

U.S. Department of Commerce

**Chief Freedom of Information Act Officer
Annual Report
March 2011**

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.

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

a. Describe how the President's FOIA Memorandum and the Attorney General's FOIA Guidelines have been publicized throughout your agency.

The President's FOIA Memorandum and the Attorney General's FOIA Guidelines were distributed as attachments to a FOIA guidance memorandum from the Assistant General Counsel for Administration and the Director, Office of Management and Organization, which was disseminated to all Department staff in April 2009, as well as incorporated in our FOIA training.

A FOIA Officers Roundtable Meeting was held in June 2009 to provide additional awareness and a forum for open discussion of the President's FOIA Memorandum and the Attorney General's FOIA Guidelines. FOIA Officers provided copies of the department's FOIA guidance memorandum to all of their FOIA contacts and coordinators in the operating units within their bureaus.

In addition, the Department's FOIA website and the individual bureaus FOIA websites provide a link to the DOJ's website through which department staff and the public can access the President's FOIA Memorandum and the Attorney General's FOIA Guidelines.

b. What training has been attended and/or conducted on the new FOIA Guidelines?

In 2009, the Office of the Assistant General Counsel for Administration provided FOIA training to all staff located in the headquarters building in Washington, D.C. The training explicitly described the foreseeable harm standard and the requirements to release information proactively, before a FOIA request was generated.

In the Office of the Assistant General Counsel for Administration, FOIA meetings are conducted bi-weekly in the office to discuss and answer any question, including questions regarding the new FOIA Guidelines.

FOIA staff in the Office of the Secretary, Bureau of Industry and Security, Economic Development Administration, International Trade Administration, National Telecommunications and Information Administration, National Institute of Standards and Technology, National

Oceanic and Atmospheric Administration (NOAA), and the Office of Inspector General attended DOJ training in 2010. NOAA FOIA staff attended the American Society of Access Professionals training series on the new guidelines. In addition, all FOIA staff at the bureau level has attended some in-house FOIA training in 2010, which included the new guidelines.

The Office of the Inspector General (OIG) conducted agency-wide training highlighting the Attorney General's FOIA Guidelines and the President's FOIA Memorandum. At a September 2010 all-hands conference, the OIG provided FOIA training to the entire OIG staff that covered the new FOIA Guidelines. The OIG also provided FOIA training to its investigative staff, which included a discussion of the new FOIA Guidelines. In addition, the OIG provided detailed training covering the new FOIA Guidelines to its FOIA points of contact who coordinate FOIA responses for each OIG operating unit.

c. How has your agency created or modified your internal guidance to reflect the presumption of openness?

The presumption of openness has been incorporated into department-wide training and in the review on appeal.

The form used to assign FOIA requests for action was amended in 2009 to require that the senior official responsible for processing a request certify that a foreseeable harm analysis has been applied to responsive documents.

Documents released under FOIA that we believe will be of interest to the public are posted to FOIA reading rooms regardless of whether or not a request for the same information has been received.

The Bureau of Industry and Security has been reviewing the feasibility of posting all released FOIA information on its public website. BIS expects to begin posting releasable information in the 2nd quarter of FY2011.

The Economic Development Administration provides briefings on the policy of the presumption of openness to legal personnel.

The International Trade Administration, in an effort to continue applying the presumption of openness to all decisions involving the FOIA, 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.

The National Institute of Standards and Technology FOIA staff updated the FOIA Overview of NIST Internal FOIA Process FACT Sheet.

The National Telecommunications and Information Administration's (NTIA) Office of the Chief Counsel processes all NTIA FOIA requests. 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.

The National Technical Information Service has made sure all employees associated with FOIA requests are aware of the presumption of openness that applies to information that is releasable as a matter of discretion. Any decision to withhold such information would be subject to review by the Director of the agency.

Although the presumption of openness is already applied to all decisions involving FOIA, the Office of Inspector General (OIG) recently clarified its internal policy on FOIA decisions involving the public release of open investigative files or portions of open investigative files. Specifically, the OIG's internal policy was clarified to ensure that each responsive document related to an ongoing or open investigation was reviewed to determine whether it could be publicly released or whether its release would interfere with a law enforcement proceeding such that it would have to be withheld under exemption (b)(7)(A).

In response to FOIA requests, the U.S. Patent and Trademark Office (USPTO) currently conducts document reviews with an eye toward presumption of openness. The USPTO FOIA Office actively engages the business units from the outset of the request for documents process to help determine whether or not discretionary releases may be made.

d. To what extent has your agency made discretionary releases of otherwise exempt information?

Particularly since the issuance of the President's FOIA Memorandum and the Attorney General's FOIA guidelines, all bureaus of the Department have, where appropriate, released information that could have been withheld pursuant to exemption (b)(2) and (b)(5). The department will continue to make such discretionary releases.

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

This information would have been covered by exemptions (b)(2) and (b)(5).

f. How does your agency review records to determine whether discretionary releases are possible?

In response to FOIA requests, all bureaus of the Department review responsive documents under the terms of FOIA to determine whether the responsive documents must be withheld, in whole or in part, pursuant to the FOIA's nine exemptions and three exclusions. After this initial determination is made, department staff apply the presumption of openness, where appropriate, to release information that could otherwise have been withheld.

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

The Economic Development Administration (EDA) established a FOIA electronic reading room on the EDA website.

The Economic and Statistics Administration (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 its two web sites (www.esa.doc.gov and www.bea.doc.gov) in an effort to maximize availability of useful data to a broad audience. The ESA headquarters website contain a full Economic Release Calendar for all ESA/Census/Bureau of Economic Analysis releases, with a link for individuals to sign up for email updates.

The National Telecommunications and Information Administration (NTIA) is making available on its website all Broadband Technology Opportunities Program (BTOP) grant applications,

award documents, and reports to ensure the openness and availability to those interested in these grants. In 2010, NTIA awarded nearly 300 grants under this program. NTIA has designed a webpage for each grant that is easily accessible and makes available the grant documents described above including the budgets and financial report. See <http://www.2.ntia.doc.gov/>.

The National Oceanic and Atmospheric Administration (NOAA) posts frequently requested records on its website, including records relating to the Deep Water Horizon oil spill.

The Minority Business Development Agency (MBDA) recently updated its website, including a new user-friendly design format and the inclusion of additional content in its electronic FOIA reading room.

As part of its responsibilities as an oversight agency, the Office of Inspector General (OIG) makes proactive releases of its reports and information on its activities to the public through postings on the OIG website. The IG Reform Act of 2008 requires the agency to post any report or audit that is subject to public release on its website within three working days of a public release determination. The OIG is currently reviewing its policies on the release of information related to investigations to determine the extent to which this information can be proactively released without jeopardizing law enforcement proceedings, consistent with the Privacy Act of 1974, as amended, and the requirement to protect confidential sources. To ensure that the presumption of openness is appropriately applied in processing FOIA requests, the OIG approaches each FOIA request with a view toward discretionary disclosure where appropriate. The OIG also makes it a practice to make partial disclosures or documents when full disclosure is not possible under the terms of FOIA.

2. Report the extent to which the numbers of requests where records have been released in full and the numbers of requests where records have been released in part has changed from those numbers as reported in your previous year's Annual FOIA Report.

Overall department numbers:

FY2008 Released in Full: 654

FY2009 Released in Full: 784

FY2010 Released in Full: 763

FY2008 Released in Part: 338

FY2009 Released in Part: 255

FY2010 Released in Part: 308

Individual bureau numbers:

Office of the Secretary:

FY2008 Release in Full: 45

FY2009 Release in Full: 58

FY2010 Release in Full: 59

FY2008 Release in Part: 37

FY2009 Release in Part: 32

FY2010 Release in Part: 64

Bureau of Industry and Security:

FY2008 Release in Full: 19

FY2009 Release in Full: 17

FY2010 Release in Full: 22

FY2008 Release in Part: 13

FY2009 Release in Part: 14

FY2010 Release in Part: 15

Census:

FY2008 Release in Full: 19

FY2009 Release in Full: 15

FY2010 Release in Full: 46

FY2008 Release in Part: 36

FY2009 Release in Part: 32

FY2010 Release in Part: 37

Economic Development Administration:

FY2008 Release in Full: 16

FY2009 Release in Full: 20

FY2010 Release in Full: 28

FY2008 Release in Part: 12

FY2009 Release in Part: 4

FY2010 Release in Part: 12

Economic and Statistics Administration:

FY2008 Release in Full: 2

FY2009 Release in Full: 2

FY2010 Release in Full: 2

FY2008 Release in Part: 2

FY2009 Release in Part: 1

FY2010 Release in Part: 0

International Trade Administration:

FY2008 Release in Full: 44

FY2009 Release in Full: 35

FY2010 Release in Full: 38

FY2008 Release in Part: 11

FY2009 Release in Part: 9

FY2010 Release in Part: 7

Minority Business Development Agency:

FY2008 Release in Full: 28

FY2009 Release in Full: 6

FY2010 Release in Full: 2

FY2008 Release in Part: 0

FY2009 Release in Part: 2

FY2010 Release in Part: 0

National Institute of Standards and Technology:

FY2008 Release in Full: 23

FY2009 Release in Full: 30

FY2010 Release in Full: 49

FY2008 Release in Part: 13

FY2009 Release in Part: 12

FY2010 Release in Part: 21

National Oceanic and Atmospheric Administration:

FY2008 Release in Full: 358

FY2009 Release in Full: 492

FY2010 Release in Full: 420

FY2008 Release in Part: 91

FY2009 Release in Part: 74

FY2010 Release in Part: 75

National Telecommunications and Information Administration:

FY2008 Release in Full: 3

FY2009 Release in Full: 25

FY2010 Release in Full: 50

FY2008 Release in Part: 0

FY2009 Release in Part: 6

FY2010 Release in Part: 8

National Technical Information Service:

FY2008 Release in Full: 6

FY2009 Release in Full: 11

FY2010 Release in Full: 1

FY2008 Release in Part: 1

FY2009 Release in Part: 0

FY2010 Release in Part: 0

Office of the Inspector General:

FY2008 Release in Full: 3

FY2009 Release in Full: 4

FY2010 Release in Full: 3

FY2008 Release in Part: 13

FY2009 Release in Part: 10

FY2010 Release in Part: 18

U.S. Patent and Trademark Office:

FY2008 Release in Full: 88

FY2009 Release in Full: 69

FY2010 Release in Full: 43

FY2008 Release in Part: 109

FY2009 Release in Part: 59

FY2010 Release in Part: 51

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."

Describe here the steps your agency has taken to ensure that your system for responding to requests is effective and efficient. This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

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

Yes. FOIA professionals within our department have access to IT staff by phone and email and after-hours in the form of on-call support.

b. Describe how your agency's FOIA professionals interact with your Open Government Team.

The Office of the Chief Privacy Officer and Director of Open Government houses the Department's senior open government leader and the Departmental and Office of the Secretary FOIA functions. This office is taking a proactive lead in integrating open government and FOIA. Currently this office is in the process of developing an Open Government Working Group, which will include all Department FOIA professionals.

The National Institute of Standards and Technology (NIST) FOIA professionals interact with the NIST Open Government Team and the Bureau of the Census FOIA Officer is the Census representative on the Department of Commerce Open Government Team.

c. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to responding to FOIA requests.

Senior leadership fully endorses the FOIA program and provides backing for resources and support required to provide timely responses to FOIA requests. Due to our decentralized processing, adequacies in FOIA staffing are reviewed by the individual bureaus and operating units, and if staffing needs fall short, adjustments to FOIA staffing are addressed at that level. When FOIA professionals leave the Department, due to the importance of the FOIA professional position, every effort is made to fill the position to assure a smooth transition and continued expert monitoring of this critical activity.

The Bureau of Industry and Security (BIS) currently has adequate staffing to handle all FOIA requests. However, if overwhelming numbers of requests were received, BIS maintains a list of experienced personnel to assist with the increase.

The Bureau of the Census anticipated that FY10 would have increased FOIA work because of the 2010 Decennial Census. In FY09 the Bureau of the Census had 3.7 equivalent full-time FOIA employees. In FY10 Census increased this to 5 equivalent full-time employees.

The National Institute of Standards and Technology now includes FOIA as an element in the performance plan of more staff members, including the all staff of the Acquisition Management Division. Also, more staff from each operating unit are required to be trained in the processing of FOIA requests.

The National Telecommunications and Information Administration is in the process of replacing their FOIA Officer, who has left the agency, with an entry level attorney to improve the service and effectiveness of its processing of FOIA requests. Previously, the position was held by a non-attorney.

The Office of Inspector General (OIG) hired a full-time paralegal, in part, to ensure that the OIG had a staff member dedicated to managing the FOIA process. The paralegal is responsible for initial and intermediate processing of all FOIA requests and works with attorneys to ensure that requests are processed in a timely manner. The OIG also recently hired additional legal staff to ensure that adequate staffing is being devoted to responding to FOIA requests.

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

The Office of the Secretary FOIA Office purchased a scanner and now used redaction software to assist with processing of requests. FOIA requests are now transmitted electronically to bureaus and operating units, to increase efficiency and timeliness.

The Bureau of the Census FOIA processing is streamlined with a detailed FOIA processing book, template letters for frequent requests, and redaction software. Also, detailed training is conducted for the staff and managers.

The National Institute of Standards and Technology updated its FOIA tracking sheet to include the collection of the new data required for the FOIA Annual Report and now transmits FOIA requests to operating units electronically.

The National Oceanic and Atmospheric Administration (NOAA) is currently in the process of adopting a centralized electronic system for logging and tracking of FOIA requests. The NOAA FOIA Office and NOAA component FOIA contacts have created functional e-mail accounts used specifically for tasking of FOIA requests to ensure better control over incoming requests that might otherwise be buried in individual work e-mail accounts and thereby allowing for more timely responses.

In addition to the recent staffing increases, the Office of Inspector General (OIG) maintains an electronic database to track FOIA requests, which helps ensure that the bureau's FOIA system operates efficiently and effectively. The OIG is constantly working to improve this database through the addition of reporting functions and refinement of existing data fields. The OIG continues to explore different FOIA tracking systems to determine if there is a more effective way to manage our FOIA process. Finally, the OIG continues to accept requests through various means, including electronic mail, and to communicate with requesters via e-mail to ensure efficient customer service.

III. Steps Taken To Increase Proactive Disclosures

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Describe here the steps your agency has taken to increase the amount of material that is available on your agency website, including providing examples of proactive disclosures that have been made since issuance of the new FOIA Guidelines. In doing so, answer the questions listed below and describe any additional steps taken by your agency to make proactive disclosures of information.

a. Has your agency added new material to your agency website since last year?

Yes, new materials have been added to the FOIA websites. The Department has taken and continues to take proactive steps to increase the amount of material that is publicly available on the website.

b. What types of records have been posted?

The Bureau of the Census has posted to its website 2010 Decennial Census information, 2010 Decennial Census enumerator training materials, and the FOIA log.

The Bureau of Industry and Security has created a new public website for the Office of Administration. This new website will make accessible all releasable FOIA information beginning the 2nd quarter of FY2011.

The Economic Development Administration has posted to its website certain internal guidelines on establishment of federal grant rates (and local match requirements) with respect to disaster grants.

The Economics and Statistics Administration (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 its two websites (www.esa.doc.gov and www.bea.doc.gov) in an effort to maximize availability of useful data to a broad audience. The ESA Headquarters web site contains a full Economic Release Calendar for all ESA/Census/BEA releases, with a link for individuals to sign up for e-mail updates.

The International Trade Administration posts to its website (<http://trade.gov/foia/>) the business units current and relevant information on programs and activities that adheres to the principles of government openness and accountability. Visitors are encouraged to review the program areas posting prior to submitting a FOIA request.

The National Oceanic and Atmospheric Administration has posted to its website information relating to the Deep Water Horizon oil spill in the Gulf of Mexico.

The National Telecommunications and Information Administration has been adding grant award documents for nearly 300 of the BTOP and State Broadband Data and Development Grant Program (Broadband Mapping) pursuant to American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, 123 Stat. 115 (2009)). Approximately, 500 to 1000 pages are added to the website on a daily basis that contain details regarding the grants including reports, award documents and applications. NTIA believes this has lessened the probable FOIA request received for this high profile project. 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.

The National Institute of Standards and Technology has posted additional studies and reports.

The Minority Business Development Agency (MBDA) has posted to its website template panel evaluation forms and other materials intended to assist applicants in applying for MBDA grant awards. MBDA 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.

The Office of Inspector General has added reports and information on its activities to its agency website throughout calendar year 2010. For example, as part of its oversight of the decennial Census, the OIG has proactively released quarterly reports to Congress on the Census, letters to members of Congress related to the Census, early observations of Census enumeration, and reviews of Census operations. These documents are available in an online reading room dedicated to the 2010 Census which can be accessed from the OIG's homepage. 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, and evaluation reports, the OIG top management challenges report, congressional testimony, information on current and planned activities, and investigative alerts warning the public about scams and other fraudulent activity covering a period of years.

c. Give examples of the types of records your agency now posts that used to be available only by making a FOIA request for them.

The Secretary and Deputy Secretary speeches are now posted on the Office of the Secretary website.

The Bureau of the Census now posts to its website the FOIA Log and the Census bureau purchase cardholder list.

The Economic Development Administration now posts to its website certain internal guidelines on establishment of federal grant rates (and local match requirements) with respect to disaster grants.

The National Telecommunications and Information Administration now posts to its website grant award documents for BTOP and State Broadband Data and Development Grant Program (Broadband Mapping).

The National Oceanic and Atmospheric Administration now posts to its website the Commerce bank card listing, records relating to the Deep Water Horizon oil spill, and fishing permits.

The National Institute of Standards and Technology now posts to its website records of disaster studies.

The U.S. Patent and Trademark Office (USPTO) has monitored and examined the nature of FOIA requests received during the past two years and discovered that a significant portion of FOIA requests pertain to procurement contracts. The USPTO now posts any procurement contracts that have been frequently requested.

With the possible exception of investigative reports that are maintained in a system of records covered by the Privacy Act of 1974, the OIG attempts, when possible, to proactively release its reports and information on its activities to the public. For instance, the OIG recently took proactive steps by releasing a final report, conducted under the auspices of the Office of Investigations, describing the OIG's review of the National Oceanic & Atmospheric Administration's (NOAA) fisheries enforcement programs and operations. This release is part of the OIG's ongoing effort to proactively release information related to the OIG's investigative activities where appropriate.

d. What system do you have in place to routinely identify records that are appropriate for posting?

All bureaus of the Department post records from FOIA requests that are frequently requested, routinely review the types of records that might be useful and appropriate for proactive disclosures, and provide continuous reminders to staff at meetings to post any and all records that may be of interest to the general public.

All FOIA requests at the Bureau of the Census which are requested more than once are automatically posted to the website. In addition, this topic is discussed quarterly at FOIA staff meetings.

It is 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.

When an Office of Inspector General (OIG) audit, inspection, or evaluation report is completed, in most circumstances, the report is routinely reviewed for public release and posting. For all

information, OIG operating units identify reports and information that are appropriate for public release and proactive disclosure. Consistent with the OIG's application of the presumption of openness, the OIG attempts to make proactive disclosures and frequently consults with staff to identify areas where additional information may be released to the public.

e. How do you utilize social media in disseminating information?

Currently the Office of the Secretary, Bureau of the Census, Economic Development Administration, International Trade Administration, Minority Business Development Administration, National Oceanic and Atmospheric Administration, National Institute of Standards and Technology, National Technical Information Service and the U.S. Patent and Trademark Service are active on multiple social media platforms, including Twitter, Facebook, You Tube, and Myspace. Blogs are also utilized by the Bureau of the Census, Minority Business Development Administration, and International Trade Administration.

At this time the Office of Inspector General (OIG) does not utilize social media for dissemination of information. The office's public affairs team is prepared to explore this opportunity in the near future. In addition, a representative from the OIG is participating in a new media working group established by the Council of Inspectors General on Integrity and Efficiency to explore how the OIG community can use new media to further the IG mission.

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

The Office of Inspector General (OIG) employs a public affairs specialist whose responsibilities include the publication of information on the OIG website. In addition to the types of information routinely posted, as discussed in I.1.g, the OIG continues to examine ways to make proactive disclosures regarding investigations consistent with the Privacy Act and confidentiality requirements.

IV. Steps Taken To Greater Utilize Technology

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. In 2010 agencies reported widespread use of technology in handling FOIA requests. For this section of your Chief FOIA Officer Report for 2011, please answer the following more targeted questions:

1. Electronic receipt of FOIA requests:

a. What proportion of the components within your agency which receive FOIA requests have the capability to receive such requests electronically?

All bureaus of the Department have dedicated e-mail boxes to receive initial FOIA requests except four bureaus. Those four bureaus, Economic and Statistic Administration, International Trade Administration, Minority Business Development Administration, and National Technical Information Service currently use an individual person's e-mail box to receive initial FOIA requests. Those bureaus are either in the process of establishing a dedicated e-mail box or are considering establishing a dedicated e-mail box.

Both the Office of the Assistant General Counsel for Administration and the U.S. Patent and Trademark Office have dedicated e-mail boxes to receive appeals.

b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

The number of dedicated e-mail boxes increased by one since the filing of the last Chief FOIA Officer Report.

c. What methods does your agency use to receive requests electronically?

All bureaus have either dedicated e-mail boxes or individual person's e-mail boxes, and facsimile numbers to receive requests.

2. Electronic tracking of FOIA requests:

a. What proportion of components within your agency which receive FOIA requests have the capability to track such requests electronically?

All bureaus of the Department have the ability to track FOIA requests electronically.

b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

Not applicable. All bureaus of the Department have had the capability to track FOIA requests electronically for many years.

c. What methods does your agency use to track requests electronically?

All bureaus have electronic databases where all relevant FOIA request information is stored. As the request moves through various stages of processing, the electronic databases are updated to reflect the current status of each FOIA request. The electronic databases allow for shared internal use and electronic reporting. The U.S. Patent and Trademark database is automated to update to reflect the current status of each FOIA request.

3. Electronic processing of FOIA requests:

a. What proportion of components within your agency which receive FOIA requests have the capability to process such requests electronically?

All but three bureaus have the ability to process FOIA requests electronically.

b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

The number of bureaus able to electronic process FOIA requests was increased by one bureau.

c. What methods does your agency use to process requests electronically?

In order to process FOIA requests electronically, all bureaus communicate with relevant operating units and requesters electronically. In addition, nine bureaus have the capability to scan responsive documents, review them and process them with electronic redaction software as necessary. Four bureaus currently do not have the ability to process requests with electronic redaction software. These four bureaus receive only a small number of FOIA requests each year.

4. Electronic preparation of your Annual FOIA Report:

- a. What type of technology does your agency use to prepare your agency Annual FOIA Report, i.e., specify whether the technology is FOIA-specific or a generic data-processing system?**

One bureau has FOIA-specific technology to prepare their Annual FOIA Report. Four bureaus have generic data-processing systems which have been specifically programmed to prepare their Annual FOIA Reports. Eight bureaus have generic data-processing systems which have not been specifically programmed to prepare their Annual FOIA Reports, therefore the reports are generated manually.

- b. If you are not satisfied with your existing system to prepare your Annual FOIA Report, describe the steps you have taken to increase your use of technology for next year.**

At this time, five bureaus are satisfied with their existing system. However, one of the eight bureaus noted they continue to explore alternative electronic systems to determine if there is a more effective way to manage their FOIA information and prepare their Annual FOIA Report. The eight bureaus manually generating their Annual FOIA Reports are consulting with the other bureaus of the Department that have generic data-processing systems which are specifically programmed to prepare their Annual FOIA Reports, to see if this is a viable solution to obtain the technology to prepare their Annual FOIA Reports.

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

Improvements to timeliness in responding to pending FOIA requests and reductions in backlogs are both ongoing agency efforts. The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. Section XII of your Annual FOIA Report includes figures that show your agency's backlog of pending requests and administrative appeals for the past two fiscal years. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In this section you should address the following elements.

- 1. If your agency has a backlog, report here whether that backlog is decreasing. That reduction should be measured in two ways. First, report whether the number of backlogged requests and backlogged administrative appeals that remain pending at the end of the fiscal year decreased or increased, and by how many, when compared with last fiscal year. Second, report whether your agency closed in Fiscal Year 2010 the ten oldest of those pending requests and appeals from Fiscal Year 2009, and if not, report how many of them your agency did close.**

At the end of FY09, the Office of the Secretary had 6 backlogged requests. At the end of FY10 the Office of the Secretary had 12 backlogged requests. The increase in the backlog was primarily caused by the need for consultation with other agencies and secondarily by voluminous documents. In FY09 the Office of the Secretary received 235 requests and in FY10 252 requests were received. The Office of the Office of the Secretary closed the ten oldest pending requests from FY09 during FY10.

At the end of FY09, the Bureau of the Census had 1 backlogged request. At the end of FY10 the Bureau of the Census had 20 backlogged requests. While the number of backlogged requests did increase, this fiscal year was unusual in that the Bureau of the Census was conducting the 2010 Decennial Census and FOIA requests increased by 41%. In FY09 the Bureau of the Census received 234 requests and in FY10 329 requests were received. The Bureau of the Census closed the ten oldest pending requests from FY09 during FY10.

For FY09 and FY10, the Bureau of Industry and Security maintained a zero backlog for all FOIA requests.

At the end of FY09, the Economic Development Administration had a zero backlog. At the end of FY10 the Economic Development Administration had 2 backlogged requests. The increase in the backlog was primarily caused by the complexity of the requests received. In FY09 the Economic Development Administration received 37 requests and in FY10 51 requests were received. The Economic Development Administration closed the ten oldest pending requests from FY09 during FY10.

For FY09 and FY10, the Bureau of Economic Analysis maintained a zero backlog for all FOIA requests.

At the end of FY09, the International Trade Administration had 16 backlogged requests. At the end of FY10 the International Trade Administration had 4 backlogged requests. In FY09 the International Trade Administration received 141 requests and in FY10 66 requests were received. The International Trade Administration closed the ten oldest pending requests from FY09 during FY10.

For FY09 and FY10, the Minority Business Development Administration maintained a zero backlog for all FOIA requests.

At the end of FY09, the National Institute of Standards and Technology had 29 backlogged requests. At the end of FY10 the National Institute of Standards and Technology had 39 backlogged requests. In FY09 the National Institute of Standards and Technology received 170 requests and in FY10 216 requests were received. The National Institute of Standards and Technology closed five of the ten oldest pending requests from FY09 during FY10.

At the end of FY09, the National Oceanic and Atmospheric Administration had 98 backlogged requests. At the end of FY10 the National Oceanic and Atmospheric Administration had 106 backlogged requests. In FY09 the National Oceanic and Atmospheric Administration received 688 requests and in FY10 652 requests were received. The National Oceanic and Atmospheric Administration closed nine of the ten oldest pending requests from FY09 during FY10.

At the end of FY09, the National Telecommunications and Information Administration had zero backlogged requests. At the end of FY10 the National Telecommunications and Information

Administration had 10 backlogged requests. In FY09 the National Telecommunications and Information Administration received 45 requests and in FY10 99 requests were received.

For FY09 and FY10, the National Technical Information Service maintained a zero backlog for all FOIA requests.

First, at the end of FY10 the Office of Inspector General (OIG) had one backlogged FOIA—this represents no change from the previous fiscal year. However, the OIG has shown a steady decrease in backlog through the years. The OIG had one backlogged FOIA at the end of FY09; two at the end of FY08; four at the end of FY07; and five at the end of FY06. Second, the OIG closed the ten oldest pending requests from FY09 in FY10.

The U.S. Patent and Trademark Office maintained a zero FOIA backlog or appeal backlog in FY09 or FY10.

At the time of the FY10 FOIA Annual Report the Office of the Assistant General Counsel for Administration's backlog of FOIA appeals was 73. This is an increase of 13 backlogged appeals from FY09. Of the 10 oldest pending appeals at the end of FY09, 5 were processed in FY10. The Office of the Assistant General Counsel for Administration closed 5 of the ten oldest pending appeals from FY09 during FY10.

- 2. If there has not been a reduction in the backlog as measured by either of these metrics, describe why that has occurred. In doing so, answer the following questions and then include any other additional explanation:**

National Institute of Standards and Technology:

- a. Is the backlog increase a result of an increase in the number of incoming requests or appeals?** Yes, the backlog increase is a result of an increase in the number of incoming requests and appeals received. The number of FOIA requests received increased by 24% from FY09 through FY10.
- b. Is the backlog increase caused by a loss of staff?** No.
- c. Is the backlog increase caused by an increase in the complexity of the requests received?** Yes, the backlog increase was caused by an increase in the complexity, i.e., requests involving voluminous responsive records and most of the requests required submitter notice and referrals and consults with other agencies.
- d. What other causes, if any, contributed to the increase in backlog?** The backlog increase was also the result of FOIA litigations which delay the processing of new FOIA requests for similar information.

National Oceanic and Atmospheric Administration:

- a. Is the backlog increase a result of an increase in the number of incoming requests or appeals?** No.
- b. Is the backlog increase caused by a loss of staff?** No.
- c. Is the backlog increase caused by an increase in the complexity of the requests received?** Yes, the backlog increase was caused by an increase in the complexity, i.e., requests involving voluminous responsive records and most of the requests required submitter notice and referrals and consults with other agencies.

- d. What other causes, if any, contributed to the increase in backlog?** The number of requests received concerning the Deep Water Horizon Oil Spill.
- 3. Describe the steps your agency is taking to reduce any backlogs and to improve timeliness in responding to requests and administrative appeals. In doing so answer the following questions and then also include any other steps being taken to improve timeliness.**
- a. Does your agency routinely set goals and monitor the progress of your FOIA caseload?**

Yes, all bureaus of the Department routinely monitor the progress of the FOIA caseload. In addition meetings are held with Senior Departmental personnel where the agency-wide FOIA backlog is discussed.

- b. Has your agency increased its FOIA staffing?**

Yes, in 2010, the Office of Inspector General hired a full-time paralegal, in part, to manage the agency's FOIA program and added several new attorneys who assist with FOIA processing; the Bureau of the Census increased staff from 3.7 equivalent full-time FOIA employees in FY09 to 5 equivalent full-time FOIA employees in FY10 to help handle the anticipated increased FOIA workload; the National Institute of Standards and Technology hired one new FOIA professional in FY10; and the National Telecommunications and Information Administration added an attorney to the staff to replace an outgoing FOIA specialist and a part time attorney to review FOIA documents and to supervise the process.

- c. Has your agency made IT improvements to increase timeliness?**

The Office of the Assistant General Counsel for Administration is in the process of designing a new document management system to improve timeliness.

The Bureau of the Census has purchased new more efficient versions of software used to process FOIA requests.

The Bureau of Industry and Security changed its tracking system to assist in completing the manual count of each area of the Annual FOIA Report and creates an archive which can be better manipulated when searching for completed FOIA requests.

The Economic Development Administration and the National Institute of Standards and Technology both report information technology improvements.

The National Oceanic and Atmospheric Administration is in the process of adopting a centralized system for tracking and control of FOIA requests.

d. Has your agency Chief FOIA Officer been involved in overseeing your agency's capacity to process requests?

The Commerce Chief FOIA Officer has been involved in the oversight of the FOIA process and attends meetings where the agency-wide FOIA backlog is discussed.

Spotlight on Success

Out of all the activities undertaken by your agency in this last year to increase transparency, describe here one success story that you would like to highlight as emblematic of your efforts.

The Office of the Secretary FOIA staff are now part of the newly established Office of Privacy and Open Government, headed by the Chief Privacy Officer and Director of Open Government. Consolidating both the FOIA and Open Government functions will improve the FOIA operations, facilitate information disclosure, and improve transparency.

There was a great interest by the public regarding how 2010 Decennial Census enumerators would conduct their job activities. The Bureau of the Census received FOIA requests asking for different topics covered in 2010 Decennial Census enumerator training. Deciding that this material was of great interest, the Bureau of the Census reviewed and posted our entire enumerator training manuals to their FOIA reading room.

In January 2011, the Economic and Statistics Administration (ESA) launched a completely revamped home page for the Headquarters web site. The site's layout and content were developed in view of the Administration's efforts to increase transparency and make more information available to the public. The "new" web site is more informative, easier to navigate, and customer friendly. A streamlined review process has been put in place to ensure that posted material is both timely and relevant. This availability of more comprehensive material will foster openness and increase public awareness of ESA's mission.

The National Telecommunications and Information Administration (NTIA) Office of Chief Counsel has worked very hard in 2010 to make available all grant award documents from the high profile Broadband Technology Opportunities Program (BTOP) and Mapping Programs described above. This has been a very time consuming, complex project involving the posting of award documents from nearly 300 grants made in 2010 pursuant to ARRA. This process includes a B4 process, seeking permission from the grantee to post documents on NTIA's website. In many, cases this process involves redacting business proprietary information (B4) and personal private information (B6). This often involves negotiations with the grantees to encourage increased disclosure. Next NTIA/OCC prepares the documents for posting to NTIA's website, including electronic redacting. On average, including review and preparation, between 500 and 1000 pages of information is posted on NTIA's website daily. This has led to a reduction of probable inquiries and FOIA requests regarding these grants.

As part of its commitment to transparency, the Office of Inspector General (OIG) continues to proactively release its reports and information on its activities to the public. In addition to routinely reviewing audit and evaluation reports and other written products for posting on the public OIG website, the OIG strives to anticipate public interest in our activities and to make information readily available and easy to access. As an example, the OIG has established reading rooms on its public website dedicated to sharing information regarding two very important OIG initiatives: a nationwide review of the policies and practices of NOAA's Office of Law Enforcement (OLE) and

General Counsel for Enforcement and Litigation (GCEL), and the 2010 United States Census. Both of these reading rooms are emblematic of the agency-wide commitment to transparency.