 by the end of 2010. This takes into account 50 expected new appeals to be filed during that period, based on an average of 50 new appeals filed during each of the last three years.

3. Steps to Improve Timeliness:

We are devoting more resources and staff time, to improve timeliness.

We are currently processing our FOIA appeals on two tracking systems. Track 1 requires appeals to be processed in 60 days and this includes: fee waiver appeals; expedited appeals; and appeals with 10 documents or less and/or 50 pages or less. Track 2 requires our incoming FOIA appeals to be processed in 6 months and this includes appeals with more than 50 pages and all other FOIA appeals not indicated in track 1.

Bureau of the Census:

I. Steps Taken to Applying the Presumption of Openness

1. Description:

The Census Bureau serves as the leading source of quality data about the nation's people and economy. We honor privacy, protect confidentiality, share our expertise globally, and conduct our work openly. Embedded in our mission is to conduct our work in a transparent manner. We do this through technology by posting our work to the intranet, creating an ever growing presence on the social network sites, and blogging.

A specific step we have taken to apply the presumption of openness is to conduct a harm review for all discretionary disclosures. We now routinely have discretionary releases on items that previously would have been withheld under exemption (b)(5) as deliberative and predecisional. We have also starting posting specific FOIA requests on popular subjects to the Census Bureau's FOIA website upon distribution instead of waiting for the second or third request for the same information. In March 2009, we conducted a class for Census Bureau managers on the FOIA which covered the President's memorandum. FOIA staff was trained on implementing the Attorney General's FOIA guidelines as well.

2. Disclosure Comparisons:

Because the number and type of requests vary from year to year it is important to look at the percentage of cases where the Census Bureau was able to either provide a full grant, a partial grant, or a full denial based on exemptions. This analysis excludes the cases where full denials were based on reasons other than exemptions as in section V.B.1 of the FOIA annual report. These cases do not provide the Census Bureau an opportunity to review any records for exemptions and release under the FOIA.

Comparing the percentage of requests from FY08 to FY09 where information was granted in full, granted in part, or denied in full based on exemptions, there is an increase in the percentage of requests where records were granted in full or in part.

In FY08 the Census Bureau had a total of 113 requests which were either categorized as a full grant, partial grant, or full denial based on exemptions, and of these, 55 were granted in full or part; this means that in 49% of requests where the Census Bureau had to review records for exemptions there was a full or partial grant.

In FY09 the Census Bureau had a total of 80 requests which were either categorized as a full grant, partial grant, or full denial based on exemptions, and of these, 47 were granted in full or part; this means that in 59% of requests where the Census Bureau had to review documents for exemptions there was a full or partial grant. This is an increase in 10% from FY08 to FY09. The percentage of full grants increased from 17% in FY08 to 19% in FY09.

The percentage of partial grants increased from 32% in FY08 to 40% in FY09. The percentage of full denials based on FOIA exemptions decreased from 51% in FY08 to 41% in FY09. See the table below for details.

Census Bureau FOIA Cases	FY08	FY09
Number of Full Grants	19	15
Number of Partial Grants	36	32
Number of Full Denials Based on Exemptions	58	33
Percentage of Full Grants and Partial Grants to the Total of Full Grants, Partial Grants, and Full Denials Based on Exemptions	49%	59%
Percentage of Full Grants to the Total of Full Grants, Partial Grants, and Full Denials Based on Exemptions	17%	19%

Percentage of Partial Grants to the Total of Full Grants, Partial Grants, and Full Denials Based on Exemptions	32%	40%
Percentage of Full Denials Based on Exemptions to the Total of Full Grants, Partial Grants, and Full Denials Based on Exemptions	51%	41%

II. Steps Taken to Ensure That Your Agency Has an Effective System for Responding to FOIA Requests

We have streamlined the Census Bureau’s FOIA processing with a detailed FOIA processing book, template letters for frequent requests, and training for the staff and managers at the Census Bureau. We recently worked with our FIELD directorate to create a section in the Regional Office Administrative Manual regarding the FOIA. This helped remove road blocks and created more efficient processing of the request from 12 regional offices.

The FOIA office works closely with IT professionals and is supported by its infrastructure. We recently acquired new software to assist with document review for exemptions which increased review and efficiency.

III. Steps Take to Increase Proactive Disclosures

The mission of the Census Bureau is to openly disseminate data about the Nation’s economy and people. Technology has enabled us to further our mission with posting our work to the Internet, creating an ever growing presence on the social network sites, and blogging.

Our existing census.gov site hosts millions of pages that include data and information about product and service offerings. The 2010census.gov site is about open and transparent government with two-way communications, Web 2.0 tools, and social media throughout.

We have also implemented a new system called Notifyme for our 2007 Econ Census Data. The Notifyme system allows individuals to sign up for email alerts for data releases.

Our engagement with the public through social media forums such as Facebook, Twitter, and Myspace has allowed the Census Bureau to promote its data products. Dr. Groves has also initiated a blog of his experiences with the Census. It’s ever growing popularity has been a fantastic example of the Census Bureau’s commitment to open government.

IV. Steps Taken to Increase Proactive Disclosures

1. Does your agency currently receive requests electronically? Yes
2. If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically? N/A
3. Does your agency track requests electronically? Yes
4. If not, what are the current impediments to your agency utilizing a system to track electronically? N/A
5. Does your agency use technology to process requests? Yes
6. If not, what are the current impediments to your agency utilizing technology to process requests? N/A
7. Does your agency use technology to prepare your agency FOIA report? Yes
8. If not, what are the current impediments to your agency utilizing technology in preparing your annual FOIA report? N/A

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

1. Backlog Status:

The Census Bureau has been able to maintain a zero or very small backlog despite an increasing number of requests. In FY08 the Census Bureau received 194 requests. At the end of FY08, the Census Bureau had 1 backlogged case that was 26 days old. In FY09 the Census Bureau received 234 requests. At the end of FY09, the Census Bureau had 1 backlogged case that was 51 days old. The FY09 backlog case was a request involving voluminous records and multiple consultations with other Federal agencies. At the end of the FY09, the Census Bureau had already provided the requester with five partial responses in which over 600 pages of documents were released to the requester. This request was completed in 60 total processing days.

Timeliness of responding to requests has measurably improved. See the tables below for details.

Census Bureau Response Time for All Non-Expedited Processed Perfected Requests	FY08	FY09
Average Number of Days	16	11.5
Highest Number of Days	97	66

Census Bureau Response Time for Non-Expedited Perfected Requests in Which Information was Granted	FY08	FY09
Average Number of Days	24	20.1
Highest Number of Days	97	66

2. Backlog Reduction Steps: N/A

3. Steps to Improve Timeliness:

We have hired more staff this past year and created a new branch so that the FOIA staff could focus on more FOIA work. We have also provided the staff with tools such as the FOIA processing notebook, template letters and redaction software.

Economic Statistics Administration:

I. Steps Taken to Applying the Presumption of Openness

1. Description:

ESA provides economic data and policy reports to the public for use in economic analysis and research. Current data, reports and speeches are disseminated through our web site in an effort to maximize availability of useful data to a broad audience. Additionally, the web site contains a full Economic Release Calendar for planning purposes and a link for individuals to sign up for email updates. The few FOIA requests we get during the year cover specific topics that would not be of interest to the general public.

The web site also contains a link to our FOIA page. The FOIA page contains information on how to file a FOIA request and how to contact the FOIA Officer

2. Disclosure Comparisons:

In Fiscal Year 2008, ESA responded with two full grants and two partial grants. In Fiscal Year 2009, ESA responded with two full grants and one partial grant.

II. Steps Taken to Ensure That Your Agency Has an Effective System for Responding to FOIA Requests

ESA management encourages the disclosure of useful information to the public. Senior leadership fully endorses the FOIA program and has provided the FOIA Officer with the resources and support required to provide timely responses to FOIA queries. The FOIA Office has been able to respond in a timely manner to all FOIA requests with current IT resources.

ESA career employees received FOIA Training in May and our political appointees attended FOIA Training in January.

III. Steps Taken to Increase Proactive Disclosures

ESA historically receives less than 15 FOIA requests annually. The number of requests has remained fairly steady in recent history. The information requested does not follow any pattern or trend that would indicate public interest in the material. ESA does not hold any responsive records for the majority of requests that we receive. In cases where we do hold responsive records, most are completely releasable. Only 1 or 2 per year have been partial grants. We have not had any full denials in recent years.

IV. Steps Taken to Greater Utilize Technology

ESA's IT system adequately supports our FOIA program. We have the capability to receive efoias through our current email system. Our email system is also used to disseminate FOIA requests to those staff members who might hold responsive records (both eFOIAs and scanned letters). Our FOIA data base is available on an excel spreadsheet. Additionally, we have the capability to complete and submit the Annual FOIA Report electronically.

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

Backlog Status: N/A

Backlog Reduction Steps: N/A

Steps to Improve Timeliness: N/A

Economic Development Administration:

IV. Steps Taken to Applying the Presumption of Openness

1. Description:

- Circulated Attorney General Holder memo all legal personnel in Office of Chief Counsel;
- Provided briefings on the policy of the presumption of openness to legal personnel;
- Office of General Counsel FOIA trainings scheduled and attended for Headquarters staff
- Provided for joint Chief Counsel and Regional Counsel review of all items considered for redaction or withholding under FOIA exemptions, with emphasis on presumption of openness;
- Established FOIA reading room on EDA website.

2. Disclosure Comparison:

EDA agency records reflect: (i) an increase in the number of FOIA requests where records were released in full (both in total number and as a percentage of total requests processed: 16/64 full releases in 2008 and 20/34 full releases in 2009); (ii) a decrease in number of FOIA requests where records were only released in part (12/64 partial releases in 2008 and 4/34 releases in 2009).

V. Steps Taken to Ensure That Your Agency Has an Effective System for Responding to FOIA Requests

1. Formal clarification for EDA staff of internal EDA FOIA review procedures, using flowcharts.
2. Weekly meetings with Regional Counsels where FOIA issues and questions may be raised and discussed.

VI. Steps Take to Increase Proactive Disclosures

1. Discussed with regional offices what proactive disclosures might be useful and appropriate for EDA stakeholders (conversations are ongoing).
2. Posted on EDA website certain “high quality” comprehensive economic development strategies (CEDS); this is intended to assist stakeholders and applicants generally in learning what EDA expects a CEDS to look like.
3. Posted on EDA website certain internal guidelines on establishment of federal grant rates (and local match requirements) with respect to disaster grants.

VII. Steps Taken to Greater Utilize Technology

1. Yes, EDA does receive requests electronically.
2. N/A
3. EDA handles electronic requests the same way as mail-in requests. EDA tracks requests and the processing of those requests by manually entering data into an Excel-spreadsheet (the FOIA log), which is accessible to all legal counsel with FOIA-processing responsibilities.
4. N/A
5. No, EDA does not use any technology to process requests.
6. EDA does not receive many FOIA requests a year so technology to process the request is not necessary. EDA manually redacts the non-responsive or exempted information as needed on the responsive documents. EDA will engage in correspondence with FOIA requesters via email if most expedient and appropriate means for speedy resolution of the matter.
7. No, EDA does not use any technology to prepare the agency's Annual FOIA report.
8. EDA currently uses its electronic excel FOIA log to retrieve information that is needed to prepare the FOIA report.

VIII. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

1. EDA does not have backlogs of FOIA requests, and has a very good record of timeliness of responses.
2. N/A
3. N/A

Bureau of Industry and Security:

I. Steps Taken to Applying the Presumption of Openness

1. Description:

- Discussed the new 2009 FOIA Guidance with BIS FOIA Points of Contact (POC). New guidance was disseminated to Program Offices.
- BIS FOIA Officer sent an e-mail notification to BIS FOIA POC that included a copy of the amended FOIA certifications (templates) adding the foreseeable harm statement, and a copy of the April 17, 2009 Department of Justice, Office of Information Policy (OIP), FOIA Post on the new guidance.
- BIS FOIA Officer conducted training to convey new guidance and discuss the combined impact of the President's FOIA Memorandum and the Attorney General's FOIA Guidelines. As a result of these directives there are now:
 - New approaches to responding to requests and to working with requesters.
 - New, more limited standards for defending agencies when they deny a FOIA request.
 - New requirements to maximize the use of technology to disclose information.
 - New requirements to post information online affirmatively, in advance of FOIA requests.
 - New focus on the broad array of agency personnel whose actions impact the FOIA.
 - New accountability requirements.

2. Disclosure Comparisons:

- BIS received 89 FOIA requests during 2009 versus 67 FOIA request during the previous year; an increase of 40.37%.
- BIS processed 91 FOIA requests during 2009 versus 58 during the previous year; an increase of 47.22%.

II. Steps Taken to Ensure That Your Agency Has an Effective System for Responding to FOIA Requests:

- BIS FOIA Officer updated the "Procedures for processing a FOIA request" (AI-A106) and incorporated the 2009 FOIA Guidance principle and posted in the BIS EmployeeNet under Administrative Instructions.
- Program Offices were tasked to provide a written description of their action plans to implement and promote internally the new 2009 FOIA Guidance.

- The Program Offices were encouraged to review their files for openness and transparency and to identify records that can be posted on the BIS website.

III. Steps Take to Increase Proactive Disclosures

- Acting Under Secretary sent a Broadcast e-mail to all BIS personnel informing them of the New 2009 FOIA Guidance Guidelines.
- BIS personnel were informed that they should view all FOIA decisions through the prism of openness in keeping with the President's vision.
- The Program offices were tasked to identify information that could be of greatest use to the public.

IV. Steps Taken to Greater Utilized Technology

1. Does your agency currently receive requests electronically.

Yes. BIS receives requests electronically via email. This email link is located on the BIS main web page.

2. If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically.

N/A

3. Does your agency track requests electronically.

Yes. BIS tracks all FOIA requests electronically through our WebCIMS electronic tracking program. All FOIA POCs have access to this program and can upload unclassified, non-sensitive correspondence into this program.

4. If not, what are the current impediments to your agency utilizing a system to track requests electronically.

N/A

5. Does your agency use technology to process requests.

Yes. BIS uses a Microsoft Word spreadsheet to electronically track all requests. This spreadsheet is maintained by the BIS FOIA Officer and is generated on an annual basis beginning October 1st, of each year.

6. If not, what are the current impediments to your agency utilizing technology to process requests.

N/A

7. Does your agency utilize technology to prepare your agency Annual FOIA Report.

Yes. BIS' Annual FOIA Report is processed electronically using the Microsoft Word spreadsheet mentioned in "3" above. The Annual FOIA Report is prepared by the BIS FOIA Officer and when completed, emailed to the Department of Commerce FOIA Officer.

8. If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report.

N/A

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

1. Backlog Status: 0
2. Backlog Reduction Steps:
3. Steps to Improve Timeliness:
 - BIS FOIA Officer has been meeting weekly with FOIA POC to review requests pertaining to their respective offices. This face-to-face, "hands-on" approach has helped FOIA POCs to better manage their timeliness of submissions and has reduced the BIS backlog to zero.
 - BIS FOIA Officer and POC have more aggressively monitored the WebCIMS tracking program to ensure a zero backlog is maintained ensuring timeliness of all FOIA requests.
 - BIS FOIA Officer will work quickly to assist the Office of General Counsel in answering Administrative Appeals.

International Trade Administration:

I: STEPS TAKEN TO APPLY THE PRESUMPTION OF OPENNESS

1. The defining purpose of ITA is helping to create economic opportunity for American workers and businesses. By promoting trade and investment we are promoting prosperity and a better world. To that end, an integral part our responsibility involves exchanging, collecting, and compiling records that contain proprietary data. In responding to FOIA requests, ITA will continue to strike a balance between openness and protecting data that would clearly cause substantial competitive harm to businesses that supply information.

2. As an agency component of the Department of Commerce, ITA's submissions for Fiscal Year 2009 (FY09) and Fiscal Year 2008 (FY08) annual FOIA reports do not indicate a significant statistical difference regarding disclosure of information. We received 141 FOIA requests in FY09 and 111 in FY08. In both years, there were no cases pending at the beginning of the fiscal year. In FY09 we processed 9 fewer full grants than were processed in FY08. Correspondingly, there was a slight increase in the number of full denials, from 3 in FY08 to 5 in FY09. As a result of the nature of some requested records, in a relatively small number of occurrences, ITA has found it prudent to apply FOIA exemptions 4 and 5.

In our effort to continue applying the presumption of openness to all decisions involving the FOIA, ITA has designated subject matter experts in each of its business units. These subject matter experts are able to identify agency personnel who can exercise sound judgment in making discretionary or partial disclosure of information previously withheld.

II: STEPS TAKEN TO ENSURE THAT ITA HAS AN EFFECTIVE SYSTEM FOR RESPONDING TO REQUESTS

ITA continues to educate its FOIA staff via FOIA updates, Executive Orders, directives, and trainings. In FY09, ITA conducted FOIA training, open to all ITA employees and mandatory for all staff performing duties related to responding to FOIA requests. This training was conducted by ITA's Office of the General Counsel (OGC) and included a comprehensive review of the new guidance received from the White House, the Attorney General, and OGC. In FY10, ITA staff participated in the DOJ's training for FOIA Public Liaisons to remain cognizant of the Administration's emphasis on increasing transparency.

In response to the new guidance, ITA made a change to the certification that must accompany responsive records provided to ITA's FOIA Officer for transmittal to the FOIA requester. Offices submitting records in response to a FOIA request must certify that: "A foreseeable harm review and analysis has been completed for all withheld documents and portions of documents and it has been determined that disclosure of the withheld information would result in harm to an interest protected by the asserted exemption or that the disclosure is prohibited by law." This is in keeping with the President's instructions to make discretionary disclosures of information and his commitment to a presumption of openness under FOIA.

In an effort to maintain continuity, alternating senior-level staff served on rotational assignments as Acting FOIA Officer when the career person retired in 2009. ITA exercised due diligence in recruiting and hiring a new FOIA Officer who possesses a wealth of knowledge and experience in successfully implementing FOIA programs and facilitating information disclosure. ITA has a designated FOIA point of contact to serve as back-up, ensuring an effective system for responding to requests.

III: STEPS TAKEN TO INCREASE PROACTIVE DISCLOSURE

The ITA's Office of Management and Operations (OMO) provides guidance and oversight for the business units' information posted on the ITA website (<http://trade.gov/foia/>). The website contains current and relevant information on programs and activities that we believe adheres to the principles of government openness and accountability. Visitors are encouraged to review the program areas postings prior to submitting a FOIA request.

Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554), hereinafter "Section 515," directs the Office of Management and Budget (OMB) to issue government-wide guidelines that "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies."

In implementing these guidelines, ITA acknowledges that ensuring the quality of information is an important management objective that takes its place alongside other ITA objectives.

In assessing the usefulness of information that the agency disseminates to the public, ITA considers the uses of the information not only from its own perspective, but also from the perspective of the public. As a result, when transparency of information is relevant for assessing the information's usefulness from the public's perspective, ITA takes care to ensure that transparency has been addressed in its review of the information. Consequently, proactive disclosure is an ongoing effort at ITA outside of the FOIA program.

IV: STEPS TAKEN TO GREATER UTILIZE TECHNOLOGY

1. Yes, ITA receives requests electronically
2. N/A
3. Yes, ITA tracks requests electronically.
4. N/A
5. Yes, ITA uses technology to process requests.
6. N/A
7. Yes, ITA uses technology to prepare our Annual FOIA report.
8. N/A

V: STEPS TAKEN TO REDUCE BACKLOGS AND IMPROVE TIMELINESS IN RESPONDING TO REQUESTS AND ADMINISTRATIVE APPEAL

1. The ITA did not record a backlog in FY08. Due to the unexpected retirement of the FOIA Officer in June 2009, ITA experienced a backlog of 16 FOIA requests. At the end of FY09 the oldest pending request, received on 2/26/09, was pending for 152 days. ITA has processed 6 of the 10 oldest pending requests, including the request that was pending 152 days.
2. With a goal toward eliminating the backlog the new ITA FOIA Officer will conduct a comprehensive review of the FOIA program to identify areas conducive to streamlining and solicit suggestions from ITA's business unit FOIA contacts on improving efficiency. The implementation of a new procedure to initiate record searches electronically will reduce the time it takes ITA business units to receive requests and begin searching for records.

ITA receives initial FOIA requests, as well as appeals, electronically. We are also able to provide responses electronically via the use of scanners. Pending available resources ITA will explore the possibility of purchasing redaction software. Under the auspices of the new ITA FOIA Officer, all business units are being strongly encouraged to transmit all records electronically where feasible.

Although ITA currently uses technology in processing requests, we fully recognize that newer technology has vastly increased efficiency and will be considered prior to preparation of the FY10 annual FOIA report.

Minority Business Development Agency:

I. Steps Taken to Applying the Presumption of Openness

1. Description

MBDA employees have received copies of and training pertaining to the principles set forth in the President's FOIA Memorandum and the FOIA Guidelines issued by the Attorney General. In particular, MBDA employees were trained on implementing the presumption of openness in responding to FOIA requests and, when so responding, must indicate that a foreseeable harm review and analysis has been completed by the originating MBDA office. The MBDA FOIA Officer oversees and monitors these reviews.

2. Disclosure Comparisons

Since the advent of this policy, MBDA proactively seeks to make discretionary releases of records requested under FOIA. For example, MBDA reviewed many of its routine functions and proactively posted materials on its website for public consumption, such as sample grant applications, merit panel review score sheets and other materials pertaining to its grant programs, the Agency's FY 2011 budget

request, and detailed nationwide and state-by-state statistical compilations describing the percentages and participation rates by industry of minority businesses.

MBDA does not receive a large volume of FOIA requests and most requests do not pertain to information that may be covered under a FOIA exemption requiring that a foreseeable harm analysis be conducted. Thus, MBDA records do not show a notable increase (or a decrease) in the number of full or partial releases as compared to the previous year’s releases. Set forth below is a comparison of the Agency’s full and partial FOIA releases for FYs 2008 – 2010 (as of March 15, 2010):

	Full Releases	Partial Releases
FY 2008	28	0
FY 2009	6	2
FY 2010 (as of 3/15/10)	2	0

II. Steps Taken to Ensure that Your Agency has an Effective System for Responding to FOIA Requests

MBDA is a relatively small agency with approximately 80 staff members in its headquarters and five regional offices. All staff is instructed to route all non-routine requests for Agency records to the MBDA FOIA Officer for review and appropriate disposition. Staff is also reminded that a request for records may fall within the purview of FOIA, notwithstanding that the request does not explicitly make reference to FOIA. The MBDA FOIA Officer continues to work diligently with Agency staff to ensure that FOIA requests are routed to his office as soon as possible upon being received by an Agency component. Agency components are also encouraged to complete document searches and foreseeable harm analysis as soon as practicable.

In addition, the MBDA FOIA Officer works closely with the Agency CIO in ensuring that technology is made available and is being properly leveraged in processing and tracking FOIA requests and in preparing reports. For example, responsive FOIA documents are generally scanned and any redactions are made using computer software. Additionally, where feasible, MBDA effectively uses email to communicate with requesters and to transmit responsive documents. The Agency also uses an electronic spreadsheet/database to manage its FOIA activities and in preparing its Annual FOIA Report.

III. Steps Taken To Increase Proactive Disclosures

MBDA has taken and continues to take proactive steps to increase the amount of material that is publicly available on the Agency’s website. For example, since the issuance of the new FOIA guidelines, the Agency has posted to its website sample application materials, template panel evaluation forms and other materials intended to assist applicants in applying for MBDA grant awards. The Agency has also inventoried and posted its

library of research reports, as well as its annual reports, strategic plans and budget requests. Additionally, MBDA posts speeches and presentations made by its senior leadership, as well as agendas, notes/transcripts and other materials from public stakeholder meetings and conferences.

IV. Steps Taken To Greater Utilize Technology

1. Does your agency currently receive requests electronically?

Yes.

2. If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically?

N/A

3. Does your agency track requests electronically?

Yes.

4. If not, what are the current impediments to your agency utilizing a system to track requests electronically?

N/A

5. Does your agency use technology to process requests?

Yes.

6. If not, what are the current impediments to your agency utilizing technology to process requests?

N/A

7. Does your agency utilize technology to prepare your agency Annual FOIA Report.

Yes.

8. If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report.

N/A

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests.

1. Backlogged Status:

MBDA did not have a backlog in either FY 2008 or FY 2009. In addition, MBDA does not currently have a backlog and does not expect one in FY 2010.

2. Backlog Reduction Steps:

N/A

3. Steps To Improve Timeliness:

N/A

National Institute of Standards and Technology:

I. Steps Taken to Applying the Presumption of Openness

1. Description: NIST conducts its work openly and transparently, and recognizes that FOIA is a disclosure statute and not a withholding statute. The NIST FOIA office prepared and distributed a memo to all NIST Operating Units and Deputy Directors requesting a review of all records to anticipate those that could hold the public interests and to identify those that have been requested or released in response to a FOIA request. They were also asked to disclose them to the NIST FOIA office as weblinks that could be posted on the NIST EFOIA Reading Website for public review. We do not provide “weblinks” specifically, but the public can access NIST’s homepage from our link.
2. Disclosure Comparisons: There was an increase in the number of full disclosures from FY 2008 (22) to FY 2009 (30).

II. Steps Taken to Ensure That Your Agency Has an Effective System for Responding to FOIA Requests

The NIST FOIA office acknowledges all incoming FOIA requests and includes names and phone numbers for further contact, and uses an internal tracking system for managing all FOIA requests. NIST works with the requesters for voluntary extensions when additional time is needed to answer the requests due to the voluminous number of possible responsive documents or reviews by outside parties that are required (e.g., (b)(4) submitters of information). The NIST FOIA office communicates proactively with the Operating Units who have been tasked to respond to FOIA requests to adhere to the 20-day response time requirement. The NIST FOIA office prepares weekly and monthly activity reports and provides them to the

Public and Business Affairs office at NIST, senior managers at NIST, and the Department of Commerce.

III. Steps Take to Increase Proactive Disclosures

The NIST FOIA office ensures that the foreseeable harm analysis is completed for all internal deliberative and pre-decisional documents that are subject to withholding consideration under 5 U.S.C. § 552(b)(5). NIST Operating Units certify that the responsive documents subject to withholding are reviewed and a foreseeable harm analysis had been conducted. NIST established fan pages on the social networking sites, Facebook and Twitter, so that the public can keep up with what is happening at NIST, to network with others interested in NIST activities, and to submit comments and questions.

IV. Steps Taken to Increase Proactive Disclosures

1. Does your agency currently receive requests electronically? YES
2. If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically? N/A
3. Does your agency track requests electronically? YES
4. If not, what are the current impediments to your agency utilizing a system to track requests electronically? N/A
5. Does your agency use technology to process requests? YES
6. If not, what are the current impediments to your agency utilizing technology to process requests? N/A
7. Does your agency utilize technology to prepare your agency Annual FOIA Report? YES
8. If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report? N/A

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

1. Backlog Status: 33
2. Backlog Reduction Steps: The NIST FOIA office is hiring additional staff and has assigned additional staff to assist in alleviating bottlenecks and responding to overdue FOIA requests.
3. Steps to Improve Timeliness: The NIST FOIA office provides follow-up email reminders to the Action Offices and outside reviewers to ensure deadlines are met.

National Technical Information Service:

I. Steps Taken to Applying the Presumption of Openness

1. Description: To underscore commitment to FOIA principles, FOIA compliance is now handled in the immediate office of the Director. Employees processing FOIA requests have all been made aware of the presumption of openness.

Some requests are for publications that are for sale pursuant to a statutory program, (15 USC 1151 et seq. and 3704b), and are unaffected by FOIA (5 USC 552(a)(4)(A)(vii)). The presumption of openness will not change our approach to these, which is to inform the requester as to whether we have the item and the price.

NTIS has given considerable thought to how it will adopt the “foreseeable harm” test in determining whether to waive an exemption for other records. We intend to take as liberal an approach as we can, given our requirement to operate on a self-sustaining basis. It is unlikely that NTIS would waive an exemption if release of a record would impede the willingness of another agency to make its information products available to the public through NTIS or if release would adversely affect a sales program, such as might occur if a request were to be made for a customer list.

2. Disclosure Comparisons: In FY 2008 we received 16 FOIA requests and made full or partial grants in 7 cases (43%). In FY 2009 we received 21 FOIA requests cases and made full or partial grants in 11 cases (53%). That is, our disclosure rate increased by 21% over FY 08.

II. Steps Taken to Ensure That Your Agency Has an Effective System for Responding to FOIA Requests

Because we receive relatively few FOIA requests from the public (about one every twelve days) and can respond to them almost immediately, we have not found it necessary to implement electronic capabilities beyond accepting FOIA requests electronically and maintaining a log on our shared-drive that FOIA personnel and senior officials can access to monitor status. Department-wide requests do add a few more, but these are usually for records that are maintained in the Director’s office and easy to track.

III. Steps Take to Increase Proactive Disclosures

Although constrained by the requirement to operate on a self-sustaining basis, NTIS does try to make information available when possible. It has recently made its database of 2.5 million items in its collection searchable at its own web site for free, even though that database is a revenue-generating product leased to

information intermediaries who charge their customers for access and share resulting revenue with NTIS. In addition, NTIS has just launched its “National Technical Reports Library,” a subscription product that offers full access to .5 million technical reports that we have in electronic format, which includes most of the items scanned into the collection since 1996. Previously, the only way to gain access to a technical report was to order and pay for it.

IV. Steps Taken to Promote Greater Utilization of Technology

1. Does your agency currently receive requests electronically? Yes
2. If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically? Not applicable
3. Does your agency track requests electronically? Yes, through a log on our share drive (see Question II).
4. If not, what are the current impediments to your agency utilizing a system to track requests electronically? Not applicable.
5. Does your agency use technology to process requests. No
6. If not, what are the current impediments to your agency utilizing technology to process requests? We receive too few to make additional investments cost effective. Because we receive no appropriations and are required to be self-sustaining, additional costs would have to be recovered through higher prices to consumers of our goods and services
7. Does your agency utilize technology to prepare your agency Annual FOIA Report? Because there are so few to keep track of, word processing is the only technology we need.
8. If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report? Not applicable.

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

1. Backlog Status. NTIS had no cases pending at the end of FY 08 and at the end of FY 09.
2. Backlog Reduction Steps. Not applicable.
3. Steps to Improve Timeliness. All requests were processed within the statutory 20-day period.

National Telecommunications & Information Administration:

I. Steps Taken to Applying the Presumption of Openness

1. Description

All FOIA requests are processed by the National Telecommunications and Information Administration's Office of the Chief Counsel (NTIA/OCC). All responsive documents are reviewed by an attorney in the Office of the Chief Counsel and/or the agency FOIA Specialist to ensure that the presumption is appropriately applied to each FOIA requested document.

2. Disclosure Comparisons

For Fiscal Year (FY) 2008, NTIA reported 3 full grants and no partial grants/denials or full denials based upon exemptions. For FY 2009, NTIA reported 25 full grants; 6 partial grants/denials; and 2 full denials based upon exemptions.

II. Steps Taken to Ensure That Your Agency Has an Effective System for Responding to FOIA Requests

In May/June 2009, NTIA/OCC organized a mandatory training seminar for all NTIA employees. In addition, NTIA/OCC will organize training classes for new hires and refresher courses for all employees as needed. All FOIA requests are reported weekly to the Office of Public Affairs and the Department FOIA Officer. NTIA/OCC has developed standard requests for fee estimates and searches and marks the requests as "high importance" to ensure prompt responses within deadlines. NTIA/OCC is exploring additional tools available through Microsoft Outlook to increase the efficiency of this process. NTIA/OCC is available to NTIA program staff to answer questions and to clarify any request sent to agency leadership and staff. NTIA provides adequate IT resources and support.

III. Steps Take to Increase Proactive Disclosures

It is the NTIA's policy to proactively make information about its operations and decisions available to the public electronically through NTIA's website at www.ntia.doc.gov. Through its website, NTIA routinely posts press releases, speeches, testimony, public notices, regulatory decisions, public comments, reports, key contracts, grant information, advisory committee information, public meeting transcripts and archived audio and video webcasts, and other information about issues of interest to the public. NTIA also provides the public with information about the agency, to include, management and personnel, privacy policy, FOIA procedures, information quality guidelines, and accessibility information. NTIA's website is fully searchable. NTIA will continue to make information available through its website, particularly in response to requests from the public for additional documents or information of general interest. Additionally, NTIA is in the process of proactively posting grant awards on NTIA's website for the Broadband Opportunities Program (BTOP) and the State Broadband Data

and Development Grant Program (Broadband Mapping). Both programs are a part of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111–5, 123 Stat. 115 (2009)) and are high profile for the Department and the agency.

IV. Steps Taken to Increase Proactive Disclosures

1. Does your agency currently receive requests electronically?

Yes. NTIA receives FOIA requests via a dedicated email in-box. The agency has posted information regarding this email in-box prominently on NTIA's website.

2. If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically?

Not Applicable.

3. Does your agency track requests electronically?

Yes. NTIA/OCC tracks all incoming requests using an electronic FOIA log that is accessible through a shared folder system utilized by NTIA/OCC.

4. If not, what are the current impediments to your agency utilizing a system to track requests electronically?

Not Applicable.

5. Does your agency use technology to process requests?

Yes. NTIA/OCC transmits fee estimates and search requests via email to all program offices and agency leadership. In addition, the NTIA/OCC also communicates with requesters via email, as well as traditional methods of communication including facsimile.

6. If not, what are the current impediments to your agency utilizing technology to process requests?

Not Applicable.

7. Does your agency utilize technology to prepare your agency Annual FOIA Report?

Yes. The Annual FOIA Report is generated from the existing electronic FOIA log.

8. If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report?

Not Applicable.

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

1. Backlog Status

NTIA does not currently have a backlog. In FY 2008 and 2009 did not have a backlog.

2. Backlog Reduction Steps

Not Applicable.

3. Steps to Improve Timeliness

NTIA/OCC has educated NTIA personnel regarding the required deadlines and encourages the program offices to respond timely to each request. NTIA/OCC follows up to ensure timeliness of responses and now uses Microsoft Outlook tools to automatically generate reminders when responses are due. NTIA/OCC's goal is to promptly begin processing each request within one business day of receipt.

National Oceanic and Atmospheric Administration:

I. Steps Taken to Applying the Presumption of Openness

1. Description

- The Office of Communications (OOC) and External Affairs regularly answers an average of approximately thirty-two (32) media calls a day and issues news releases daily. The Office also has a webpage link on [noaa.gov](http://www.noaa.gov) that lists the telephone number and e-mail address of every Communications employee, including their subject matter expertise. <http://www.noaa.gov/media.html>.
- Provide NOAA Staff with comprehensive information regarding the new FOIA requirements on "Presumption of Openness."
- Email NOAA Staff new Tasker Form for implementation and to ensure compliance with FOIA policies.
- Provide individual and group training sessions to NOAA staff discussing the new FOIA requirements and "Presumption of Openness."
- Placement of website links on several Line and Staff Offices, which provides the public access to the FOIA process and to documents requested under the FOIA.

- Placement of NOAA Public Liaisons contact information web link to the Office of Information Policy.
- Digitizing frequently requested documents and making them available on websites that the public can easily access.
- Provide requesters with as much accessible information available when responding to requests unless compelling evidence of harm to the agency or individuals exists. This process has reflected an overall increase in the number of “full” and “partial” disclosure releases in comparison to prior years.

2. Disclosure Comparisons

FY 2008 Full Grants: 358
 FY 2009 Full Grants: 492

FY 2008 Partial Grants: 91
 FY 2009 Partial Grants: 74

II. Steps Taken to Ensure an Effective System for Responding to FOIA Requests.

- NOAA Staff refers members of the public and/or media to the NOAA FOIA Office in submitting FOIA requests.
- Process ninety-eight percent of all FOIA requests received by NOAA within one day of receipt.
- Provide acknowledgement letters to requesters notifying them of receipt of requests.
- Contact requesters for extensions when additional time is needed to process a request(s).
- E-mail weekly and monthly reports to staff reminding them of action completion dates.

The agency is currently developing an in-house web-based system that will track FOIA requests and incorporate processing of the FOIA Annual Report. When developed, we are hoping to extend the web-based system to all FOIA contacts within the line and staff offices.

III. Steps Taken to Increase Proactive Disclosures

- The Office of Commission regularly disseminates news worthy information to the public by the media and the NOAA homepage. This is handled primarily through the creation and distribution of news releases. News releases are sent by email to targeted media outlets and reporters based on subject of interest. The releases are also posted and archived on www.noaa.gov.

- NOAA currently publishes information pertaining to operations and decision on www.noaa.gov.
- Frequently requested records are posted on the NOAA FOIA Home Page, such as the Commerce Bank Card Listing http://www.corporateservices.noaa.gov/foia/commerce_bankcard_listing.pdf, fishing permits and other records of interest frequently requested from the public.
- Continue to digitize frequently requested documents and making them available on websites that the public can easily access.
- Information pertaining to the conduct of market research is made available to the public by publishing Requests for Information (RFI) and Sources Sought announcements.
- All new open market procurements announcements over \$25K are posted on the Federal Business Opportunities (FedBizOps) website.
- Notices of contract awards are posted on the FedBizOps website.
- NOAA's approved budget and financial data is made available online as required under the Federal Funding Accountability Transparency Act (FFATA).

IV. Steps Taken to Greater Utilize Technology

- All incoming FOIA requests are transmitted to the appropriate Action Office electronically and/or via facsimile.
 - Oracle and Oracle Discoverer software have been loaded on laptops to enable the creation of adhoc reports for preparation of FOIA responses in the Commerce Bankcard Center.
 - Several offices are continuing to convert appropriate information from office databases into websites for public retrieval of sought after information.
 - FOIA Log spreadsheets are saved to shared drives of laptops to track the status of FOIA requests.
 - NOAA is currently updating its FOIA database/tracking system to include new FOIA requirements and to extend the use of the database to other NOAA FOIA Liaison Officers.
1. Does your agency currently receive requests electronically? Yes
 2. If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically? N/A

3. Does your agency track requests electronically? Yes
4. If not, what are the current impediments to your agency utilizing a system to track requests electronically? N/A
5. Does your agency use technology to process requests? Yes
6. If not, what are the current impediments to your agency utilizing technology to process requests? N/A
7. Does your agency utilize technology to prepare your agency annual FOIA Report? Yes
8. If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report? N/A.

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests and Administrative Appeals

1. Backlog Status (Pending from 2009 FOIA Annual Report): 98
2. And 3. Backlog Reduction Steps/Steps to Improve Timeliness
 - Establish deadlines prior to receipt of FOIA responses to ensure due dates are adequately met.
 - Provide weekly and Monthly reports of outstanding FOIA reports to NOAA staff for tracking purposes and follow-up e-mail reminders to ensure deadlines are met.
 - Maintain weekly FOIA report that has to be updated with the real-time status, which serves as a reminder for due date of requests.
 - Reassignment of FOIA functions to alleviate bottlenecks in the system that would deter proper processing of FOIA requests.

Appeals:

1. Provide Department attorneys with proper Action Office Contact if a FOIA request is appealed.
2. NOAA action Office provides Department Attorneys with copies of incoming/outgoing response letter from requesters including copies of all documents withheld.

United States Patent and Trademark Office:

I. Steps Taken to Applying the Presumption of Openness

1. Description.

The USPTO no longer considers withholding any documents solely on the basis of internal use, (5 U.S.C. § 552(b)(2), or “Low 2”). There is no record of a request

specifically for internal guidelines lacking public interest since the implementation of the Attorney General's Memorandum. To this end, the USPTO recently disclosed some internal working tools responsive to a FOIA request that had little public interest and would have previously been withheld under the "Low 2" justification. The USPTO continues, however, apply "High 2" exemptions where appropriate to avoid the unauthorized or unlawful circumvention of agency regulations or federal statute.

The USPTO also applies the "foreseeable harm" analysis regarding all internal deliberative documents that are subject to withholding consideration under 5 U.S.C. § 552(b)(5). The USPTO recently had a case that resulted in the disclosure of seven pages of (b)(5) material that was released due to a lack of foreseeable harm. All other (b)(5) withholdings have complied with the foreseeable harm test since the standard's re-institution.

The USPTO continues to operate under the "presumption of openness," and has long recognized that the FOIA is a disclosure statute and not a withholding statute.

2. Disclosure Comparisons

While there was a general decrease in the number of full and partial disclosures between FY 2008 and FY 2009, there are nonetheless strong signs suggesting greater disclosure overall. In FY 2008, full disclosures accounted for 40% of USPTO FOIA disclosures and exemption-based withholdings. In FY 2009, this figure rose to 48%. It should also be noted that Full Denials have also dropped from 20 in FY 2008 to 13 in FY 2009. Finally, USPTO has experienced drops in the number of times Exemption (b)(5) was applied between FY 2008 and FY 2009 (47%). Instances of (b)(2) withholdings also dropped (36%) in this period.

II. Steps Taken to Ensure That Your Agency Has an Effective System for Responding to FOIA Requests

The USPTO utilizes an electronic processing/tracking system dedicated for FOIA use. This system is scalable and has been in place since FY 2009. While it is difficult to precisely identify the software's direct impact on processing, recent changes in pendency statistics strongly suggest that it has played at least some role in reducing pendency at USPTO:

Between FY 2008 and FY 2009, the USPTO has experienced drops in Median (44%) and Average (36%) processing times for perfected requests. Further, its highest number of days pending for a single FOIA request dropped dramatically from 318 days in FY 2008 to just 58 days in FY 2009, an approximately 80% reduction.

USPTO has also slightly increased the number of requests processed within the 1-20 day Time Increment: FY 2008 = 246, FY 2009 = 250. It is also notable that 94 FOIA requests, roughly a quarter of all FY 2009 FOIA requests, were processed under one day.

USPTO has exceptional IT support in furthering its mission to timely process FOIA requests for the public. USPTO has been able to transition from paper handling to a largely electronic processing of requests due to the timely support received from the Agency's IT Support System. The USPTO has an IT representative specifically assigned to ensure that the system is maintained properly and is actively assisting FOIA Office staff in expanding the software's capabilities.

III. Steps Take to Increase Proactive Disclosures

The USPTO web content recently included over 855,000 web documents. Most experts consider a large website to have about 45,000 web documents. This count does not include documents required to be made available under 5 U.S.C. § 552(a)(2), which are also considerable. The USPTO website is robust, and the Agency posts a wide variety of information regarding its manuals, practitioner information, information regarding the filing of patents and/or trademarks, rulemaking information, independent inventor information, policy and law, products and services, Strategic Planning, copyrights, etc. The public record of both ongoing and concluded Patent and Trademark proceedings are available to the extent not otherwise prohibited, on the USPTO's Public PAIR, TESS, TTABvue and other automated information systems, which are accessible through the web site. This voluminous amount of information suggests that the USPTO website is well-populated with information in which the public is likely to find of interest.

The agency developed a policy through which contract deliverables will require vendors to propose redaction of business information within 30 days of award. The agency will then post the awarded contract on its website, along with all other contracts previously cleared through a FOIA process. The language for this requirement will be included in upcoming proposal requests.

The agency is also exploring a means of posting all FOIA disclosures (excluding private information) on its website in a searchable format

IV. Steps Taken to Increase Proactive Disclosures

1. Does your agency currently receive requests electronically. Yes.

2. If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically. N/A
3. Does your agency track requests electronically. Yes.
4. If not, what are the current impediments to your agency utilizing a system to track requests electronically. N/A
5. Does your agency use technology to process requests. Yes
6. If not, what are the current impediments to your agency utilizing technology to process requests. N/A
7. Does your agency utilize technology to prepare your agency Annual FOIA Report. Yes.
8. If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report. N/A

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

1. Backlog Status. The USPTO does not have a FOIA backlog.
2. Backlog Reduction Steps. Not applicable.
3. Steps to Improve Timeliness. The USPTO does not have cases that exceed 20 business days for perfected FOIA requests. Some requests, however, are held open in excess of a 20 business day cycle where delays are encountered due to fee matters, clarifications, consultation, etc. For instance, in some FOIA requests, clarification is requested, a fee estimate is provided, a fee waiver is then subsequently invoked, and then administrative appeals regarding fee waiver and/or expedited treatment denials can impact the actual total number of processing days. Most of these events toll the statutory clock, but nonetheless result in an extension of actual non-statutory time. However, even these requests are processed within statutory requirements when the request is finally perfected. Since these requests are still completed within 20 days after perfection, they are not considered “backlogged.” However, the USPTO is increasing its attempts to communicate more frequently with these types of requestors in the hope of trimming the total non-statutory time. These newer communications include, but are not limited to: telephonic discussions with requestors, fee waiver clarifications that precede initial fee waiver denials, presentation of alternate proposals or suggested strategies to requestors (i.e., suggested remedies to facilitate record description, fee waiver claims, etc.)

Office of Inspector General:

I: Steps Taken to Apply the Presumption of Openness

1. Description:

In accordance with President Obama's memorandum to the heads of executive departments and agencies, the Office of Inspector General has taken steps to apply the presumption of openness in responding to requests under the Freedom of Information Act. Since the issuance of the memorandum, we have, where appropriate, released information that could have been withheld pursuant to exemption (b)(5) and exemption (b)(2). We will continue to make such discretionary releases.

2. Disclosure Comparisons:

The Office of Inspector General reports indicate an increase in the release of records in full, from 3 in FY 08 to 4 in FY 09. The number of partial grants/partial denials decreased from 13 in FY 08 to 10 in FY 09. The number of records withheld in their entirety based on exemptions decreased from 4 in FY 08 to 3 in FY 09. The annual reports for FY 08 and FY 09 indicate that the most frequently cited FOIA exemption in the Office of Inspector General was (b)(7)(C), a non-discretionary exemption that provides protection for personal information in law enforcement records.

II: Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests

In order to ensure that we have an effective system for responding to requests, we have taken the following steps:

- hired additional legal staff to assist with reviewing and processing FOIA requests,
- trained staff on the FOIA,
- updated our FOIA database, and
- purchased legal management system to track assignments (under development).

III: Steps Taken to Increase Proactive Disclosures

To increase proactive disclosures, we have placed years of Semi-annual Reports to Congress, audit, inspection, and evaluation reports, our management challenges report, congressional testimony, a section describing current and planned work, and even investigative alerts that warn the public about scams and other fraudulent activity, on the OIG website. We are also periodically consulting our staff to find areas where we can make information readily available to the public.

IV: Steps Taken to Greater Utilize Technology

1. Does your agency currently receive requests electronically?

Yes, we currently receive requests through a FOIA-dedicated email account and through facsimile.

2. If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically?

N/A

3. Does your agency track requests electronically?

Yes, we use an electronic database to track requests.

4. If not, what are the current impediments to your agency utilizing a system to track requests electronically?

N/A

5. Does your agency use technology to process requests?

Yes, we use electronic communication and technology to process requests.

6. If not, what are the current impediments to your agency utilizing technology to process requests?

N/A

7. Does your agency utilize technology to prepare your agency Annual FOIA Report?
Yes, we use our electronic FOIA database in order to prepare the Annual Report.

8. If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report?

N/A

V: Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests and Administrative Appeals

1. Backlog Status

OIG had a backlog of two in FY 2008 and a backlog of one in FY 2009.

2. Backlog Reduction Steps

The Office of Inspector General, Office of Counsel has recently hired a paralegal. This individual will be responsible for administering the office's FOIA program and will work with the staff attorneys to respond to the requests. This structure will create a more

efficient workflow where the administrative responsibilities are managed by the paralegal and the legal responsibilities are managed by the attorneys. Coordinating these efforts will help to reduce backlogs and improve the timeliness of the office's response to requests.

3. Steps to Improve Timeliness

Please see response to V(2).