



## **U.S. DEPARTMENT OF STATE**

*CHIEF FREEDOM OF INFORMATION ACT OFFICER  
ANNUAL REPORT  
MARCH 2017*

## Summary

The Department of State is responsible for formulating and executing the foreign policy of the United States and maintains records dealing with U.S. foreign relations as well as those relating to the programs and activities that support this mission. The Department's mission is global in nature as are the records that document that mission. As such, the Department maintains its records at dozens of locations domestically and at hundreds of posts located around the globe.

The Freedom of Information Act (FOIA) requests received by the Department are often a mixture of complex subject matters regarding foreign government relations, diplomacy, terrorism, armed conflicts, and security; they can require multiple searches throughout many of the Department's approximately 270 domestic offices and posts. Additionally, requests often involve the review of classified or highly sensitive materials, as well as coordination with other federal agencies and foreign governments. In many of these cases, searches locate voluminous amounts of paper and electronic records that must be reviewed by subject matter experts within the Department, as well as other U.S. Government agencies. These reviews are required to determine whether the release of the information would potentially harm U.S. national security or damage relations with foreign governments, or other sensitivities.

The Department makes every effort to respond to FOIA requests within the statutory response period. In an effort to respond to all requests in the most comprehensive manner, the Department processes FOIA requests incrementally and makes interim responses to requesters as document searches and reviews are completed rather than waiting until all responsive records are located and reviewed. To implement its statutory responsibilities under FOIA, the Department has established a centralized and comprehensive FOIA Program, in which a single office receives and coordinates the processing of FOIA requests made to the Department. Whether that coordination is with the Department's domestic offices and bureaus, its posts overseas, other federal agencies, or foreign governments, the process is managed by the FOIA Program in the Bureau of Administration's Office of Information Programs and Services (A/GIS/IPS).<sup>1</sup>

During this reporting period (March 2016 to March 2017), the Department's FOIA program experienced several major changes that have either resulted in significant improvements or positioned the Department for improvements in the next few years. New leadership and management approaches adopted as early as March 2016 have been the catalyst of much of this change, as well as additional resources provided to support the program.

The most significant achievements for this reporting period are the efforts in place to reduce the FOIA backlog, the increased use of the FOIA website through the adoption of the "Release to

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<sup>1</sup> The Office of Inspector General (OIG) and the Bureau of Consular Affairs' Office of Passport Services (CA/PPT) are the only exceptions to this process at the Department. OIG processes FOIA requests independently and provides information and statistics on its FOIA activities for inclusion into the Department's FOIA Annual Report. PPT processes FOIA requests independently, but IPS provides information and statistics on PPT's FOIA activities for inclusion into the Department's FOIA Annual Report.

One, Release to All” approach to posting documents, the increase of FOIA training of agency staff, and the increase of the processing of FOIA litigation cases.

The Department is committed to decreasing the current FOIA backlog. The preponderance of cases accounting for the backlog consists of referral cases from the United States Citizenship and Immigrations Services (USCIS). Since the reporting of the total backlog on our 2016 FOIA Annual Report, we were able to close many of the USCIS cases as part of a concerted effort by A/GIS/IPS and the Bureau of Consular Affairs. Better data organization for open cases in the FOIA backlog in IPS has been helpful to the management of cases and resource planning. The oldest cases in the Department, which date back to 2006, are now being targeted for completion in this calendar year along with those from 2007 and 2008; this is being done in addition to processing the many other incoming requests.

The Department saw an increase of 42% more documents posted to the website than existed during previous reporting period when there were just over 110,000 documents posted online. The FOIA website now features over 156,000 posted documents. These posted documents include both court-ordered document productions in FOIA litigation cases and documents requested and released through the Department’s FOIA program. As of the time of this report, these monthly postings to the FOIA website include nearly all of the documents released from the FOIA program in the previous month (i.e. the posting at the end of March 2017 will include nearly all of the documents released in February 2017, the posting in April will include nearly all of the documents released in March, etc.).

Over the past year, the Department has increased training and conducted more awareness outreach than in recent years, especially those offices in the Department that work on the processing of FOIA cases. New standard operating procedures were put in place in A/GIS/IPS for expedited requests, which has resulted in these cases being processed faster than in the past (as reflected in the report’s data). This change was implemented following public feedback. Additionally, A/GIS/IPS eliminated the use of “still interested” letters as a result of public feedback.

Despite the progress made, newly identified problems with the FOIA program required immediate attention. The Department consistently had more than 100 FOIA litigation cases throughout the year, continuing its streak of unprecedented FOIA litigation demands. While the Department accounts for nearly 25% of all federal agencies’ FOIA litigation cases, these 100+ cases account for less than one percent of the Department’s FOIA caseload. Court ordered document production schedules required A/GIS/IPS, which manages FOIA litigation cases working along with or in conjunction with the Department’s Office of the Legal Adviser, to allocate about 80% of its FOIA resources to meet these court-ordered productions.<sup>2</sup>

Additionally, the volume of incoming FOIA requests (not in litigation) remained similar to past years with more than 20,000 incoming requests. With so many resources being committed to processing FOIA litigation cases, it has been challenging to respond quickly to other FOIA requests which are at risk of becoming FOIA litigation cases if not processed in a timely manner.

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<sup>2</sup> This has been cited in declarations in several FOIA litigation cases.

In sum, the Department's FOIA program is now better poised to process and efforts continue to further improve our response to the public. We will continue with our efforts to reduce the backlog and to make records available to the public through the FOIA website. The Department will continue to use its online presence to promote transparency and provide information to the public. Feedback is welcome and can be provided at <https://foia.state.gov/Contact/Feedback.aspx>.

## Content of 2017 Chief FOIA Officer Reports

### Name and Title of your Agency's Chief FOIA Officer

Assistant Secretary of Administration, Bureau of Administration, U.S. Department of State

Currently Vacant

Inquiries for the Chief FOIA Officer can be directed to the Deputy Assistant Secretary for Global Information Services (A/GIS)

Ambassador Larry L. Palmer

### **Section 1: Steps Taken to Apply the Presumption of Openness**

The guiding principle underlying the President's [FOIA Memorandum](#) and the DOJ's [2009 FOIA Guidelines](#) is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

#### **A. FOIA Training**

1. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any FOIA training or conference during the reporting period such as that provided by the Department of Justice?

Yes, the Department both attended and conducted FOIA training during this reporting period.

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

The Department offered a variety of different training sessions in the form of in-person and conference-call briefings to various personnel. These sessions were held by the Director of the Office of Information Programs and Services (IPS), the FOIA Program Manager who joined the Department in May 2016, and the Office of the Legal Adviser. These briefings and training sessions were tailored to each different audience.

The Acting IPS Director and FOIA Program Manager held four all hands briefings for all IPS employees working on FOIA in May, June, August, and October 2016; more recently, sessions held in February and March of 2017 as well. Topics of these sessions included an overview of the organization and offices in the State Department followed by a discussion on how to task search requests, an overview of the FOIA in general, a review of the recent amendments to the FOIA, reminders about annual training requirements for classified and privacy information, updates on efforts to implement records management mandates which may affect FOIA, a review of efforts to address existing FOIA processing issues, an update on efforts to increase postings to the FOIA website, a conversation on establishing FOIA case processing priorities including new timelines for expedited requests, elimination of the use of "still interested" letters, and more.

Additionally, IPS Leadership including the FOIA Program Manager along with attorneys in the Office of the Legal Adviser held training sessions for IPS reviewers; IPS employs analysts and reviewers to process FOIA requests, the latter conducting nearly all of the substantive review of documents in response to requests. Two training sessions held in June 2016 covered a variety of topics including briefings on the

use of FOIA exemptions B1, B4, B5, and B6, as well as a briefing on updates and changes to the existing FOIA case management system.

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

Approximately 70% percent of the Department's FOIA professionals attended substantive FOIA training during this reporting period.

4. OIP has directed agencies to "take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year." If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

Additional FOIA professionals are located in decentralized bureaus; many of those professionals process FOIA request part-time. Plans are already in motion to ensure that we provide substantive FOIA training during the next reporting year. A/GIS/IPS has initiated a speakers series in the Department's Ralph J. Bunche Library, to provide training regarding FOIA and to advise staff of their roles and responsibilities in the FOIA process. A/GIS/IPS requested OGIS and DOJ/OIP representatives to provide on-site training. A/GIS/IPS is providing information to all FOIA staff regarding other briefings that are provided by the American Society of Access Professionals (ASAP).

### ***B. Outreach***

5. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA?

Yes. During the reporting period, the Department regularly interacted with numerous requesters regarding the processing of the Department's pending FOIA cases.

The IPS Director participated in discussions about a recommendation from the public to eliminate the use of "still interested" letters after the Department used an incorrect template to send one such letter. After this discussion, the Department ceased using the "still interested" letters altogether, instead shifting resources and focus to processing cases to completion.

The Department's FOIA Public Liaison (FPL) attended the American Society of Access Professionals' events, which provide opportunities to communicate with the requester community.

6. If you did not conduct any outreach during the reporting period, please describe why.

N/A

### ***C. Other Initiatives***

7. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA.

The FOIA Program Manager regularly interacts with employees throughout the Department regarding FOIA issues. The FOIA Program Manager also provides training regarding employee's FOIA responsibilities and about any changes to the Department's policies implementing the FOIA. Through the FOIA Program Manager's Outreach Program with the Department's bureaus, Department personnel have access to individualized FOIA briefings.

Having just experienced a change in Presidential Administration, outgoing officials were reminded in writing and in individual briefings of their responsibilities to complete their outstanding FOIA searches and to preserve their records so that they can be searched in the future. Incoming officials have been briefed on their records and classification responsibilities with additional briefings on FOIA expected to be scheduled during the period that will be covered in the next report.

In March 2017, a new Department-wide outreach effort started which includes a monthly FOIA briefing for Department employees being offered in the Department's Ralph J. Bunche Library. This briefing, which is scheduled to occur the second Wednesday of every month from March 2017 onward, is meant to provide an overview of the FOIA and the responsibilities of Department employees in searching for and providing potentially responsive records for requests.

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

The Department started to implement the policy of "Release to One, Release to All" during this reporting period. Starting in June 2016, there were a series of monthly postings made to the public FOIA website ([www.foia.state.gov](http://www.foia.state.gov)) including records released in FOIA cases over the past couple years. By early March 2017, documents were being posted from FOIA productions made in January 2017. The posting at the end of March 2017 will include releases from February 2017; current plans call for a new posting every month which will include substantially all documents released to requesters during the previous month (excluding any Privacy Act or first person requests involving privacy information).

Additionally, documents that were ordered to be posted in FOIA litigation have been posted to the FOIA website over the past year on a rolling basis and continue to be posted pursuant to court-ordered production schedules. Such rolling productions include documents to and/or from former Secretary of State Hillary Clinton that were provided to the Department by the Federal Bureau of Investigation in the summer of 2016.

The documents available on the Department's FOIA website now number more than 156,000 as of March 2017, an increase of over 40% since the previous report.

## **Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests**

The DOJ's [2009 FOIA Guidelines](#) emphasized that "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." It is essential that agencies effectively manage their FOIA program.

Please answer the following questions to describe the steps your agency has taken to ensure that the management of your FOIA program is effective and efficient. You should also include any additional information that that describes your agency's efforts in this area.

### **A. Processing Procedures**

1. For Fiscal Year 2016, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A., of your agency's Fiscal Year 2016 Annual FOIA Report.

In FY 2016, the average number of days for adjudicating requests for expedited processing was 10 days, down from 10.49 days the year before. The Department implemented new procedures for expedited requests during the reporting period which contributed to the reduction in processing time.

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

N/A

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report data, using active workflows and track management, reviewing and updating processing procedures, etc.

The Department launched a number of self-assessment exercises during this reporting period. There are two studies involving the FOIA process: one focusing on changing the future Department-wide IT approach to processing FOIA requests so that new IT may be acquired to better respond to requests and the other reviewing the current staffing structure of A/GIS/IPS to include how better to structure the FOIA offices within IPS to support an improved process.

A/GIS/IPS management conducted reviews of existing processes to identify short- and long- term solutions; the focus has been to improve the entirety of the Department's FOIA process so that responses to the public are provided in a more consistent and timely manner and more information is posted to the FOIA website. These efforts have included improved communication and coordination among and between offices in the Department working to process FOIA requests; these efforts have been successful.

4. Please provide an estimate of how many requests your agency processed in Fiscal Year 2016 that were from commercial use requesters. If your agency is decentralized, please identify any components within your agency that received a majority of their requests from Commercial use requesters.

The Department estimates that we received 260 requests from Commercial use requesters.

### ***B. Requester Services***

5. Does your agency provide a mechanism for requesters to provide feedback about their experience with the FOIA process at your agency? If so, please describe the methods used, such as making the FOIA Public Liaison available to receive feedback, using surveys posted on the agency's website, etc.

Yes. The Department has a Requester Service Center which can be contacted via telephone at: (202) 261-8484 or via email at [foiastatus@state.gov](mailto:foiastatus@state.gov); this information is available on the Department's FOIA website: <https://foia.state.gov/Contact/Default.aspx#>.

The Department also has a FOIA Public Liaison who is also available to receive feedback; contact information for the FOIA Public Liaison is on the FOIA website link provided above.

Additionally, the public can provide feedback using the FOIA website using the following link: <https://foia.state.gov/Contact/Feedback.aspx>.

6. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of how often requesters sought assistance from your agency's FOIA Public Liaison.

In May 2016, a new FOIA Public Liaison, who also serves as the Department's FOIA Program Manager, joined A/GIS/IPS. For the eight months of available data in response to this question, the Public Liaison was contacted on average about 67 times per month. In those eight months, she was contacted 535 times – 360 by phone and 175 by email.

7. The FOIA Improvement Act of 2016 requires agencies to make their reference material or guide for requesting records or information from the agency electronically available to the public. Please provide a link to your agency's FOIA reference guide.

<https://www.foia.state.gov/Request/Guide.aspx>

### ***C. Other Initiatives***

8. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as improving search processes, eliminating redundancy, etc., please describe them here.

During the reporting period, efforts were made to improve communication and coordination among the various offices working on FOIA cases in the Department. This includes a series of meetings on FOIA IT Governance chaired by the Office of the Transparency Coordinator, as well as meetings held by IPS with the Bureau of Diplomatic Security, the Bureau of Consular Affairs and the Department's Executive Secretariat.

As noted above, A/GIS/IPS brought in experts to study its FOIA process from A to Z.

### ***Section III: Steps Taken to Increase Proactive Disclosures***

Both the **President's** and **DOJ's** FOIA memoranda focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

#### ***A. Posting Material***

1. Describe your agency's process or system for identifying "frequently requested" records that should be posted online.

The Department adopted the "Release to one, Release to All" approach to posting FOIA documents online during this reporting period. With the exception of first person requests (i.e. those involving privacy or personally identifiable information), the Department now posts on its FOIA website those documents released to the public in the previous month. These releases include all FOIA cases that are not in litigation; documents from FOIA litigation cases that are not court ordered are expected to be posted on the FOIA website later this calendar year, fully completing the adoption of "Release to One, Release to All." This approach exceeds the requirement to post documents/information that has been requested multiple times. It is part of a strategy to use the website to promote transparency and to avoid duplicative requests in the future.

2. Does your agency have a distinct process or system in place to identify other records for proactive disclosure? If so, please describe your agency's process or system.

Yes, see response provided above the question #1.

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

Yes

4. If so, briefly explain those challenges and how your agency is working to overcome them.

The Department is using its available resources to post online as many documents as possible each month. At this point, nearly all documents released in FOIA cases are posted on the FOIA website with the exception of certain Privacy Act and first person requests, as well as a few other instances. The preponderance of information released through the Department's FOIA process is now posted online within less than two months of the release of that information to the public. The delay between the public release of documents and their posting on the website is based on the available resources to complete the posting process, which are also needed to comply with court ordered production postings and other IT needs in support of the Department's FOIA program.

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

Starting in June 2016, the Department resumed posting documents released in non-litigation FOIA requests on the FOIA website. As the monthly postings continue, the public will be able to see what the Department is processing less than two months of it being sent to a requester. In some FOIA litigation cases, records are being posted, making them simultaneously available to both the plaintiff in those cases and the public. Below are links that would include documents proactively disclosed on the website in some instances:

<https://foia.state.gov/Search/Collections.aspx>

<https://foia.state.gov/Search/Litigation.aspx>

6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe these efforts.

From March through November 2016, the Department announced the proactive disclosure of this material on the Department's FOIA website in a daily press briefing.

### ***B. Other Initiatives***

7. If there are any other steps your agency has taken to improve proactive disclosures, please describe them here. For example, has your agency engaged requesters in determining how and what to post? Has your agency used web analytics to inform your proactive disclosures?

N/A

### ***Section IV: Steps Taken to Greater Utilize Technology***

A key component of the President's **FOIA Memorandum** was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that that describes your agency's efforts in this area.

### ***A. Making Material Posted Online More Useful***

1. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website?

Yes

2. If yes, please provide examples of such improvements.

The Department currently posts documents to its FOIA website that are in PDF format and are searchable through metadata provided for each document or via full-text searches. All documents are put through an optical character recognition process and the public is able to search for key words and terms. The metadata provided for each document on the website includes subject (title), date, and to and from lines, which assists the public in locating documents of interest. The improvements made to the Department's FOIA website allow the public easy access to PDF documents, all of which are Section 508 compliant.

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

Yes, there are studies underway to examine and improve the overall FOIA process at the Department including how we interact with requesters via the website. IPS employees attended both interagency meetings events/conferences and those held by the American Society of Access Professionals (ASAP). The Department provided a briefing to another federal agency on how we post documents as one of our best practices.

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

4. Did your agency conduct training for FOIA staff on any new processing tools during the reporting period, such as for a new case management system, or for search, redaction, or other processing tools?

Yes, training occurred for Department employees using the case management system. This included new functionality and updates to the systems which is used in the search, redaction, and other aspects of processing FOIA requests.

5. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents? If yes please describe:

Yes. The Department is undertaking short- and long-term efforts to improve how technology is used to facilitate FOIA requests. In the short term, new ways to use existing tools are being examined including evaluating the existing processes to identify steps that should be automated or eliminated.

Two significant changes occurred during this rating period. First, the Department's FOIA case management system now has the ability to electronically ingest documents into the system. Prior to this development, potentially responsive electronic documents had to be printed out in paper prior to ingestion into the case management system. This development is part of a broader Department-wide effort to shift away from paper and toward better management of electronic records. Second, the Department is now processing documents electronically instead of in paper in several parts of the FOIA process including search responses and consultations. This significantly reduces the time needed to process documents.

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

Yes, these tools are being explored as part of the studies and review efforts previously noted.

### **C. Other Initiatives**

7. Did your agency successfully post all four quarterly reports for Fiscal Year 2016?

No

8. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2017.

The Department was behind in posting documents, including the quarterly reports, to the FOIA website outside of specific court ordered productions for the first half of calendar year 2016. During the reporting period, problems were identified regarding how the Department's case management system tracked FOIA cases. With recent improvements to the case management system, the tracking problems have been resolved and quarterly reporting should resume during calendar year 2017.

### **Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs**

The President's [FOIA Memorandum](#) and the DOJ's [2009 FOIA Guidelines](#) have emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations.

*For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2016 Annual FOIA Report and, when applicable, your agency's 2015 Annual FOIA Report.*

#### **A. Simple Track**

Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

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

Yes. The Department identifies that a request should be categorized as simple request that should be processed in the simple track. The Department's track for simple requests includes requests that the Department receives directly where the records are readily available for release and documents referred to the Department by other agencies for direct response to the requester. The Department is working to establish clear guidance on an efficient process to ensure that requests in the simple track are processed quickly.

2. If so, for your agency overall in Fiscal Year 2016, was the average number of days to process simple requests twenty working days or fewer?

No.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2016 that were placed in your simple track.

6%

4. If your agency does not track simple requests separately, was the average number of days to process all non-expedited requests twenty working days or fewer?

No

### **B. Backlogs**

Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Years 2015 and Fiscal Year 2016 when completing this section of your Chief FOIA Officer Report.

### **BACKLOGGED REQUESTS**

5. If your agency had a backlog of requests at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015? If not, explain why and describe the causes that contributed to your agency not being able reduce its backlog.

No. The backlog increased in Fiscal Year 2016. The number of requests pending as of the start of FY 2016 was 11,731. There were 22,664 requests in the Department's FOIA backlog at the end of FY16. That is an increase of approximately 52%. An explanation of the reasons for the increase is provided below in question 6. Efforts to update and improve the data used to track cases have been underway; these updated, and more accurate numbers, are included in the explanation below.

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

The Department consistently had more than 100 FOIA litigation cases throughout the year, continuing its streak of unprecedented FOIA litigation demands. While the Department accounts for nearly 25% of all federal agencies' FOIA litigation cases, these 100+ cases account for less than one percent of the Department's FOIA caseload. Court ordered document production schedules required A/GIS/IPS, which manages FOIA litigation cases working along with or in conjunction with the Department's Office of the Legal Adviser, to allocate about 80% of its FOIA resources to meet these court-ordered productions.

Additionally, the volume of incoming FOIA requests (not in litigation) remained similar to past years with more than 20,000 incoming requests. With so many resources being committed to processing FOIA litigation cases, it has been challenging to respond quickly to other FOIA requests which are at risk of becoming FOIA litigation cases if not processed in a timely manner.

This year's FOIA Annual Report indicates Section V.A of this year's FOIA Annual Report shows 11,731 cases in the backlog at the end of FY15. This total was wrong as it did not include more than 16,000 USCIS referrals that were not entered into the Department's case management system. In the end, we believe that the Department began FY16 with a backlog of approximately 28,500 cases (the 11,731 cases we reported in last year's report plus the 16,774 USCIS referrals for a combined total of 28,505 cases).

Efforts are underway to avoid these processing and counted issues in the future. Specifically, data has been better organized to track the backlog. There are about 4,000 of the USCIS cases to be ingested into our case management system (compared to 16,774 needed to be ingested at the start of FY16). These backlogged USCIS cases are expected to be ingested and processed by the end of the next reporting period.

7. If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests *received* by your agency in Fiscal Year 2016.

To calculate your agency's percentage, you must divide the number of backlogged requests reported in Section XII.A., of your Fiscal Year 2016 Annual FOIA Report by the number of requests received in Fiscal Year 2016, which can be found in Section V.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.

87%

### **BACKLOGGED APPEALS**

8. If your agency had a backlog of appeals at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015? If not, explain why and describe the causes that contributed to your agency not being able reduce backlog.

No

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

The Department's backlog of FOIA appeals increased in Fiscal Year 2016 because the reviewers who process appeals and the Appeals Officer were reassigned to work on FOIA litigation cases to assist with a large increase in the number of new litigation cases. 10. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2016. If your agency did not receive any appeals in Fiscal Year 2016 and/or has no appeal backlog, please answer with "N/A."

The appeals received during Fiscal Year 2016, make up 32% percent of the appeals backlog.

### ***C. Backlog Reduction Plans***

11. In the 2016 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2015 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2016?

Yes, a plan was developed and implemented. The plan had multiple parts. It focused on identifying the cases in the overall FOIA backlog to understand the extent of the problem and developing plans to address the backlog using available resources. Having accurate data was critical to this effort; significant time was dedicated to improving how data about cases was being organized and reported.

With regard to the cases in the FOIA case management system, new reports were developed to identify where the backlog exists within certain offices by the year of the request. A/GIS/IPS set clear priorities for IPS employees to process expedited and litigation cases as top priorities; all other cases were to be completed using the first-in, first-out approach. This has been clearly communicated to all A/GIS/IPS FOIA employees and is being tracked by IPS leadership.

Also, a team was committed to working full time to close the more than 16,000 United State Citizenship and Immigration Services (USCIS) referrals that were not previously put into the Department's case management system and therefore were not included in backlog counts in previous FOIA Annual Reports. This effort has been very successful; there are approximately 4,000 USCIS cases left to be ingested into the system; at the current rates, these cases should be both ingested and closed by the end of FY2017.

As a result, the FOIA backlog, which in fact stood at 28,505 cases at the start of FY16 including all of the USCIS cases that were not previously inputted into the case management system. The backlog has been reduced to 22,664 cases as of the date that this report is filed, for a backlog reduction of more than 20% during the course of FY16.

12. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2016, what is your agency's plan to reduce this backlog during Fiscal Year 2017?

The plan for FY17 is to continue the efforts started in FY16. The remaining USCIS referrals are expected to be in the system and closed by the end of the calendar year; all future referrals are being managed through an established process between the Department and USCIS. The Department will consider the recommendations from the two FOIA-related studies underway: one with a focus on obtaining new technology and the other on the current and potential staffing and resource models to support a new FOIA process. In FY17, there will be efforts made to complete short-term actions using existing resources such as making improvements to the existing FOIA website including continued monthly postings and emphasis on processing cases in the backlog using available data. Finally, the implementation of simple and complex tracking may assist.

#### ***D. Status of Ten Oldest Requests, Appeals, and Consultations***

Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C. (5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2015, and Fiscal Year 2016 when completing this section of your Chief FOIA Officer Report.

#### **TEN OLDEST REQUESTS**

13. In Fiscal Year 2016, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

Yes

14. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2015 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

N/A

15. Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?

Three were withdrawn by the requester.

#### **TEN OLDEST APPEALS**

16. In Fiscal Year 2016, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

No.

17. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2015 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

The Department closed five of its 10 oldest appeals.

### **TEN OLDEST CONSULTATIONS**

18. In Fiscal Year 2016, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

Yes.

19. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C., of your Fiscal Year 2015 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

N/A

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

20. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2016.

The demands of FOIA litigation and the resources required to support these court ordered production schedules detract from our ability to work on other FOIA cases, including appeals where we did not close our 10 oldest cases. A streamlined FOIA appeals process with fewer steps than the current process that allows for more expedient appeals decisions will help to close the ten oldest cases for the next report.

21. If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

N/A

22. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2017.

Efforts are underway to improve the FOIA appeals process at the Department. The Department expects to have a new appeals process proposed, if not implemented, by the time of the next report.

### ***F. Interim Responses***

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

Yes

24. If your agency had a backlog in Fiscal Year 2016, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

The Department estimates that it made 872 interim releases directly to requesters in Fiscal Year 2016.

## ***G. Success Stories***

Out of all the activities undertaken by your agency since March 2016 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas. As noted above, these agency **success stories** will be highlighted during Sunshine Week by OIP. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

The success stories of Fiscal Year 2015 show the commitment each FOIA professional displays on a daily basis:

- The FOIA backlog decreased by over 20% from 28,505 cases at the beginning of Fiscal Year (FY) 2016 to 22,664 at the end of FY16. The preponderance of cases accounting for this reduction involve referral cases from the United States Citizenship and Immigrations Services (USCIS) that have been closed as part of a concerted effort by IPS and the Bureau of Consular Affairs. Better data organization for open cases in the FOIA backlog has been helpful to the management of cases and resource planning. The oldest cases in the Department, dating back to 2006, are now being targeted for completion in this calendar year along with those from 2007 and 2008; this has been accomplished despite continued strong demand for information.
- Over the past year, the Department used the FOIA website to post more documents than ever before. The FOIA website, which now has over 156,000 documents posted on it, hosts documents from both court-ordered document productions in FOIA litigation cases and releases through the Department's FOIA program. The library of documents on the website grew by more than 40% from the already high number of 110,000. In June 2016, the Department resumed regular monthly document postings for those records released through its FOIA program (those cases not in litigation and not involving first person/Privacy Act or similar requests) on the FOIA website; the previous year's postings were almost entirely done in response to FOIA litigation cases. As of the time of this report, these monthly postings to the FOIA website include nearly all of the documents released from the FOIA program in the previous month (i.e., the posting at the end of March will include nearly all of the documents released in February, the posting in April will include nearly all of the documents released in March, etc.).