

2020 Chief FOIA Officer Report of the Federal Communications Commission

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The Federal Communications Commission (FCC) is an independent regulatory agency. It was established by the Communications Act of 1934 and is charged with regulating interstate and international communications by radio, wire, satellite, and cable. It is directed by five Commissioners nominated by the President and confirmed by the United States Senate. The President designates one of the Commissioners as Chairman, who acts as the chief executive officer of the agency. The FCC is organized by function into seven operating Bureaus and eleven Staff Offices. Implementation of the Freedom of Information Act (FOIA) is the responsibility of all FCC components, as FOIA requests are processed by the Bureau or Office that is the custodian of the records sought. The Commission's General Counsel is the FCC's Chief FOIA Officer. The general reporting period for the Chief FOIA Officer (CFO) Report is March 2019 to March 2020. The FCC conducted a review of its administration of the FOIA and analyzed the data from its FOIA Annual Report from Fiscal Year 2018 (October 1, 2018, to September 30, 2019), supplemented by data gathered for the period through March 2020. Highlights of this review and analysis are:

- Consistent with the FOIA Improvement Act of 2016 and Department of Justice (DOJ) guidance, the FCC granted (in full or in part) 380 FOIA requests, or 54 percent of 703 requests processed, in FY 2019.
- The agency's average response time for simple track initial FOIA requests was 12.5 days in FY 2019. This is the third year in a row that the agency reported meeting the DOJ's 20-day benchmark and, moreover, is a decrease in the response time of 14.68 days reported in FY 2018.
- The number of pending appeals was reduced from 11 pending at the end of FY 2018, to only three appeals pending at the end of FY 2019.
- The average response time for fee waiver requests dramatically decreased to 0.08 days for 51 requests in FY 2019, from 10.1 days for ten requests in FY 2018.
- The average response time for expedited processing requests was 8.7 days in FY 2019, remaining under the 10-day benchmark for the fourth year in a row.
- In FY 2019, the FCC again reported a very low number of year-end backlogged FOIA requests: 16 of 703 processed.
- The agency pro-actively posted on its website nearly 33 million records in FY 2019, a significant increase from 7.2 million reported in FY 2018.

Section 1: 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 the Assistant Secretary or equivalent level. Is your agency's Chief FOIA Officer at this level?

Yes.

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

Thomas M. Johnson, Jr., General Counsel, FCC, is the agency's Chief FOIA Officer.

B. FOIA Training

3. 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. As explained in more detail in the response to Question 4 below, the agency's FOIA professionals and other staff attended training offered by, among others, the Department's Office of Information Policy and the FCC.

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

- Department of Justice FOIA Training:

Annual FOIA Report Refresher Training
October 9, 2018

Freedom of Information Act Litigation Seminar
November 1, 2018

Introduction to the Freedom of Information Act
December 5, 2018

Chief FOIA Officer Report Refresher Training
December 11, 2018

Best Practices Workshop
January 10, 2019

Freedom of Information Act for Attorneys and Access Professionals
February 5-6, 2019

Advanced FOIA Seminar
February 20, 2019

Freedom of Information Act for Attorneys and Access Professionals
April 16-17, 2019

Continuing FOIA Education
April 24, 2019

Advanced FOIA Seminar
May 14, 2019

Introduction to the Freedom of Information Act
May 21, 2019

Freedom of Information Act for Attorneys and Access Professionals
June 11-12, 2019

FOIA Litigation Seminar
June 25, 2019

Freedom of Information Act for Attorneys and Access Professionals
July 23-24, 2019

Best Practices Workshop
August 13, 2019

- Chief FOIA Officers Council Meeting (August 5, 2019) – FCC staff, representing the Chief FOIA Officer, attended a meeting of the Chief FOIA Officers’ Council, co-chaired by the National Archives and Records Administration (NARA) Office of Government Information Services and the Department of Justice’s Office of Information Policy. Among the topics for discussion were the Foundations for Evidence-Based Policymaking Act and the 2020 CFO Reporting Guidelines.
- Federal Records Officer Network (FRON) Meeting (June 11, 2019) – FCC staff, representing the Performance Evaluation and Records Management Group of the FCC Office of Managing Director, attended this session examining how government-wide records management policies and procedures may be leveraged to improve the administration of the FOIA.
- The agency’s FOIA Service Center provides individual FOIAonline training for new FOIA professionals and other staff with FOIA responsibilities upon request.
- The FCC required all agency staff to take a newly-developed in-house Records Management 101 training course during the reporting period. The NARA requires mandatory annual records management training for all agency personnel including federal employees, contractors, volunteers and others that create, receive, access, or use Federal records on behalf of the agency. The course is offered by video on demand through the agency’s Intranet.

- FOIA training materials are available to all staff, including staff with FOIA responsibilities, on demand through the agency’s Intranet. Among these are slides from joint Department of Justice – FCC training held onsite in April 2017, and a YouTube link for FOIAonline walkthrough training offered by the Environmental Protection Agency in 2018.

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

We believe that 100 percent of the FCC’s FOIA professionals and staff with FOIA responsibilities have attended at least one FOIA training session during the reporting period.¹

6. 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.

C. Outreach

7. 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. The FOIA Service Center will engage in dialogue with any member of the requester community prior to filing in FOIAonline, to more reasonably describe, clarify, and efficiently route FOIA requests once filed. As one example, a frequent media filer of complex FOIA requests has contacted the FOIA Service Center directly on multiple occasions during the reporting period, to discuss the type of information at issue and where it may likely be found, so that the information sought is reasonably described and the appropriate agency Bureau or Office identified in the filed request, thus reducing processing delays.

D. Other Initiatives

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

The agency’s internal FOIA webpage and public FOIA webpage provide information for employees who are not FOIA professionals, but who may need to provide records in response to a FOIA request or are otherwise interested in the FOIA process. For instance, the FCC’s internal FOIA webpage provides contact information for staff FOIA experts in the agency’s FOIA Service Center, Office of General Counsel, and component Bureaus and Offices, as well as the FOIA training described above. As indicated above, the agency’s FOIA Service Center offers individual FOIAonline training for new FOIA

¹ The agency reported 15.96 total full-time FOIA staff in the FY 2019 Annual FOIA Report. The agency does not record precise attendance figures at any of the FOIA training sessions listed above. However, we believe that all individuals with substantial FOIA responsibilities attended the mandatory Records Management training course. At least two other individuals with substantial FOIA responsibilities attended the FRON meeting in person, and at least one other such individual attended the CFO Council Meeting. We believe that at least several staff with substantial FOIA responsibilities attended the remaining FOIA sessions listed in response to Question 2.

professionals and other staff with FOIA responsibilities upon request. In addition, the FOIA Service Center issued weekly reports to agency staff with FOIA responsibilities, and monthly reports to senior staff in the Bureaus and Offices, showing the status of their pending FOIAs throughout the reporting period. The Commission reviewed the Department of Justice's FOIA-related performance standards when they were issued. While the Commission has not adopted specific performance standards related to FOIA, such metrics would be included in more general evaluation criteria contained in employee evaluation standards.

9. 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 agency's Office of General Counsel continues to execute the initiatives begun in previous reporting periods. Specifically, following the FOIA Improvement Act of 2016, the Chief FOIA Officer directed management in the FCC's bureaus and offices to devote resources to determining if discretionary releases are appropriate for records that otherwise would be protected from release under the FOIA exemptions. Additionally, FCC FOIA staff in all bureaus and offices were provided with a FOIA response template that includes language to use that acknowledges the agency's responsibility to determine if discretionary release is appropriate, and the result of that determination. The template also includes discussion of the harm that would result if an otherwise withheld record were released. Agency FOIA staff also review exempt documents to determine whether partial disclosures may be made.

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 2019, 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 2019 Annual FOIA Report.**

8.7 days.

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

Not applicable.

- 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. As indicated in responses to the questions in Sections 1-3 in this report, the agency has examined its FOIA administration by conducting individualized FOIA Online training, issuing internal FOIA status reports, and disclosing information proactively, using techniques in the Toolkit. As reported previously, the FCC conducted a formal self-assessment of its FOIA program utilizing the OIP’s FOIA Self-Assessment Toolkit following its release.

4. 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 2019 (please provide a total number or an estimate of the number).

We estimate 37 occasions on which requesters initiated a request for assistance from the FOIA Public Liaison. This figure does not include multiple exchanges with the requester that may have followed, or the multiple requests by the FOIA Public Liaison to other agency offices, to resolve the initial assistance request.

5. Optional -- Please describe:

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

The FOIA Service Center actively tracks individual FOIA requests, and issues weekly informational reports to agency FOIA professionals showing FOIAs that are backlogged, FOIAs and Expedited Processing requests due, and FOIAs on hold, thus facilitating staff action and improving agency performance. The FOIA Service Center issued to senior staff in the Bureaus and Offices monthly reports showing the status of their pending FOIAs. Other factors, such as the quantity or the complexity of the records requested, challenge the agency’s FOIA processing efficiency.

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 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.

- Freedom of Information Act (FOIA) Electronic Reading Room – The Commission maintains a webpage among other things listing records disclosed in response to FOIA requests that the agency determines have become or are likely to become the subject of subsequent requests for

substantially the same records. <https://www.fcc.gov/general/freedom-information-act-electronic-reading-room>

- **Current Policy Initiatives and Proceedings** -- The Commission established new webpages devoted to a number of policy initiatives and proceedings, including the Nexstar and Tribune Transaction, the Broadcast TV Transition, Media Diversity, the 833 Auction (of toll-free numbers in the 833 code), TV Rescan, Federal Broadband Funding, and Accounting Authority Transition. Each page is a one-stop source of information, providing links to FCC releases, news, and other resources, regarding the Commission's efforts. These may be accessed at:
<https://www.fcc.gov/transaction/nexstar-tribune>, <https://www.fcc.gov/symposium-media-diversity-photos>, <https://www.fcc.gov/wireline-competition/competition-policy-division/numbering-resources/833-auction>, <https://www.fcc.gov/tvrescan/press-resources>, <https://www.fcc.gov/about-fcc/fcc-initiatives/tv-rescan/tv-rescan-faqs-what-consumers-should-do>, <https://www.fcc.gov/about-fcc/fcc-initiatives/tv-rescan/consumer-toolkit>, <https://www.fcc.gov/consumer-governmental-affairs/about-bureau/office-native-affairs-and-policy/federal-broadband>, <https://www.fcc.gov/accounting-authority-transition-frequently-asked-questions>
- **Consumer Guidance** – The Commission launched new webpages providing consumer guidance on how to recognize and avoid communications-related frauds and scams:
 - A Phone Scam That Starts with a Postcard: <https://www.fcc.gov/phone-scam-starts-postcard>
 - Protect Yourself from Social Security Number Spoofing Scams: <https://www.fcc.gov/protect-yourself-social-security-number-spoofing-scams>
 - Port-Out Fraud Targets Your Private Accounts: <https://www.fcc.gov/port-out-fraud-targets-your-private-accounts>
 - Older Americans and Medicare Card Scams: <https://www.fcc.gov/older-americans-and-medicare-card-scams>
 - Phony IRS Scams: <https://www.fcc.gov/phony-irs-scams>
 - FCC Alerts Consumers About Spoofing of 1-888-CALL-FCC Phone Number <https://www.fcc.gov/fcc-alerts-consumers-about-spoofing-1-888-call-fcc-phone-number>
 - Older - but Wiser - Telecom Consumers: <https://www.fcc.gov/older-wiser-telecom-consumers>
 - Scams Take Toll on Older Asian American Pacific Islanders: <https://www.fcc.gov/scams-take-toll-older-asian-american-pacific-islanders>
 - This Tax Season, Don't Fall for Spoofed IRS Calls: <https://www.fcc.gov/tax-season-dont-fall-spoofed-irs-calls>
 - Scam Glossary: <https://www.fcc.gov/scam-glossary>
- **Public Safety Guidance** – The Commission launched new webpages providing communications-related public safety guidance:
 - Distracted Walking a Campus Concern: <https://www.fcc.gov/distracted-walking-campus-concern>
 - Raising Awareness About the Dangers of Distracted Driving: <https://www.fcc.gov/raising-awareness-about-dangers-distracted-driving>
- **Social Media and RSS Feeds** – The Commission participates in several social media platforms to interface with the public on a daily basis. FCC accounts on platforms from Instagram to YouTube regularly update and provide the public with FCC news and releases. In addition, the agency offers automatic updates of its participation in social media by RSS feed subscription.

<https://www.fcc.gov/consumers/social-media>, <https://www.fcc.gov/news-events/social-media>,
[FCC Podcast](#)

- [FCC New Blog Posts and Podcast Episodes](https://www.fcc.gov/news-events/blog) – <https://www.fcc.gov/news-events/blog>, <https://www.fcc.gov/news-events/podcast>, <https://www.fcc.gov/about/leadership/jessica-rosenworcel#podcast>

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.**

The FCC's policy on open data is showcased in a webpage providing further links, including: 1) FCC Open Data, enabling public innovation by publishing data underlying FCC regulatory proceedings and activities with a focus on improving quality, openness, accessibility and utility; 2) FCC Developers Page, promoting the innovative application of FCC data by connecting developers with the tools they need to unlock government data; 3) FCC Digital Strategy, the agency's participating in federal cross-agency initiatives to increase data usability and consumption; 4) FCC Data and Information Officers, a roster of FCC staff members dedicated to providing data and information; and 5) FCC blog posts on open government. The webpage may be accessed at <https://www.fcc.gov/general/open-government-fcc>.

4. **Optional -- Please describe:**

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

As indicated above, the Commission identifies records that are required to be proactively disclosed informally, and generally posts material proactively beyond the requirements of the statute. The FCC participates in numerous social media and e-mail subscription services through which, among other things, it publicizes proactive disclosures for public awareness. These include Facebook, Twitter, Instagram, YouTube, and many others. For instance, the FCC maintains over fifty-five RSS feeds, by which users can receive automatic updates covering the FCC Blog, actions by individual bureaus and offices, and numerous types of FCC documents and databases. Users can also receive this information by email subscription.

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. **Is your agency leveraging or exploring any new technology to facilitate efficiency in its FOIA administration that you have not previously reported? If so, please describe the type of technology.**

Yes.

As required under the FOIA Improvement Act of 2016, in May 2019, the agency submitted to the DOJ its plan to meet the National FOIA Portal's interoperability requirement using FOIAonline, with an anticipated implementation in FY 2022. The FOIA Improvement Act of 2016 requires creation of a central, online request portal that allows a member of the public to submit a request for records under the FOIA to any Federal agency from a single website. In addition, during the reporting period FOIA staff in the Office of General Counsel established an employee mailbox for submitting inquiries regarding the FOIA. The agency is in the process of implementing a new email records management program, as approved by NARA. The agency is exploring how it can use the electronic records management tools from this program to make its FOIA process more efficient.

Also, as previously reported, the Commission has used FOIAonline exclusively to administer its FOIA program beginning in FY 2016. In addition, the agency's FOIA professionals are able to convert documents, emails, and other conventional digital materials to a pdf format automatically using Adobe Acrobat Pro software. This software provides a full range of FOIA processing tools, including redaction marking and application, FOIA exemption labeling, and deduplication using character searches. The software also enables documents to be provided in digital form to requesters without the need to scan or provide paper copies. For very large volume productions, the Commission has made use of file hosting services to provide records to requesters, rather than sending such records over multiple e-mails or on physical media. Although difficult to quantify, we believe that the conversion to FOIA Online and its subsequent 2018 upgrade, and the use of Adobe Acrobat Pro software and file hosting services, have led to more efficient FOIA processing.

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. The agency's FOIA website addresses the elements noted in the OIP 2017 guidance. Most recently, the agency added summary graphs of the annual and quarterly FOIA reports that previously could only be viewed using links to the FOIA.gov website. More generally, as previously reported, there is a clear link to the agency's FOIA webpage, <https://www.fcc.gov/foia>, directly from the Office of General Counsel page. The FOIA webpage includes, as recommended in the OIP guidance, links to: i) the electronic reading room containing, among other things, a list of links to proactive disclosures; ii) instructions to the public on how to make a request or to contact the agency about an existing request; and iii) links to the Commission's Annual FOIA Reports and Chief FOIA Officer Reports, among other reports. Other direct links contained in the Commission's FOIA webpage include the agency's FOIA reference guide and regulations, FOIA text, and the Department of Justice FOIA guide.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2019?

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.

Not applicable.

- 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 2018 Annual FOIA Report and, if available, for your agency's Fiscal Year 2019 Annual FOIA Report.**

For the agency's FY 2018 Annual FOIA Report, please see: <https://www.fcc.gov/reports-research/reports/annual-foia-reports/freedom-information-act-annual-report-fy-2018>. In addition, for the agency's FY 2019 Quarterly FOIA Reports (Q1-Q4), as well as all other Annual and Quarterly FOIA Reports beginning with FY 2013, including links to data in json and xml formats, please see <https://www.fcc.gov/general/foia-reports>.

- 6. Optional -- Please describe:**

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

As indicated above, the agency's FOIA program is administered using FOIAonline, substantially updated in July 2018, and utilizes Adobe Acrobat Pro XI software for processing records. For very large volume productions, the Commission has made use of file hosting services to provide records to requesters, rather than sending such records over multiple e-mails or on physical media. The use of these technologies requires additional specialized training, which can be an issue for staff for whom FOIA processing is only a small part of their work portfolio.

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 2019 Annual FOIA Report and, when applicable, your agency's 2018 Annual FOIA Report.

A. Simple Track

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

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

Yes. The agency's multi-track system consists of simple, complex, and expedited tracks.

- 2. If your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2019?**

Yes. 12.5 days.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2019 that were placed in your simple track.

71.1 percent, or 500 of 703 total requests processed.

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?

Not applicable.

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 2018 and Fiscal Year 2019 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 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?

No. The agency's backlog did increase, but only slightly, from 9 at the end of FY 2018 to 16 at the end of FY 2019.

6. If not, did your agency process more requests during Fiscal Year 2019 than it did during Fiscal Year 2018?

No. The agency processed 848 requests during FY 2018 and 703 requests during FY 2019.

7. If your agency's request backlog increased during Fiscal Year 2019, 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.**

As indicated above, the agency's request backlog increased by only 7 requests, and the FY 2019 total of 16 backlogged requests is well below the agency's historic average. During FY 2019, the agency lost experienced FOIA staff. The agency is in the process of hiring additional FOIA professionals to assist with requests and backlogs.

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 2019. If your agency has no request backlog, please answer with "N/A."

2.29 percent, or 16 of 700 incoming initial FOIA requests.

BACKLOGGED APPEALS

- 9. If your agency had a backlog of appeals at the close of Fiscal Year 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?**

Yes, the number of backlogged appeals decreased from 11 at the end of FY 2018 to three at the end of FY 2019.

- 10. If not, did your agency process more appeals during Fiscal Year 2019 than it did during Fiscal Year 2018?**

Not applicable.

- 11. If your agency's appeal backlog increased during Fiscal Year 2019, 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.

Not applicable.

- 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 2019. If your agency did not receive any appeals in Fiscal Year 2019 and/or has no appeal backlog, please answer with "N/A."**

33.3 percent, or 3 of the 9 total appeals received during FY 2019, were backlogged. The appeals received by the agency during FY 2019 generally involve complex issues, compared with the 36 appeals received (and 35 processed) reported during FY 2018. The decrease in the number of appeals received, and the corresponding increase in their complexity, reflects the agency's efforts during FY 2019 to resolve issues with FOIA requesters informally instead of on appeal.

C. Backlog Reduction Plans

- 13. In the 2019 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2018 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 2019?**

Not applicable.

- 14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2019, what is your agency's plan to reduce this backlog during Fiscal Year 2020?**

Not applicable.

D. Status of 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 2018 and Fiscal Year 2019 when completing this section of your Chief FOIA Officer Report.

OLDEST REQUESTS

15. In Fiscal Year 2019, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

No. Three of the ten oldest requests that were reported pending in the FY 2018 Annual FOIA Report requests remained pending at the end of FY 2019.

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 2018 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

The agency closed during FY 2019 seven of the ten oldest requests that were listed as pending in its FY 2018 Annual FOIA Report.

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

As indicated in Section I, the FOIA Service Center issues weekly reports to staff with FOIA responsibilities, and monthly reports to Bureau and Office management, showing the status of pending FOIAs. FOIA staff in the Office of the Managing Director and the Office of the General Counsel regularly follow up with FOIA staff throughout the agency to help resolve pending matters.

TEN OLDEST APPEALS

18. In Fiscal Year 2019, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

Yes.

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 2018 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

Not applicable.

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 Commission delegated authority to its Chief FOIA Officer and General Counsel to address appeals where it is most efficient for such appeals to be handled without review by the full Commission. This authority has been used to address multiple appeals more quickly than a decision from the full Commission. Similarly, the Office of General Counsel has been given authority to attempt to resolve appeals informally with the consent of the requester.

TEN OLDEST CONSULTATIONS

21. In Fiscal Year 2019, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

Not applicable, because the agency reported no pending consultations in its FY 2018 Annual FOIA Report. During FY 2019, the agency received seven consultations and processed all but one, which was received on September 27, 2019, one business day before the end of the FY reporting period.

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 2018 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

Not applicable.

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.

As noted above, during FY 2019, the Commission was able to close all but three of its ten oldest requests, and all of its ten oldest appeals, that were reported pending in its FY 2018 Annual FOIA Report. The Commission had no pending consultations at the end of FY 2018.

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.

Not applicable.

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 2020.

The Commission will continue to work on the three oldest pending requests, and expects to close them during FY 2020. As indicated above, there are no currently pending appeals that were reported as the ten oldest pending in FY 2018, and there were no consultations pending at the end of FY 2018.

F. Success Stories

Out of all the activities undertaken by your agency since March 2019 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.

See highlights on page 1.