



U.S. DEPARTMENT OF STATE

CHIEF FOIA OFFICER REPORT

MARCH 2021

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 overseas posts. In many of these cases, searches locate voluminous amounts of paper and electronic records, often containing highly classified or otherwise sensitive information that must be reviewed by subject matter experts within the Department, as well as other U.S. Government agencies or foreign governments. These reviews are required to determine whether the release of the information could harm U.S. national security, damage relations with foreign governments, or reveal other sensitive information.

The Department makes every effort to respond to FOIA requests within the statutory response period. To implement its statutory responsibilities under FOIA, the Department has established a centralized and comprehensive FOIA program, in which a single office, the Office of Information Programs and Services (A/GIS/IPS), receives and coordinates the processing of the majority of the FOIA requests made to the Department. Only two other offices, the Law Enforcement Liaison Division of the Directorate of Passport Services and the Office of Inspector General, are authorized to accept FOIA requests submitted 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 programs in these three Department components.

During this reporting period (March 2020 to March 2021), the Department strived to improve its FOIA program and reduce the FOIA backlog. However, the Department's ability to close cases at the same rate of previous years was significantly constrained due to the onset of the COVID-19 pandemic. On March 17, 2020, the Office of Management and Budget issued a memorandum directing all executive branch agencies to "[r]educe and re-prioritize non-mission-critical services to free up capacity for critical services," to "[m]aximize telework across the nation for the Federal workforce," and to "immediately adjust operations and services to minimize face-to-face interactions." The Department began implementing these guidelines to protect its employees and their communities, and to ensure that it could continue to perform mission-critical functions during this national emergency. These measures severely limited FOIA processing capabilities as the Department's legacy document review system resides on a classified network that is only accessible on site. Employees were not initially prepared to telework, most had never previously teleworked, and only a small fraction of personnel were onsite at Department workstations.

On April 20, 2020, the Office of Personnel Management directed that plans for ramping back up Federal Government operations would follow the national guidelines for Opening Up America Again. Those guidelines include a phased approach for the resumption of normal activities, which can begin only after certain epidemiological “gating criteria” are met on a location-by-location basis. Consistent with this guidance, the Department adopted a three-phased approach for resumption of operations. Between April 20, 2020, and June 15, 2020, the Department had not yet entered Phase One of that three-phased process and Department personnel remained unable to return to Department workspace.

During that time, A/GIS/IPS devoted substantial resources to adapt its FOIA program to the pandemic situation. From mid-March until mid-April 2020, the scheduling of all reemployed annuitant reviewers (REAs) was paused and IPS as a whole transitioned to maximum telework. Meanwhile, A/GIS/IPS leadership prepared approximately 380 FOIA and non-FOIA employees to telework (many for the first time ever). A/GIS/IPS leadership undertook significant efforts to complete the administrative work needed to make personnel telework-ready, train and equip those personnel with resources necessary to conduct FOIA processing via telework (which was not a Department practice pre-COVID-19), and troubleshoot the many novel issues that arose. These efforts were undertaken with the intention to resume as much FOIA processing as possible in a remote environment. The Department also continued deployment of its new FOIA case management system FOIAXpress, which is not housed exclusively on the Department’s classified systems, and, as a result, the Department was able to resume limited processing of FOIA cases using the telework functionality of FOIAXpress. That change enabled the Department to begin make productions in its FOIAXpress cases by processing unclassified documents available on the Department’s unclassified network remotely. This was a major change from past Department practice where all records, unclassified and classified, were processed on a legacy document review platform that operated exclusively on a classified computer network.

On June 15, 2020, the Department entered Phase One of its three-step process for the resumption of normal operations, which required that offices maximize telework. On July 27, 2020, the Department entered Phase Two. During Phase Two, the Department was no longer required to maximize telework but supervisors were encouraged to continue maximizing telework and extending telework flexibilities—particularly given childcare, eldercare, and transportation concerns. In light of rising COVID-19 cases across the country, the Department made an initial announcement on November 25, 2020, that it was reverting to a more restrictive policy and on December 21, 2020, announced that it was officially regressing to Phase One, where it currently remains.

As a result, the Department had to shift its focus on using technology to communicate with requesters and to support FOIA professionals working remotely. The Department promptly posted notices on its FOIA website and sent individualized correspondence advising requesters that it had altered its FOIA operations and that potential delays may be incurred in processing requests. While adapting to COVID-19 workplace precautions, the Department identified additional solutions to help facilitate remote work to improve intake, search, review, referrals and consultations, delivering responses to requesters, and proactive disclosures. The Department continued its “Release to One, Release to All” approach to posting documents on its FOIA

website, increased and improved FOIA training of agency staff, and ensured compliance with court orders in FOIA litigation cases.

The Department's FOIA litigation demands continue to be considerable. Despite the progress and improvements made to the FOIA program, the Department defended approximately 205 FOIA litigation cases, involving 368 FOIA requests, during the reporting period, continuing its streak of record high FOIA litigation demands for another year. These 368 FOIA requests account for approximately 2.5% of the Department's FOIA caseload. For most of this reporting period, court-ordered document production schedules required A/GIS/IPS to allocate over 90% of its FOIA review resources to meet these court-ordered productions. Most of these reviewer resources are currently part-time employees, whose availability has been severely constrained due to the ongoing pandemic, as described above.

The Department continues to receive demanding court orders concerning FOIA litigation productions, which further strain the Department's ability to meet its processing obligations across its ever-increasing litigation caseload. These orders require committing further resources to processing FOIA litigation cases, which in turn negatively impacts the Department's ability to provide information to a broader set of requesters and respond quickly to other FOIA requests that are themselves at risk of becoming FOIA litigation cases if not processed in a timely manner. This compound dilemma represents the Department's most serious and most complex challenge in meeting its FOIA obligations and improving its FOIA processes.

To help meet this challenge, the Department is in the process of hiring more full-time FOIA support to address both its FOIA and FOIA litigation demands. The Department is also in the process of creating an additional FOIA litigation branch in order to increase the capacity to process the increasing FOIA litigation demands. In order to further the core FOIA goals of transparency and accountability, the Department is committed to implementing aggressive measures to address its backlog while still maintaining the highest standards of quality and further improving its processes in the future. However, the Department's FOIA processing remains severely constrained as a result of the significant and unprecedented effects of the COVID-19 pandemic and is expected to remain that way until the U.S. Government returns to full operations.

In sum, the Department's FOIA program continues its efforts to improve its ability to process FOIA requests and remains committed to efforts to further improve its response to the public. The Department will continue with these efforts to reduce the backlog, improve response times, and make records available to the public through the FOIA website. The Department will also 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>.

Name and Title of your Agency's Chief FOIA Officer

John W. Dinkelman, Acting
Assistant Secretary, Bureau of Administration
U.S. Department of State

Section I: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying DOJ's FOIA Guidelines is the presumption of openness.

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

A. FOIA Leadership

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. See 5 U.S.C. § 552(j)(1) (2018) Is your agency's Chief FOIA Officer at or above this level?

Yes.

2. Please provide the name and title of your agency's Chief FOIA Office.

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B. FOIA Training

3. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. §552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

The Department offered a variety of different training sessions in the form of video conference-call briefings to hundreds of Department employees processing FOIA cases. Information Access training included sessions regarding FOIA, Privacy Act (PA), records management, National Security Information, and the organizational structure of the State Department.

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

Yes, the Department's FOIA professionals and personnel both attended and conducted FOIA training during this reporting period.

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

Despite the constraints imposed by the COVID-19 pandemic, the Department continued to provide training and hold briefings and information sessions for Department employees working on FOIA. Topics of these sessions included an overview of the FOIA in general, FOIA processing requirements, including guidance on expedited requests, a review of the most recent amendments to the FOIA, overview of the FOIA's nine exemptions, best practices when redacting documents, the FOIA and Privacy Act interface, classification and declassification of national security information, and records management. A/GIS/IPS provided multiple virtual training sessions on the newly acquired FOIAXpress system.

The A/GIS/IPS Director led a series of video briefings on the organization and responsibilities of the Department's domestic bureaus/offices and overseas posts. These briefings were meant to inform and educate the FOIA staff and ensure that the Department is conducting high quality searches for records sought in response to FOIA and other records requests. The Director also continued to hold regular meetings of the Department's internal FOIA Working Group. The Working Group is composed of employees from A/GIS/IPS, other offices that regularly receive FOIA requests, and other Department offices that play a role in the Department's FOIA process. Topics discussed included the processing of FOIA requests remotely, limited ability to process classified material, FOIAXpress and other IT updates, and FOIA reporting requirements.

All Department employees are required to complete online mandatory training for "Records Management for Everyone (PK217)," which includes a module regarding FOIA. Over 70,000 Department employees completed this program during the reporting period.

All Department personnel who hold a security clearance are also required to complete the online "Mandatory Training for Classifiers and Users of National Security Information (PK400)" on an annual basis. The goal of the course is to train Department of State personnel how to properly identify, classify, safeguard, and declassify national security information. Over 70,000 Department employees completed this program during the reporting period. This is particularly important due to the prevalence of foreign government information within State Department records.

A/GIS/IPS leadership also continued to encourage and approve funding for FOIA staff to attend briefings and trainings provided by the American Society of Access Professionals

(ASAP), the Department of Justice's (DOJ) Office of Information and Policy (OIP), and National Archives and Records Administration's (NARA) Office of Government and Information Services (OGIS).

6. Please 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 80% of the Department's FOIA professionals attended substantive FOIA training during this reporting period.

7. 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.

N/A

C. Outreach

8. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

Yes. During the reporting period, the Department regularly interacted with numerous requesters regarding the processing of their pending FOIA cases, including by providing estimated dates of completion (EDC).

The Department's FOIA Public Liaison (FPL) and other A/GIS/IPS employees attended American Society of Access Professionals events, which provided opportunities to interact with the requester community.

Additionally, the A/GIS/IPS Director serves as co-chair of the interagency Chief FOIA Officer Council's Technology Committee (<https://www.archives.gov/ogis/about-ogis/chief-foia-officers-council/technology-committee>). In this role, he participated in events with the public and the FOIA Advisory Committee to discuss FOIA, records management, and technology trends throughout the government, including those at the State Department.

D. Other Initiatives

9. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff.

The Department conducted agency-wide outreach on several occasions from March 2020 to March 2021. The Department issued agency-wide guidance on the use of electronic messaging applications, to ensure that all official business conducted on electronic messaging devices is captured and incorporated into the Department's central filing system in compliance with federal records management laws, regulations, and policies. The Department continues to require completion of online mandatory training for all Department employees, "Records Management for Everyone (PK217)," which includes a module on FOIA; as previously noted, over 70,000 Department employees have completed this course.

The FOIA Office regularly interacts with employees throughout the Department regarding FOIA issues. It also provides training regarding employee's FOIA responsibilities and about any changes to the Department's policies implementing the FOIA. Department personnel have access to individualized FOIA briefings by the FOIA Office, including its FOIA Program Manager. A/GIS/IPS also maintains an internal website where Department employees can view and download guidance on the FOIA.

A/GIS/IPS continued to brief incoming officials on their records and classification responsibilities, with additional briefings on FOIA, and to remind outgoing officials, in writing and in individual briefings, of their responsibilities to complete any outstanding FOIA searches before departure and to preserve their records so that they can be searched in the future.

10. Optional – 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 continued the policy of "Release to One, Release to All" during this reporting period through a series of regular postings made to the public FOIA website (foia.state.gov) of records released in FOIA cases, excluding any Privacy Act or first person requests involving privacy information. From March 1, 2020, through January 5, 2021, over 11,400 additional records were posted to the public FOIA website, making a total of more than 236,400 records available through the Department's transparency programs via the public website.

The Department's postings include releases from its Mandatory Declassification Review requests on its FOIA website. While other MDR releases have been posted in the past, the Department posts MDR releases as part of its regular postings, often at the end of the month.

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

DOJ's FOIA Guidelines emphasize 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.

1. For Fiscal Year 2020, 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 2020 Annual FOIA Report.

In FY 2020, the average number of days for adjudicating requests for expedited processing was 25.64 days.

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2020 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

The onset of the COVID-19 severely constrained the Department's ability to review and adjudicate requests for expedited processing in a timely manner. However, the A/GIS/IPS leadership was able to modify its FOIA processes for expedited requests, including making the intake personnel telework-ready and training and equipping those personnel with resources necessary to conduct FOIA processing via telework. The successful deployment of FOIAXpress, the Department's new agency-wide FOIA case management and redaction tool, which resides on an unclassified network, enabled the Department to resume limited processing of FOIA cases in a remote environment. The Department continues to strive to meet the statutory timeframe for adjudicating requests for expedited processing.

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.

•Note: In September 2017, OIP released a FOIA Self-Assessment Toolkit as a resource for agencies conducting a self-assessment of their FOIA program. The Toolkit is available on OIP's website for all agencies to use.

Yes, the Department has assessed its FOIA program on more than one occasion during this reporting period.

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. The Department has

established FOIA contacts, including a senior level point of contact as well as working level FOIA liaisons, within the various Department components to ensure that FOIA processing at the Department receives the attention it deserves. These efforts have resulted in improved communication and coordination among offices in the Department working to process FOIA requests.

For the majority of the reporting period, the Department remained on maximum telework, as part of its ongoing precautions taken to reduce the likelihood of transmission or community spread of COVID-19 within the workplace. Only a small fraction of A/GIS/IPS FOIA personnel were onsite at their Department workstations. However, despite the constraints imposed by the COVID-19 pandemic, the Department continued to implement its backlog reduction plan that provides for distinct resources for both FOIA and FOIA litigation demands. The Department developed new FOIA policies and procedures, increased training for its staff, and continued deployment of its new FOIA case management system, FOIAXpress. These efforts were undertaken with the intention to resume as much FOIA processing as possible in a remote environment. As a result, the Department was able to resume limited processing of FOIA cases using the telework functionality of FOIAXpress. That change enabled the Department to begin make productions in its FOIAXpress cases by processing unclassified documents available on the Department's unclassified network remotely. This is a major change from past Department practice where all records, unclassified and classified, were processed on a document review platform that operated exclusively on a classified computer network.

During the rating period, the Department continued its internal Department FOIA Working Group, which is chaired by the A/GIS/IPS Director in the bureau overseen by the Chief FOIA Officer and comprised of employees from the centralized FOIA office, other Department offices that regularly receive FOIA cases, and other Department offices that play a role in the Department's FOIA process. Topics discussed included the processing of FOIA requests remotely, FOIAXpress and other IT updates, and FOIA reporting requirements.

4. Standard Operating Procedures (SOPs): Having SOPs can improve the consistency and quality of an agency's FOIA process. In addition, describing an agency's standard practices for handling FOIA requests on agency FOIA websites can help requesters better understand how their request will be handled.

- a) Does your agency have SOPs that outline general processes for handling FOIA requests and appeals?

Yes

- b) If not, does your agency have plans to create FOIA SOPs?

N/A

- c) If yes, how often are they reviewed/updated to account for changes in law, best practices and technology?

Annually, as developments in case law arise, as statutory amendments require, and as circumstances warrant, such as in response to the COVID-19 pandemic.

- d) In addition to having SOPs, does your agency post or otherwise describe your standard processes for handling requests on your website?

SOPs are posted for internal staff.

5. 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 the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2020 (please provide a total number or an estimate of the number).

The FOIA Public Liaison, who also serves as the Department's FOIA Program Manager, was contacted an estimated 1200 times during FY 2020 (100 by phone and 1100 by email), for an average of 100 times per month.

6. Does your agency frequently receive common categories of first-party requests? If so, please describe the type of requests and if your agency has explored establishing alternative means of access to these records outside of the FOIA process?

The Department receives first-party requests various subject matters. Most requests relate to the issuance of a passport or a visa. The Department has established a centralized FOIA program, in which a single office, the Office of Information Programs and Services, receives and coordinates the processing of the majority of the FOIA requests made to the Department. However, the processing of most first-party requests may be tasked to a decentralized component of the Department for a direct reply to the requester. Requests for passport records may be submitted directly to the Law Enforcement Liaison Division of the Passport Services Directorate of the Bureau of Consular Affairs.

7. The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within 180 days. Has your agency updated its FOIA regulations in accordance with the FOIA Improvement Act of 2016? If not, what is your agency's plan to update your regulations?

The Department's draft FOIA regulations are pending the Federal Register notice for the final rule.

8. Please explain how your agency worked to mitigate the impact of the COVID-19 pandemic on FOIA processing. Examples could include but are not limited to: altering

workflows, implementing new technology, providing notices and instructions or otherwise communicating directly with requesters.

Over the last several months, the Department has devoted substantial resources to adapting its FOIA program in light of the significant and unprecedented constraints imposed by COVID-19. With the continuation of the pandemic's impact and uncertainty over its duration, records responsive to cases housed on the Department's classified network system at present are not accessible remotely.

The Department's FOIA processing capabilities were significantly constrained by the COVID-19 pandemic, as the scheduling of document reviewers, mostly retired foreign service officers hired as Re-employed Annuitants (REAs) was paused from mid-March to mid-April 2020, as IPS as a whole transitioned to maximum telework. During that time, IPS devoted substantial resources to adapt its FOIA program to the pandemic situation. A/GIS/IPS leadership prepared approximately 380 FOIA and non-FOIA employees to telework (many for the first time ever). A/GIS/IPS leadership undertook significant efforts to complete the administrative work needed to make personnel telework-ready, train and equip those personnel with resources necessary to conduct FOIA processing via telework (which was not a Department practice pre-COVID-19), and troubleshoot the many novel issues that arose. These efforts were undertaken with the intention to resume as much FOIA processing as possible in a remote environment. The Department also continued deployment of its new FOIA case management system FOIAXpress and, as a result, was able to resume limited processing of FOIA cases using the telework functionality of FOIAXpress. That change enabled the Department to begin make productions in its FOIAXpress cases by processing unclassified documents available on the Department's unclassified network remotely. This was a major change from past Department practice where all records, unclassified and classified, were processed on a legacy document review platform that operated exclusively on a classified computer network. The Department's ability to process documents maintained on its classified network remains severely constrained, with only a small fraction of its personnel onsite at Department workstations that have access to classified systems. It is expected to remain that way until the U.S. Government returns to full operations.

The Department focused on using technology to communicate with requesters via the public website (foia.state.gov) and to support FOIA professionals working remotely. The Department promptly posted notices and sent individualized correspondence, advising requesters that it had altered its FOIA operations and that potential delays may be incurred in processing requests. While adapting to COVID-19 workplace precautions, the Department identified additional solutions to help facilitate remote work to improve intake, search, review, referrals and consultations, delivering responses to requesters, and proactive disclosures.

The FOIA Intake Team that receives incoming FOIA requests from the public reduced its backlog by 87% throughout the year and developed a sustainable process using metrics to keep up with incoming requests moving forward. Implementation of the digitization of

incoming requests submitted by facsimile, allowed timely receipt and entry of new request and continuity of the process.

The Department's FOIA program continued to post records online monthly during the pandemic, releasing thousands of new records during the reporting period. The Department was able to continue to provide the public with access to information through these proactive disclosures despite the limitations placed on its FOIA processing capabilities as a result of the COVID-19 pandemic.

With the Department's quick pivot to telework, A/GIS/IPS focused on those requests that could be handled remotely, reviewed and updated outdated procedures, and held remote trainings. FOIA staff strategically managed their cases using multitrack processing and interim releases, and A/GIS/IPS successfully launched the FOIA Search Team, in the Ralph J. Bunche Library, completing an average of 100 searches for FOIA cases per week.

9. Optional – Please describe

- Best practices used to ensure that your FOIA system operates efficiently and effectively
- Any challenges your agency faces in this area

Deploying FOIAXpress and better overall electronic records management have allowed for improvements and enabled future improvements to the FOIA program. The Department's enterprise-wide FOIA IT solution allows all FOIA employees to more easily coordinate on cases, which is intended to result in processing efficiencies. FOIAXpress is interoperable with the Department's eRecords archive containing hundreds of millions of records, mainly emails, and allows A/GIS/IPS to conduct searches for certain records. Additionally, because FOIAXpress, unlike the Department's legacy system, is not housed exclusively on the Department's classified network, it enables unclassified FOIA processing to be conducted, as needed, via telework.

To ensure that records are accessible to citizens and to promote the importance of government openness and accountability, A/GIS/IPS established the State Department FOIA Working Group. The group is composed of agency FOIA staff from various bureaus that participate in the agency FOIA process. From March 2020 to March 2021, the group met multiple times to discuss FOIA policy, process, and reporting matters.

FOIA Briefings for agency staff were held on a near-monthly basis. The briefings, which included a session called "Intro to FOIA and Your Responsibilities as a Department Employee," are available to Department of State employees. These briefings provide an overview of the FOIA, the FOIA Administrative Process, A/GIS/IPS FOIA responsibilities, bureau/office FOIA responsibilities, conducting searches in response to a FOIA request, identifying responsive documents, and a brief overview of the FOIA's nine exemptions.

During the rating period, the Department also made changes to its FOIA intake process, developed strategies to make searches of electronic and other records more consistent, and further developed the knowledge of the agency and its offices among FOIA employees to ensure high quality searches.

Section III: Steps Taken to Increase Proactive Disclosures

The Department of Justice has long 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.

1. Provide examples of material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

The Department continues the “Release to one, Release to All” approach to posting FOIA documents online, which it did throughout the reporting period. With the exception of first-person requests (i.e., those involving privacy or personally identifiable information), the Department endeavors to post on its FOIA website those documents released to the public in the previous month. These releases include the posting of records released in response to FOIA and FOIA litigation cases (<https://foia.state.gov>). The adoption of this approach to posting documents online leads to the public’s access to thousands of documents that would otherwise only be available to individual requesters. As noted above, over 11,400 records were posted to the public FOIA website from March 2020 through early January 2020, for a total of more than 236,400 records on the public FOIA website.

2. 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.

3. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

The Department continues to make sure that any material posted to the FOIA website is searchable by the public, not just posted online. The Department also works to group

certain web postings to make it easier for the public to find records that we have posted online.

The Department continues to post documents released in non-litigation and litigation FOIA requests on the FOIA website. In some FOIA litigation cases, records are being released to the requester through a web posting, making them simultaneously available to both the plaintiff in those cases and the public. Below is a link that includes documents proactively disclosed on the website in some instances:

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

4. Optional – Please describe:

- Best practices used to improve proactive disclosures
- Any challenges your agency faces in this area

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 from 2017 to 2020 are posted on the FOIA website, with the exception of documents responsive to 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 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—the same resources are also needed to comply with court-ordered production postings and to satisfy other IT needs in support of the Department's FOIA program. 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.

Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information more accessible. 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.

1. Please briefly describe the types of technology your agency uses to support your FOIA program. In addition, please highlight if your agency is leveraging or exploring any new technology that you have not previously reported. If so, please describe the type of technology.

Yes, there have been major improvements in the Department's management of electronic records in a centralized, cloud-based eRecords archive that is interoperable with the Department's use of FOIAXpress, allowing one platform to complete all aspects of the FOIA process electronically including searching for records previously provided in response to FOIA requests contained its document storage component. The Department is seeking ways to leverage Technology Assisted Review (TAR) to improve the electronic management of records in the eRecords archive.

2. OIP issued guidance in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user-friendly. Has your agency reviewed its FOIA website (s) during the reporting period to ensure it addresses the elements noted in the guidance?

Yes.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2020?

Yes.

4. 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 2020.

N/A

5. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2019 Annual FOIA Report and, if available, for your agency's Fiscal Year 2020 Annual FOIA Report.

<https://foia.state.gov/Learn/Reports.aspx>

6. Optional – Please describe:

- Best practices used in greater utilizing technology
- Any challenges your agency faces in this area

There have been major improvements in the Department's management of electronic records in a centralized, cloud-based eRecords archive that will be interoperable with FOIAXpress. FOIAXpress allows one platform to complete all aspects of the FOIA process electronically including searching for records previously provided responsive to FOIA requests contained its document storage component.

Two of the biggest challenges continue to be the wide variety of forms of electronic records being generated and the volume of this electronic data and information. As a result, it has been useful to consider both process and technology together in responding

to FOIA requests, specifically, scoping requests and search results to find information being sought by requesters and minimizing the review of non-responsive search results from these large pools of data and information.

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

The Department of Justice has 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 FY 2019 and 2020 Annual FOIA Reports.

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 a simple request and that it 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. Nearly all of the Department's FOIA requests fall into the complex track.

2. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A., was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2020?

No.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2020 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1.) divided by (requests processed from Section V.A.) x 100.

18.29%

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?

N/A

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 Year 2019 and Fiscal Year 2020 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 2020, according to Annual FOIA Report Section XII.A., did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

No. The backlog as of the close of FY 2020 was 13,798. The number of requests backlogged as of the close of FY 2019 was 11,106.

6. If not, according to Annual FOIA Report Section V.A., did your agency process more requests during Fiscal Year 2020 than it did during Fiscal Year 2019?

Yes. The number of requests processed as of the close of FY 2020 was 7,041. The number of requests processed as of the close of FY 2019 was 6,545.

7. If your agency's request backlog increased during Fiscal Year 2020, please explain why, and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming requests.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

The increase in the Department's backlog can be directly attributed to the significant and unprecedented effects of the COVID-19 pandemic, which severely constrained the Department's FOIA processing capabilities. The dramatic increase in the Department's

FOIA litigation demands and the large volume of electronic records being generated and maintained by the agency were also contributing factors.

IPS devoted substantial resources to adapt its FOIA program to the pandemic situation. From mid-March until mid-April 2020, the scheduling of all reemployed annuitant reviewers (REAs) was paused and IPS as a whole transitioned to maximum telework. Meanwhile, A/GIS/IPS leadership prepared approximately 380 FOIA and non-FOIA employees to telework (many for the first time ever). A/GIS/IPS leadership undertook significant efforts to complete the administrative work needed to make personnel telework-ready, train and equip those personnel with resources necessary to conduct FOIA processing via telework (which was not a Department practice pre-COVID-19), and troubleshoot the many novel issues that arose. These efforts were undertaken with the intention to resume as much FOIA processing as possible in a remote environment. The Department also continued deployment of its new FOIA case management system FOIAXpress, which is not housed exclusively on the Department's classified systems, and, as a result, the Department was able to resume limited processing of FOIA cases using the telework functionality of FOIAXpress. That change enabled the Department to begin making productions in its FOIAXpress cases by processing unclassified documents available on the Department's unclassified network remotely. This was a major change from past Department practice where all records, unclassified and classified, were processed on a legacy document review platform that operated exclusively on a classified computer network. The Department's ability to process documents maintained on its classified network remains severely constrained, with only a small fraction of its personnel onsite at Department workstations that have access to classified systems. It is expected to remain that way until the U.S. Government returns to full operations.

The continued and significant rise in FOIA litigation has required the Department to shift its already limited resources away from FOIA requests not in litigation to comply with court-ordered production schedules. While FOIA requests subject to litigation comprise only 2.5% of all FOIA requests at the Department, they demand a disproportionate share—approximately 90%—of A/GIS/IPS's current FOIA review resources. This increase in the FOIA backlog coincides with exceptionally demanding court orders in several FOIA litigation cases. The demands of FOIA litigation and the resources required to support these court-ordered production schedules detracted from the Department's ability to work on other, non-litigation FOIA cases.

To improve its FOIA program, the Department has established a backlog reduction plan that provides for distinct resources for both FOIA and FOIA litigation demands. Additionally, the Department has developed new FOIA policies and procedures, increased training for its staff, and acquired and began using a new FOIA case management system. The Department is also working to fill vacancies.

8. 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 2020. Please use the following calculation based on data from your Annual FOIA Report:

(backlogged requests from Section XII.A.) divided by (requests received from Section V.A.) x 100. If your agency has no request backlog, please answer with “N/A.”

153%

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2020, according to Section XII.A. of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

No. The backlog of appeals at the close of FY 2020 was 256. The number of appeals backlogged at the close of FY 2019 was 223.

10. If not, according to section VI.A. of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2020 than it did during Fiscal Year 2019?

No. The number of appeals processed as of the close of FY 2020 was 241; the number of appeals processed in FY 2019 was 380.

11. If your agency’s appeal backlog increased during Fiscal Year 2020, please explain why, and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming appeals.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

The increase in the Department’s appeals backlog can be directly attributed to the significant and unprecedented effects of the COVID-19 pandemic, which severely limited the Department’s FOIA processing capabilities. The dramatic increase in the Department’s FOIA litigation demands and the large volume of electronic records being generated and maintained by the agency were also contributing factors. This significant rise in FOIA litigation has required the Department to shift its limited resources away from processing appeals and use those resources to comply with court-ordered production schedules.

Currently, the Department’s ability to acknowledge receipt and process documents in response to appeals has been greatly diminished. The Department’s ability to process

documents maintained on its classified network remains severely constrained, with only a small fraction of its personnel onsite at Department workstations that have access to classified systems. It is expected to remain that way until the U.S. Government returns to full operations.

12. 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 2020. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A.) divided by (appeals received from Section VI.A.) x 100. If your agency did not receive any appeals in Fiscal Year 2020 and/or has no appeal backlog, please answer with "N/A."

99%

C. Backlog Reduction Plans

13. In the 2020 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2019, 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 2020?

Yes, the Department has developed a multi-year plan that allows for compliance with its increasing FOIA litigation demands while making concurrent progress in reducing its FOIA backlog. Under this plan, the Department estimates that it will be able to eliminate its FOIA backlog and keep up with incoming cases by FY 2027.

The Department continues to follow its backlog reduction plan and update and/or revise FOIA policies and procedures to improve its FOIA program. Additionally, the Department assessed backlog, capabilities, and needs (training, technical, resources, etc.). The Department also made changes to its FOIA intake process, developed strategies to make searches of electronic and other records more consistent, and further developed the knowledge of the agency and its components among FOIA employees to ensure high quality searches. The acquisition of FOIAXpress enabled the Department to continue processing unclassified records responsive to FOIA requests remotely.

The Department's plan provides for distinct resources for both FOIA and FOIA litigation demands and sets an annual monthly closure rate target for FOIA requests with the goal of eliminating the backlog while keeping up with new, incoming FOIA requests. The Department has been given permission to fill key FOIA vacancies that will allow for dedicated resources in each program and will mitigate against the need to shift resources from FOIA to FOIA litigation cases.

The Department continues internal and external training of its full-time 306 series Government Information Specialists to conduct FOIA reviews. The Department hired new part-time retired annuitants and new full-time contract employees to do review work as well. The Department intends to hire additional Government Information Specialists and contract employees in 2021.

The Department intends to continue its practice of “Release to one, release to all,” where records released in FOIA cases are posted to the public FOIA website. Enabling the Department to close cases based on previous releases where records were posted online.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2020, what is your agency’s plan to reduce this backlog during Fiscal Year 2021?

The Department will continue to implement the steps noted above including updating its FOIA processes and using FOIAXpress.

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 2019 and Fiscal Year 2020 when completing this section of your Chief FOIA Officer Report.

TEN OLDEST REQUESTS

15. In Fiscal Year 2020, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2019 Annual FOIA Report?

No.

16. 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 2019 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

9

17. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

The Department’s updated FOIA policies and procedures mentioned above emphasize the need to follow the First In, First Out (FIFO) processing standard. As a result, the focus of the program will be to close out requests based on FIFO, which should assist with closing

out the 10 oldest cases annually. New technology and the other factors noted above should also help to facilitate these efforts.

TEN OLDEST APPEALS

18. In Fiscal Year 2020, did your agency close the ten oldest appeals that were reported pending in Section VII.C.5., of your Fiscal Year 2019 Annual FOIA Report?

No.

19. 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 2019 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

8

20. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

The Appeals Officer continues to work on the oldest pending appeals. The Department is in the process of completing a plan to change the current appeals process to ensure that appeals are reviewed and the processing is completed so that there are no additional delays in the responses to requesters.

TEN OLDEST CONSULTATIONS

21. In Fiscal Year 2020, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2019 Annual FOIA Report?

Yes.

22. 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 2019 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

N/A

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

23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2019.

The demands of FOIA litigation and the resources required to support these court-ordered production schedules detracted from the Department's ability to work on other, non-litigation FOIA cases, including appeals and consultations, during this reporting period.

The Department is reviewing how it manages its overall FOIA process, including appeals, consultations, and referrals. New processes are being considered for requests, appeals, and consultations to provide more timely responses to requesters and other federal agencies working to close FOIA cases. One of the A/GIS/IPS FOIA teams has been specifically assigned to work on FOIA consultations, which should assist in getting these oldest cases closed moving forward.

24. 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

25. 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 2021.

The Department closed 9 of its oldest pending requests, 8 of its oldest appeals, and 10 of its oldest consultations.

The Department will continue with its efforts to close the oldest pending cases.

F. Success Stories

Out of all the activities undertaken by your agency since March 2020 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, OIP will highlight these agency success stories during Sunshine Week. 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.

- **New Records and FOIA Training:** Required online mandatory training for all Department employees, Records Management for Everyone (PK217), includes a module regarding FOIA that explains what the FOIA is and each employee's FOIA responsibilities. Over 70,000 Department employees completed this program during the reporting period.

- **Leveraging New Technology:** IPS devoted substantial resources to adapting its FOIA program to the pandemic situation. For example, leadership prepared approximately 380 FOIA and non-FOIA employees to telework (many for the first time ever). IPS undertook significant efforts to complete the administrative work needed to make personnel telework-ready, train and equip those personnel with resources necessary to conduct FOIA processing via telework (which was not a Department practice pre-COVID-19), and troubleshoot the many novel issues that arose. This would not have been achievable without the successful deployment of FOIAXpress, the Department's new FOIA case management system and redaction tool, which resides on an unclassified network. Additionally, FOIAXpress is interoperable with the Department's unclassified eRecords archive that captures all unclassified state.gov emails dated after December 31, 2016, and will hold millions of other State Department records as existing archives and datasets are migrated to eRecords.
- **New Classification Training:** Required online training on classification of information per Executive Order 13526 was also deployed at the Department during this reporting period. All Department personnel who hold a security clearance are also required to complete the new online Mandatory Training for Classifiers and Users of National Security Information (PK400) on an annual basis. The goal of the course is to train Department personnel how to properly identify, classify, safeguard, and declassify national security information. Over 70,000 Department employees completed this program during the reporting period. Such training is particularly important due to the prevalence of foreign government information within State Department records.
- **More than 17,000 Records Posted Online to FOIA Library:** From March 2020 through early January 2021, over 11,400 new records were posted to the public FOIA website (foia.state.gov) increasing the overall number of records available to the public via this site to more than 236,400 records.