

Office of Management and Budget (OMB)  
Chief Freedom of Information Act (FOIA) Officer's Report  
March 2014

This Chief FOIA Officer's Report is issued in accordance with the Attorney General Guidelines on FOIA issued on March 19, 2009. In compliance with those Guidelines, OMB's Chief FOIA Officer has reviewed all aspects of OMB's FOIA administration and issues this report on the steps OMB has taken to improve FOIA operations and facilitate information disclosure.

Copies of this report, as well as information on how to make a FOIA request to OMB, are available at the "FOIA" site on the OMB Home Page at [http://www.whitehouse.gov/omb/foia\\_default](http://www.whitehouse.gov/omb/foia_default).

Those wishing to submit FOIA requests to OMB should submit their request, in writing, to OMB either via email [OMBFOIA@omb.eop.gov](mailto:OMBFOIA@omb.eop.gov), fax (202) 395-3504, or to the following mailing address: Office of Management and Budget, New Executive Office Building, FOIA Officer, Room 9026, 725 17th Street, N.W., Washington, D.C. 20503.

I. Steps Taken to Apply the Presumption of Openness.

*Discretionary Disclosures*

OMB focuses on applying the presumption of openness in all decisions involving the FOIA. For each FOIA request received, OMB's FOIA Officer and OMB's Office of the General Counsel (OGC) ensure that the President's FOIA Memorandum, the Attorney General's FOIA Guidelines, and the presumption of openness are being applied. This effort is made during the review of responsive material, to best determine what can be released, and additionally the initiative is undertaken during the search for responsive material, to ensure that the search is comprehensive.

OMB's document-review procedure involves a document-by-document, line-by-line review conducted by agency personnel to identify material that is appropriate for release, including whether OMB can discretionarily release material that falls within one of the FOIA's exemptions. This careful review is followed by another review, of any redactions made during the initial review, to ensure that OMB has properly implemented the presumption of openness. Over the past year, OMB has institutionalized this review process, so that now all potential withholdings undergo review more than once to ensure that the presumption of openness has been applied appropriately. As a result of this review, OMB has identified material that is protected under Exemption 5, but has determined it could be released, as a matter of agency discretion, as a disclosure would not create a harm protected by that exemption. For instance, OMB was able to release portions of email traffic within OMB and between OMB and other Federal agencies that are discussing proposed regulatory items, which are deliberative and pre-decisional. Over the past year, OMB has also posted all quarterly FOIA reports for FY2013. Those are available at the following link: <http://www.foia.gov/index.html>.

## *Outreach*

In addition to institutionalizing this review process, OMB has also begun reaching out to requesters as a matter of course to discuss specific FOIA requests and to explain OMB's FOIA processing generally. OMB staff reviews requests shortly after receipt. If during that initial review, OMB determines that it could potentially take a significant amount of time to complete the processing of that request, OMB will reach out to the requester. By creating an open dialogue with these requesters, OMB is better able to understand what the requester is interested in receiving from OMB and the requester community has a better understanding of OMB's roles and responsibilities, as well as the types of records OMB has in its files. By establishing this dialogue, OMB hopes to satisfy the requester's interest in the most efficient way practicable. Additional outreach efforts are explained below in Section III.

## *FOIA Training*

While OMB did not hold any FOIA training of its own, this year approximately three members of OMB's staff did attend FOIA training offered by Department of Justice (DOJ) to ensure it continued to apply the Attorney General's Guidelines consistent with DOJ government-wide guidance, as well as all statutory requirements. All agency FOIA professionals are made aware of substantive FOIA training that is offered government-wide. They are encouraged to attend those sessions, which they feel will help them in working on FOIA matters for OMB. Furthermore, OMB leadership and staff met to discuss ways in which the importance of FOIA compliance may be stressed within the agency.

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

### *Processing Procedures, Personnel, and Requester Services*

OMB continues to improve upon the system it uses to develop responses to FOIA requests, in order to make that system more effective and efficient. To that end, OMB ensures that its FOIA professionals have sufficient IT support and are in close collaboration with other components of the agency that are devoted to transparency initiatives, such as the agency's Open Government team. This close collaboration allows for personnel working in these areas to know of the various efforts undertaken to increase OMB's transparency and to understand the role the agency is playing in government-wide transparency projects. In total, to complete this work OMB relies on one full-time FOIA professional and other employees throughout the agency who have responsibilities in various areas, including FOIA.

As explained in OMB's prior Chief FOIA Officer Reports, OMB's FOIA processing begins when the request is received by OMB's FOIA Officer, who is within the agency's Management and Operations Division (MOD). From that point, the FOIA Officer works closely with the program office(s) within OMB, which conducts the search for potentially responsive records, and with OMB's OGC, which devotes substantial time and resources to conducting a careful, line-by-line review of all potentially responsive documents before a response is issued. Once these steps are complete, the FOIA Officer finalizes the response and sends it to the requester. Whenever feasible, communications with requesters are done over the phone or

through e-mail, in order to provide the quickest response or feedback. Additionally, OMB's responses to administrative appeals inform requesters of the mediation services available at the National Archives and Records Administration's (NARA) Office of Government Information Services (OGIS) and provides the contact information for that office.

Furthermore, OMB continues to focus on creating a more team-based approach to its FOIA processing in order to further streamline the procedure and reduce request-processing periods. This team-based approach includes coordination between OMB's FOIA Officer, a representative from OGC, and staff from the offices within OMB that are most likely to have records that are responsive to the request, in order to discuss the request and determine the path forward for OMB's processing of the request. Additionally, OMB personnel meet periodically to discuss the status of each pending FOIA request. This allows the agency to identify any circumstances that have created (or may create) delays in the agency's processing of a request and to identify, as expeditiously as possible, any steps that can be taken to reduce or avoid such delays. (This procedure applies to all FOIA requests received by OMB and not just to those that request expedited processing.)

A significant benefit of instituting this team-based approach, and periodic meetings, is a greater awareness across the agency of pending FOIA issues. With representatives from appropriate offices meeting consistently, OMB is able to more easily identify and resolve issues quickly.

OMB has also streamlined its approach for handling consultations from other agencies. As agencies often need responses to their consultation requests in an expedited manner, in order to meet deadlines they have with requesters, or to meet court imposed timelines, OMB's FOIA Officer flags these documents for OGC upon receipt. OGC conducts a review of the material, coordinates with the appropriate offices within OMB, and responds directly to the agency with a proposal regarding OMB's equities. This practice provides the agency with a contact within OMB's OGC that is already familiar with the material, with whom they can work with if OMB's equities are later the subject of an administrative appeal or litigation.

Finally, under the team-based approach that OMB employs for the processing of FOIA requests and consultations, the set of roles and responsibilities that are set forth in the OPM-established "Government Information Specialist" position classification are carried out – collectively – by OMB staff in different OMB offices (principally, MOD and OGC). Accordingly, there are no OMB staff who individually perform the roles and responsibilities of a Government Information Specialist. For this reason, OMB has not converted any staff positions to that job classification.

### III. Steps Taken to Increase Proactive Disclosures

#### *Posting Material and Making Posted Material More Useful*

OMB offers a number of high-value datasets for downloading online and has not encountered problems in making these disclosures. A catalogue of these datasets is available here: <http://www.whitehouse.gov/open/around/eop/omb/datasets>. OMB also actively disseminates data on the government-wide open data site Data.gov. Through this site, OMB

continues to disseminate several datasets, including regulatory reviews (per Executive Order 12866) by calendar year, history of economic forecasts, improper payments database, extracts from the IT Dashboard, and excess Federal properties. Other websites that OMB continues to update include [ITdashboard.gov](http://ITdashboard.gov), [USAspending.gov](http://USAspending.gov), [Performance.gov](http://Performance.gov), and [Recovery.gov](http://Recovery.gov).

For instance, OMB continues to add to and improve the information available on [USAspending.gov](http://USAspending.gov). This site provides a single searchable location that is accessible to the public at no cost and includes the following information for each Federal award: (1) the name of the entity receiving the award; (2) the amount of the award; (3) information on the award including transaction type, funding agency, etc; (4) the location of the entity receiving the award; and (5) a unique identifier of the entity receiving the award. As the website has matured, its limitations and weaknesses have come into focus, specifically the need to show the lifecycle of Federal spending, address real/perceived data quality issues, and improve the website's usability and functionality. The Administration has begun to take steps to address these limitations and achieve these goals. First, leveraging the lessons learned from [Recovery.gov](http://Recovery.gov) in its display of data, both search capabilities and visualization of data on [USAspending.gov](http://USAspending.gov) will be enhanced. Second, the Administration is committed to increasing the quality of the data on [USAspending.gov](http://USAspending.gov). OMB's June 2013 memo on [USAspending.gov](http://USAspending.gov) data quality required agencies to validate the quality of their financial data on [USAspending.gov](http://USAspending.gov) with their financial systems or other control totals. Based on these agency assessments, OMB will be able to identify additional agency-specific and government-wide mechanisms to increase the accuracy and completeness of Federal spending information on the website. Third, the Administration is committed to regular stakeholder outreach and has begun to meet with these groups. These engagements will give us a better understanding of how [USAspending.gov](http://USAspending.gov) is being used and how to best improve on our efforts to date. Looking ahead to the next fiscal year, the President's FY 2015 Budget requests an additional \$5.5 million to continue our efforts to improve existing spending data and expand upon it to make [USAspending.gov](http://USAspending.gov) the go-to website for Federal spending information that is useable, accurate, and complete.

Additionally, as OMB completes a response to a FOIA request, staff in the relevant program office, OGC, and MOD review those records to determine whether it would be helpful to post any material provided to the requester on these websites. Those websites include: (1) the Regulatory Review and Information Collection Review Dashboard, at <http://www.reginfo.gov/public/>; (2) OMB's record management policy, at [http://www.whitehouse.gov/omb/records\\_management\\_policy/](http://www.whitehouse.gov/omb/records_management_policy/); and (3) the [OMBlog](#), which is frequently updated by OMB officials. If so, staff in MOD work to put the information in a format accessible to the public on one of these sites. In some cases, notification of these postings is then made through the [OMBlog](#), by officials at public meetings, or through Twitter accounts.

Over the past year, OMB has continued to build on its Open Data Policy in order to increase the amount of information publicly available across the Federal government. In May 2013, OMB, in conjunction with the Office of Science and Technology Policy (OSTP), issued Memorandum 13-13, which established a framework to help agencies manage information as an asset. Specifically, this Memorandum requires agencies to collect or receive information in a way that supports downstream information processing and dissemination activities. Through this guidance, OMB called upon agencies to make its information resources accessible, discoverable, and useable by the public. This includes requiring agencies to incorporate machine-readable and

open formats, data standards, and common core and extensible metadata for all new information creation and collection efforts. Furthermore, agencies are instructed to build (or modernize) information systems in a way that maximizes interoperability and information accessibility, to maintain internal and external data asset inventories, to enhance information safeguards, and to clarify information management responsibilities. OMB continues to work with agencies to implement these actions and to follow the principles of the Open Data Policy.

#### IV. Steps Taken to Greater Utilize Technology

##### *Online tracking of FOIA requests:*

OMB has found that, given the number of requests received in a fiscal year and the few pending at any given time, OMB's FOIA Officer is familiar with the status of each request, such that a requester can call or email OMB to find the status of their request.

##### *Use of technology to facilitate processing of requests*

OMB relies on technology to complete its FOIA processing, especially when responding to requests that are seeking a large volume of potentially responsive material. In situations where the request calls for a search of several OMB employees' records, across various offices within the agency, or the subject matter of the request indicates that there may be many responsive records, OMB relies on software to conduct a centralized search. This software reduces the time needed for a search to be conducted, as OMB does not need to rely on many different employees to conduct separate searches. The software also stores the documents in a centralized location, allowing OMB to organize the material in a more efficient way. This allows those processing the documents to locate non-responsive or duplicative material more easily.

OMB also uses technology to redact documents and consult with other offices and agencies as necessary. OMB's software allows for redactions to be made in transparent and opaque forms. With this feature OMB staff can apply initial redactions in a transparent form, which allows those reviewing the documents to see the material subject to the proposed redaction to confirm that the redactions are appropriate and consistent, the presumption of disclosure is applied, and offices outside of OMB can confirm that their equities are appropriately addressed. Once that review is complete, using the software, OMB staff can convert the redactions from transparent to opaque, and prepare the documents for production. This software allows OMB to more easily move the documents from a preliminary to a final stage and OMB continues to look for additional tools that would further assist in its FOIA processing.

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

##### *1. Simple Track Requests.*

OMB does not use a separate track for processing simple requests. The average number of days for processing requests was 31 days.

## 2. *Backlogged and "Ten Oldest" Requests, Appeals and Consultations*

### Backlogs

- a. *If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012?*

OMB had a backlog of 41 requests at the end of FY 2013, which is an increase from the end of FY 2012, when OMB had 6 backlogged requests.

- b. *If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?*

OMB had a backlog of 5 administrative appeals at the end of FY 2013, which is an increase from FY 2012, when OMB did not have a backlog of administrative appeals.

### Ten Oldest Requests

- c. *In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?*

During FY 2013, OMB closed all of its ten oldest requests that were pending as of the end of FY 2012.

- d. *In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?*

OMB did not have any pending administrative appeals at the end of FY 2012.

### Ten Oldest Consultations

- e. *In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012?*

OMB had two consultations pending at the end of FY 2012 and both were closed in FY 2013.

## 3. *Reasons for Any Backlogs*

*If you answered "no" to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation:*

- a. *Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?*
- b. *Was the lack of a reduction in the request backlog caused by a loss of staff?*

- c. *Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?*
- d. *What other causes, if any, contributed to the lack of a decrease in the request backlog?*

As mentioned above, OMB's backlog increased from 6 at the end of FY 2012 to 41 at the end of FY 2013.

The increase in the size of the backlog in FY 2013 was the result of two factors: (1) the continuing year-by-year increase in the number of requests that OMB has received, and (2) the reduction in the amount of resources that were available to OMB for the processing of requests.

In FY 2013, OMB received 222 requests, which was an increase of 31 requests (16%) from the prior-year level of 191 in FY 2012. Thus, not only did OMB receive more requests during FY 2013 than in any other year, but this increase was also on top of significant increases in the prior years. During the past 5 years (FY 2009 through FY 2013), the number of FOIA requests received by OMB has increased by 60%, from 138 in FY 2009 to 222 in FY 2013.<sup>1</sup> Furthermore, many of the requests OMB receives are complex, involving searches of several offices within the agency, review of a large number of potentially responsive documents, and consultations with offices throughout the Executive Branch.

At the same time that OMB has experienced significant annual increases in the number of requests received, OMB in FY 2013 continued to process requests at a high level. In FY 2013, OMB processed 181 requests, which is the second largest number of requests that OMB has processed in a fiscal year (second only to the 207 requests that OMB processed in FY 2012). While it is the case that OMB processed fewer requests in FY 2013 than in FY 2012, the 181 requests that OMB processed in FY 2013 represents a high level as compared to prior years. The 181 requests that OMB processed in FY 2013 represents a 44% increase from FY 2009 (126 requests); a 28% increase from FY 2010 (141 requests), and a 5% increase from FY 2011 (173 requests).

In sum, during FY 2013, OMB was able to maintain a high production level as compared with FY 2011 and prior years, but was unable to maintain the very high production level of FY 2012. A substantial factor in this regard is that OMB experienced significant budgetary/resources constraints during FY 2013. As an initial matter, during FY 2013, OMB operated under a continuing resolution for the entire year, which provided OMB with its funding level from FY 2012. In addition, OMB's budget authority for FY 2013 was reduced – to below its FY 2012 level – as part of the government-wide sequestration that occurred in March 2013 under the Joint Committee provisions of the Balanced Budget and Emergency Deficit Control Act, as amended. In order to meet its reduced funding level, OMB was required to conduct an OMB-wide furlough of OMB staff for a total of eight days during FY 2013 and reduced the number of full-time employees (FTEs) employed by the agency. In addition to restricting OMB in its ability to carry out other activities, these budgetary/resource limitations restricted OMB's

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<sup>1</sup> As stated in OMB's Annual FOIA Reports, OMB received 138 requests in FY 2009, 147 in FY 2010, 188 in FY 2011, 191 in FY 2012, and 222 in FY 2013. During this same 5-year period, OMB processed 126 requests in FY 2009, 141 in FY 2010, 173 in FY 2011, 207 in FY 2012, and 181 in FY 2013.

ability to process FOIA requests and appeals. As a result, OMB during FY 2013 was not able to maintain its very high production level of FY 2012. Moreover, when combined with the significant increases in the number of requests that OMB received in FY 2013 (as compared with FY 2012), this resulted in the increase in OMB's backlog (in FY 2013) that is discussed above.

#### 4. Interim Responses

*OIP has issued guidance encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information.*

*a. Does your agency have a system in place to provide interim responses to requesters when appropriate?*

*b. If your agency had a backlog in Fiscal Year 2013, 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.*

As part of its standard processing procedure, OMB provides interim responses, where practicable, in response to complex requests. As mentioned in Section II above, soon after a FOIA request is received by OMB, a meeting is held to discuss that request and determine a path forward for OMB's processing. This meeting typically includes OMB's FOIA Officer, a representative from OGC, and staff from the offices within OMB that are most likely to have records that are responsive to the request. Based on the information provided at that meeting, OMB may estimate that it will take a substantial amount of time to complete processing the request (this delay can be due to the potential need to search several OMB employees' records, across various offices within the agency, or the request indicates that there may be many responsive records that will require review). In those situations, a contact within OMB's OGC reaches out to the requester to discuss their request and the amount of time it may take to process the request. The goal of this conversation is to see if OMB and the requester can establish (1) a way to narrow the request, to provide the information as quickly as possible, taking into account both the requester's interest and the processing burden on OMB staff, and/or (2) a production schedule by which OMB will provide the responsive material to the requester through a series of rolling (or interim) productions. Since the end of FY 2013, OMB has made substantive interim responses in connection with eight requests. Of the 41 requests in OMB's backlog pending at the end of FY 2013, four have received substantive interim responses.

#### Use of FOIA's Law Enforcement "Exclusions"

- 1. Did your agency invoke a statutory exclusion during Fiscal Year 2012?*
- 2. If so, what was the total number of times exclusions were invoked?*

OMB did not invoke a statutory exclusion during FY 2012 pursuant to subsection (c) of the Act.



## Spotlight on Success

As mentioned above, in Section II, OMB has streamlined its approach for handling consultations from other agencies. Agencies often need responses to their consultation requests in an expedited manner, in order to meet deadlines they have with their requesters, or to meet court imposed deadlines. Consequently, OMB's FOIA Officer flags consultations for OGC upon receipt. A contact within OGC conducts a review of the material, coordinates with the appropriate offices within OMB, and works directly with the agency on any material with OMB equities. This practice provides the agency with a contact within OMB's OGC that is already familiar with the material, with whom they can work with if OMB's equities are later the subject of an administrative action or litigation. Furthermore, with this procedure in place, response times to consultation requests from other agencies are relatively short. In fact, as reported in OMB's Annual FOIA Report, OMB had two consultations pending at the end of the FY, the oldest of which was only pending for five days.