



U.S. Commission on Civil Rights

Annual Report of the Chief Freedom of
Information Act (FOIA) Officer

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Chief FOIA Officer

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Message from the Chief Freedom of Information Act Officer

I am pleased to present the U.S. Commission on Civil Rights' (USCCR) Chief Privacy Officer Report to the Attorney General of the United States. The Freedom of Information Act (FOIA) requires all agency Chief FOIA Officers to report to the Attorney General on their performance in implementing the FOIA. *See* 5 U.S.C. § 552(j)(2)(D). The Report details the Commission's accomplishments in fiscal year 2023 to enhance transparency and openness in government through implementation of the FOIA.

In the last year, USCCR focused on ways to modernize its FOIA processes, including the successful acquisition and use of a new FOIA eDiscovery document review platform to make reviews more efficient and greatly reduce wait times for requesters. This new system is one example of USCCR's commitment to reduce FOIA processing time and assist USCCR's FOIA personnel with identifying information that may be subject to a FOIA Exemption. Moving forward, USCCR's Office of General Counsel, which handles FOIA obligations for the Commission, is committed to continue improving its FOIA processing. FOIA personnel also received DOJ FOIA trainings and regularly met with USCCR leadership to provide progress updates concerning USCCR's FOIA performance goals. Please direct inquiries about this report to USCCR's Office of General Counsel at foia@usccr.gov. This report and other information about USCCR's FOIA program is available at <https://www.usccr.gov/foia>.

Section I: FOIA Leadership and Applying the Presumption of Openness

The guiding principle underlying the Attorney General's 2022 FOIA Guidelines is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

A. Leadership Support for FOIA

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 Officer.

Mauro Morales, Staff Director

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

The mission of the USCCR is to inform the development of national civil rights policy and enhance enforcement of Federal civil rights laws. USCCR is small agency of less than 55 full time employees nevertheless it uses its best efforts to comply with FOIA's mandates and underlying principles. The Commission pursues this mission by investigating alleged deprivations of voting rights or allegations of discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission also serves as a monitor of effective enforcement of civil rights laws by the Federal government through its annual statutory enforcement reports, which examine other agencies compliance with, and upholding of, civil rights laws and regulations. USCCR's mission is consistent with the principals underlying FOIA, which encourages accountability in the federal government through transparency.

B. Presumption of Openness

4. The Attorney General's 2022 FOIA Guidelines provides that "agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions." Does your agency provide such confirmation in its response letters?

USCCR plans to update its response letters to contain language describing how the foreseeable harm standard was applied when reviewing records and applying exemptions.

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interested protected by a FOIA exemption. This is commonly referred to as a *Glomar* response. If your agency tracks *Glomar* responses, please provide:

- a. the number of times your agency issued a full or partial *Glomar* response (separate full and partial if possible);

Zero

- b. the number of times a *Glomar* response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).

Zero

6. If your agency does not track the use of *Glomar* responses, are you planning to track this information in the future?

USCCR does not have records related to federal law enforcement or investigations files; nor does it receive FOIA requests for such records and thus USCCR does not plan to track the use of *Glomar* responses.

7. 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.

As noted above, USCCR plans to incorporate the foreseeable harm standard in its FOIA response letters.

Section II: Ensuring Fair and Effective FOIA Administration

The Attorney General’s 2022 FOIA Guidelines provide that “[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of FOIA obligations by the entire agency workforce.” The Guidelines reinforce longstanding guidance to “work with FOIA requesters in a spirit of cooperation.” The Attorney General also “urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency’s FOIA administration” as part of ensuring fair and effective FOIA administration.

A. FOIA Training

1. 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.

During the reporting period, USCCR FOIA's personnel took several substantive FOIA trainings related to foreseeable harm standard and the recent *Sierra Club* Supreme Court case related to deliberative process privilege: The training materials from DOJ can be found at the following weblinks: [Office of Information Policy | The Supreme Court's Exemption 5 Ruling in United States Fish & Wildlife Service v. Sierra Club, Inc. \(justice.gov\)](#), [Office of Information Policy | OIP Guidance: Applying a Presumption of Openness and the Foreseeable Harm Standard \(justice.gov\)](#), and <https://www.justice.gov/oip/training/elearning/professional-employees/story.html>. FOIA personnel also receive regular training on its document review and redaction platform Relativity.

USCCR's OGC staff and FOIA personnel also routinely worked with agency IT staff and document custodians to explain to them their obligations under FOIA and the Privacy Act.

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

Please see response above.

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

Please see above.

4. 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.

All or 100 percent. Please note that USCCR has one full time personnel and three others who work as legal counsel providing part time advice on document collection, review, and production, Exemptions, redactions, and administrative appeals.

5. 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.

Not applicable.

6. 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; and if senior leaders at your agency received a briefing on your agency's FOIA resources, obligations and expectations during the FOIA process?

See response to Question 1 of this section. In addition to working with custodians and IT staff, FOIA personnel routinely inform members of USCCR's Executive Team and Commissioners about noteworthy FOIA requests and productions, any administrative appeals or FOIA litigation, and to ensure proper budgetary allotments for maintenance and succession planning of USCCR's FOIA program are provided.

B. Outreach

7. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue and, if applicable, any specific examples.

Yes. For complex requests, or requests that require narrowing, our FOIA personnel maintain lines of communication with requesters to more quickly and efficiently facilitate the production of their requested records.

8. Outside of the standard request process or routine FOIA Liaison or FOIA Requester Service Center interactions, did your FOIA professionals engage in any outreach or dialogue, with the requester community or open government groups regarding your administration of the FOIA? For example, did you proactively contact frequent requesters, host FOIA-related conference calls with open government groups, or provide FOIA training to members of the public? 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.

No; USCCR is a very small agency with limited resources.

9. 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 Fiscal Year 2023 (please provide a total number or an estimate of the number for the agency overall).

No requesters sought assistance from our agency FOIA Public Liaison in fiscal year 2023.

C. Other Initiatives

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

The agency's OGC, which handles FOIA production, continually evaluates staffing and procurement requirements to current and expected future FOIA obligations.

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

USCCR is a very small agency, however it uses a number of software platforms to manage its FOIA workload and obligations, including Excel and Relativity.

Section III: Proactive Disclosures

The Attorney General's 2022 FOIA Guidelines emphasize that "proactive disclosure of information is . . . fundamental to the faithful application of the FOIA." The Guidelines direct agencies to post "records online quickly and systematically in advance of any public request" and reiterate that agencies should post records "in the most useful, searchable, and open formats possible."

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

USCCR maintains a website with a public FOIA reading room where we upload our information that has been requested three times or more. Our agency FOIA reading room can be found at <https://www.usccr.gov/foia>.

2. How long after identifying a record for proactive disclosure does it take your agency to post it?

After USCCR's OGC receives three or more requests for the same or substantiality similar records, it will immediately contact IT staff to post to the agency's website.

3. Does your agency post logs of its FOIA requests?

No, our agency only uploads its annual FOIA report.

If so, what information is contained in the logs?

Are they posted in CSV format? If not, what format are they posted in?

4. Provide examples of any 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.

USCCR had no proactive disclosures in fiscal year 2023, however it did have proactive disclosures in FY 2022, which can be viewed [here](#).

5. 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?

Our agency recently updated its Limited English Proficiency plan. Updates to this plan included focus on website accessibility for LEP individuals such as screen reading available in languages other than English, which includes USCCR's FOIA web page. These updates will make our posted information more useful and accessible to the LEP community who accesses our agency website.

6. 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.

See above.

7. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

Yes. Our FOIA staff collaborate with our agency IT office to create secure web-links to be used to store our proactively disclosed information.

Section IV: Steps Take to Greater Utilize Technology

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's 2022 FOIA Guidelines emphasize the importance of making FOIA websites easily navigable and complying with the FOIA.gov interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

Yes.

2. Please briefly describe any new types of technology your agency uses to support your FOIA program.

Halfway through fiscal year 2022 our FOIA personnel began training on an eDiscovery platform Relativity to decrease the time it takes our agency to review records requested under FOIA. The use of this technology continued throughout 2023.

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.

No.

4. 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?

USCCR regularly reviews its website.

5. Did all four of your agency's quarterly reports for Fiscal Year 2023 appear on FOIA.gov?

No.

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2024.

USCCR is a very small agency with limited resources, however it endeavors, within available financial and staffing constraints to comply with FOIA requirements, including Quarterly reports for the upcoming fiscal year.

7. 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 2022 Annual FOIA Report and, if available, for your agency's Fiscal Year 2023 Annual FOIA Report.

The raw statistical data for Fiscal Year 2023 can be found here:

<https://securisync.intermedia.net/us2/s/R6XXyOIQ4SElnnRHdhPGzp0011ef58>

8. In February 2019, DOJ and OMB issued joint Guidance establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

Yes; USCCR receives FOIA requests from FOIA.gov in addition to its own agency website.

Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness in Responding to Requests, and Reduce Backlogs

The Attorney General's 2022 FOIA Guidelines instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

A. Remove Barriers to Access

1. Has your agency established alternative means of access to first-party requested records, outside of the typical FOIA or Privacy Act process?

It has not, however, with guidance from DOJ, USCCR will endeavor to do so.

2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.

Please see above.

3. Please describe any other steps your agency has taken to remove barriers to accessing government information.

Please see above.

B. Timeliness

4. For Fiscal Year 2023, 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 2023 Annual FOIA Report.

USCCR had no requests given expedited processing.

5. 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 2023 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.

N/A

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

Yes.

7. 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 2023?

Yes.

8. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?

N/A

9. Please provide the percentage of requests processed by your agency in Fiscal Year 2023 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.

76% of our agency's requests were on the simple track.

10. 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

C. Backlogs

Backlogged Requests

11. If your agency had a backlog of requests at the close of Fiscal Year 2023, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2022?

Our agency did not have a FOIA backlog at the close of FY 2023/beginning of FY 2024.

12. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2023 than it did during Fiscal Year 2022?

N/A

13. If your agency's request backlog increased during Fiscal Year 2023, 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:

N/A

14. 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 2023. 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. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A."

N/A

Backlogged Appeals

15. If your agency had a backlog of appeals at the close of Fiscal Year 2023, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2022?

Our agency had zero appeals in FY 2023.

16. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2023 than it did during Fiscal Year 2022?

N/A

17. If your agency's appeal backlog increased during Fiscal Year 2023, 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:

N/A

18. 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 2023. 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. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2023 and/or has no appeal backlog, please answer with "N/A."

N/A

D. Backlog Reduction Plans

19. In the 2023 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2022 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 2023?

N/A

20. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2023, please explain your agency's plan to reduce this backlog during Fiscal Year 2024.

N/A

E. Reducing the Age of Requests, Appeals, and Consultations

Ten Oldest Requests

21. In Fiscal Year 2023, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2022 Annual FOIA Report?

Our agency had no pending requests for our 2022 Annual FOIA Report.

22. 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 2022 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

N/A

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

N/A

Ten Oldest Appeals

24. In Fiscal Year 2023, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2022 Annual FOIA Report?

Our agency had no pending appeals for our 2022 Annual FOIA Report.

25. 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 2022 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A

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

N/A

Ten Oldest Consultations

27. In Fiscal Year 2023, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2022 Annual FOIA Report?

Our agency had no pending consultations for our 2022 Annual FOIA Report

28. 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 2022 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

N/A

Additional Information Regarding Ten Oldest

29. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2024.

N/A

F. Additional Information about FOIA Processing

30. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency’s overall FOIA request processing and backlog. If possible, please indicate:

No.