

2021 Chief FOIA Officer Report of the Federal Communications Commission

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The Federal Communications Commission (FCC or Commission) 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 2020 to March 2021. The FCC conducted a review of its administration of the FOIA and analyzed the data from its FOIA Annual Report from Fiscal Year 2020 (October 1, 2019, to September 30, 2020), supplemented by data gathered for the period through March 2021. Highlights of this review and analysis are:

- Notwithstanding extraordinary circumstances in this reporting period, the agency was able to conduct its FOIA program in an effective and timely manner under mandatory telework, with less processing delay due to COVID-19 than initially projected.
- Consistent with the FOIA Improvement Act of 2016 and Department of Justice (DOJ) guidance, the FCC granted (in full or in part) 322 FOIA requests, or 55.6 percent of 579 requests processed, in FY 2020, a slight increase from 54 percent in FY 2019.
- The agency's average response time for simple track initial FOIA requests was 13.07 days in FY 2020. This is the fourth year in a row that the agency reported meeting the DOJ's 20-day benchmark.
- The number of pending appeals at the end of FY 2020 remains low at 10, even as the number of incoming appeals more than doubled from 9 in FY 2019 to 25 in FY 2020.
- The average response time for fee waiver requests remains low at 1.82 days for 11 requests in FY 2020.
- The average response time for expedited processing requests decreased to 6.56 days in FY 2020, remaining under the 10-day benchmark for the fifth year in a row.
- In FY 2020, the FCC again reported a very low number of year-end backlogged FOIA requests: 21 of 579 processed.
- The agency pro-actively posted on its website more than 9 million records in FY 2020.

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. See 5 U.S.C. § 552(j)(1) (2018). 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.**

Michele Ellison, Acting General Counsel, FCC, is the agency's Chief FOIA Officer.

B. FOIA Training

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

During the reporting period, the FOIA Service Center forwarded information about DOJ FOIA Training sessions to the agency's FOIA professionals and other staff with FOIA responsibilities. FCC Office of General Counsel (OGC) staff followed with outreach to each of the agency's component Bureaus and Offices, seeking input for additional FOIA training that the FOIA Service Center and OGC could provide. OGC conducted a customized FOIA training session with the agency's Public Safety and Homeland Security Bureau on October 14, 2020, including an overview of the FOIA, comprehensive written FOIA slides, and a question and answer session. Customized FOIA training for the agency's remaining Bureaus and Offices will be conducted on request. In addition, the FOIA Service Center provides individualized FOIA training to any staff on request. The agency makes available to all staff a number of FOIA training materials on demand through its intranet. Significant revisions to these materials are provided directly to all staff with FOIA responsibilities.

- 4. 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?**

Yes. As explained in more detail in the response to Question 5 below, the agency's FOIA professionals and other staff attended training offered by the DOJ's Office of Information Policy (OIP) and the FCC.

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

- DOJ FOIA Training:

Annual FOIA Report Refresher Training - October 17, 2019

Freedom of Information Act Litigation Seminar - October 22, 2019

Introduction to the Freedom of Information Act - November 7, 2019

Chief FOIA Officer Report Refresher Training - December 10, 2019

Best Practices Workshop - January 7, 2020

Freedom of Information Act for Attorneys and Access Professionals - January 21-22, 2020

Advanced FOIA Seminar - February 18, 2020

Best Practices Workshop - April 20, 2020

Virtual Introduction to the Freedom of Information Act - May 12, 2020

Virtual Exemption 4 Workshop - May 14, 2020

Virtual Exemption 5 Workshop - May 14, 2020

Virtual Privacy Considerations Mini-Session - May 21, 2020

Virtual Continuing FOIA Education - May 28, 2020

Virtual Exemption 7 Workshop - June 11, 2020

Virtual Exemption 1 Workshop - June 11, 2020

Virtual Fees and Fee Waivers Workshop - June 16, 2020

Virtual Litigation Workshop - June 18, 2020

Virtual Processing from Start to Finish Workshop - June 30, 2020

Virtual Introduction to the Freedom of Information Act - July 9, 2020

Virtual Exemption 4 Workshop - July 14, 2020

Virtual Exemption 5 Workshop - July 14, 2020

Virtual Privacy Considerations Mini-Session - July 21, 2020

Virtual Annual FOIA Report Training - October 15, 2020

Virtual Litigation Workshop - October 20, 2020

Artificial Intelligence for FOIA Professionals - November 5, 2020

Virtual Introduction to the Freedom of Information Act - November 10, 2020

Virtual Chief FOIA Officer Report Training - December 10, 2020

Virtual Procedural Requirements and Fees Workshop – January 14, 2021

Virtual Exemption 1 and Exemption 7 Workshop – January 19, 2021

Virtual Exemption 4 and Exemption 5 Workshop – January 21, 2021

Virtual Privacy Considerations Workshop – January 27, 2021

Virtual Litigation Workshop – February 10, 2021

- The FCC’s OGC provided FOIA training to the agency’s Public Safety and Homeland Security Bureau on October 14, 2020.
 - The FOIA Service Center provides individual FOIAonline training for new FOIA professionals and other staff with FOIA responsibilities upon request.
 - The FCC requires all agency staff to take a Records Management 101 training course annually. The National Archives and Records Administration (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 providing a FOIA overview; slides from joint DOJ – FCC training held onsite in April 2017; FOIAonline resources including user training manual, coordinator list, best practices, and YouTube link for FOIAonline walkthrough training offered by the Environmental Protection Agency in 2018; and FOIA “Things to Remember” worksheet for issuing initial responses.
- 6. Please provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.**

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

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

¹ The agency reported 15.24 total full-time FOIA staff in the FY 2020 Annual FOIA Report. We believe that all individuals with substantial FOIA responsibilities attended the mandatory Records Management training course. We believe that at least several staff with substantial FOIA responsibilities attended the remaining FOIA sessions listed in response to Question 5.

Not applicable.

C. Outreach

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

Yes. 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. Some frequent requesters contact the FOIA Service Center regularly prior to filing, 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 is identified in the filed request, thus reducing processing delays.

D. Other Initiatives

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

The 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, OGC, and component Bureaus and Offices, as well as the FOIA training and materials described above that are available to all staff. As indicated above, the agency's OGC offers customized FOIA training sessions to the Bureaus and Offices, and the FOIA Service Center offers individual FOIAonline training for new FOIA 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 DOJ'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.

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

The agency's OGC 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 where release is appropriate for records that otherwise would be protected, consistent with the standard set forth under the Act. Relatedly, 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 2020, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2020 Annual FOIA Report.**

6.56 days.

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

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 or raw 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.

During the 2021 reporting period, the agency has self-assessed its FOIA program on an informal, ongoing basis using techniques in the Toolkit and, in particular, it has identified areas needing improvement and implemented next steps. More specifically, the FOIA Service Center provided individualized FOIAonline training to any staff with FOIA responsibilities upon request and implemented measures to ensure that all agency staff attended mandatory annual Records Management training (Toolkit Module 10). The FOIA Service Center also issued regular internal FOIA status reports to senior agency officials and staff with FOIA responsibilities summarizing pending and backlogged initial FOIA requests and requests for expedited processing, and provided follow-up guidance on individual cases where needed to reduce processing times and delay (Module 2). The agency increased the number of proactively disclosed records during FY 2020 and FY 2019, compared with previous fiscal years (Module 2, Module 13). OGC expanded its FOIA Review team during the 2021 reporting period to speed turnaround for review of initial FOIA decisions and for advice on other FOIA issues, and to add new expertise (Module 2). As reported previously, the FCC conducted a formal self-assessment of its FOIA program utilizing the Toolkit during the reporting periods immediately following its 2017 release.

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

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

The agency has standardized its processes for handling FOIA requests and appeals to ensure quality control and increase efficiency, although it has not implemented formal FOIA SOPs. As previously reported, it has used FOIAonline to administer its FOIA requests and appeals beginning in FY 2016. Requesters can use FOIAonline to file a request or appeal electronically and to obtain status information, and are automatically issued notifications and correspondence. The agency maintains a “How To File A FOIA Request” public webpage setting forth FOIA filing procedures, fees, and how to obtain status information. For staff with FOIA responsibilities, the FCC has available on its intranet a FOIA Directive implementing standard internal procedures in receiving, processing, and reporting on FOIA requests and appeals. Staff are provided FOIA response templates through the intranet. OGC reviews all draft initial FOIA responses by the Bureaus and Offices, to ensure consistency and quality of FOIA decisions agencywide.

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

Not at this time, because the agency has not yet determined that formal SOPs are needed in addition to the established processes outlined above to ensure quality control and facilitate efficiency in its FOIA program.

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

As indicated above, the agency has not implemented formal FOIA SOPs. The general processes outlined above, however, are updated regularly, as necessary, to reflect new information. For instance, the “How To File a FOIA Request” public webpage was updated during the reporting period. The new and revised FOIA overview slides and FOIA response templates were posted on the agency’s intranet during the reporting period, and the most current FOIA Directive was issued in 2018.

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

Please see responses to 4.a) and c) above.

5. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency’s FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency’s FOIA Public Liaison during FY 2020 (please provide a total number or an estimate of the number).

We estimate 30 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 Bureaus and Offices, to resolve the initial assistance request.

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

Yes. Common categories of first-party requests include: i) requests for consumer complaints involving, or filed by, the requester; and ii) requests for records related to an enforcement action involving the

requester or initiated by the requester's complaint. First-party requests are administered in FOIAonline, whether they are processed under the FOIA or the Privacy Act.

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

Yes. On December 15, 2016, the agency issued an order updating its FOIA regulations consistent with the FOIA Improvement Act of 2016, available at: <https://www.fcc.gov/document/foia-improvement-act-implementation-order>.

8. Please explain how your agency worked to mitigate the impact of the COVID-19 pandemic on FOIA processing. Examples could include, but are not limited to: altering workflows, implementing new technology, providing notices and instructions or otherwise communicating directly with requesters.

The agency implemented a number of measures to mitigate the impact of the COVID-19 pandemic on FOIA processing. Specifically, in response to initial projections of FOIA processing delays, the FOIA Service Center implemented electronic conversion of incoming hard copy FOIA requests, and conversion of responses to hard copy for postal mailing to requesters without an email address. Because many custodians were performing other mission-critical work in response to the crisis, OGC staff worked directly with requesters to modify and better target requests, in an effort to reduce search and review time. Where records had already been processed, OGC handled internal agency coordination of responses that were relatively uncomplicated or involved high visibility or sensitive issues. As a result of these measures, we believe that FOIA processing delays were lower than initially projected and mainly involve a limited number of responses involving hard copy records, or that require multiple stages of high-level agency review. The agency's use of FOIAonline and other electronic means to receive, process, and close out FOIA requests enabled it to process many of its requests in a timely manner.

9. Optional -- Please describe:

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

In addition to the measures implemented to mitigate the impact of COVID-19 during the reporting period described above, more generally 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 telehealth, federal broadband support, and accessibility. Each page is a one-stop source of information, providing links to FCC releases, news, and other resources, regarding the Commission’s efforts. Examples of some of these may be accessed at: <https://www.fcc.gov/covid-19-telehealth-program>, <https://www.fcc.gov/health/rural-telehealth-outreach>, <https://www.fcc.gov/wireline-competition/telecommunications-access-policy-division/connected-care-pilot-program>, <https://www.fcc.gov/5g-fund>, <https://www.fcc.gov/auction/107>, <https://www.fcc.gov/accessibility/program>, <https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2020-broadband-deployment-report>
- Consumer Guidance – The Commission launched new webpages providing consumer guidance on how to recognize and avoid communications-related frauds and scams:
 - Coronavirus Scams - Consumer Resources, <https://www.fcc.gov/covid-scams>
 - COVID-19 Text Scams, <https://www.fcc.gov/covid-19-text-scams>
 - COVID-19 Robocall Scams, <https://www.fcc.gov/covid-19-robocall-scams>
 - Home Network Tips for the Coronavirus Pandemic, <https://www.fcc.gov/home-network-tips-coronavirus-pandemic>
 - How to Sanitize Your Phone and Other Devices, <https://www.fcc.gov/consumers/guides/how-sanitize-your-phone-and-other-devices>
 - Bogus COVID-19 Tests and Pharmacy Offers, <https://www.fcc.gov/bogus-covid-19-tests-and-pharmacy-offers>
 - Fear Fuels COVID-19 Contact Tracing Scams, <https://www.fcc.gov/fear-fuels-covid-19-contact-tracing-scams>
 - Coronavirus Scams Targeting Older Americans, <https://www.fcc.gov/coronavirus-scams-targeting-older-americans>
 - As More Consumers Adopt Payment Apps, Scammers Follow, <https://www.fcc.gov/more-consumers-adopt-payment-apps-scammers-follow>
 - How to Identify and Avoid Package Delivery Scams, <https://www.fcc.gov/how-identify-and-avoid-package-delivery-scams>
 - Call Blocking Tools and Resources, <https://www.fcc.gov/call-blocking>
 - Don’t Let Holiday Shopping Scams Dampen Your Spirits, <https://www.fcc.gov/dont-let-holiday-shopping-scams-dampen-your-spirits>
- Public Safety Guidance – The Commission launched new webpages providing communications-related public safety guidance:
 - Coronavirus – <https://www.fcc.gov/coronavirus>, <https://www.fcc.gov/coronavirus-espanol>

- Weather Emergencies – <https://www.fcc.gov/isaias>, <https://www.fcc.gov/midwest-derecho>, <https://www.fcc.gov/laura>, <https://www.fcc.gov/marco-laura>, <https://www.fcc.gov/sally>, <https://www.fcc.gov/delta>, <https://www.fcc.gov/zeta>
 - 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 – The Commission added numerous blog posts, events, and podcast episodes during the reporting period. <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. Please briefly describe the types of technology your agency uses to support your FOIA program. In addition, please highlight if your agency is leveraging or exploring any new technology that you have not previously reported. If so, please describe the type of technology.**

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, the agency provides an employee mailbox for submitting inquiries regarding the FOIA. During the reporting period the agency implemented 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 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, deduplication using character searches, and electronic signature. 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 use of these technologies generally facilitates efficient FOIA processing and, as explained in Section II, led to fewer processing delays due to COVID-19 than initially projected.

- 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. As previously reported, there is a clear link to the agency's FOIA webpage, <https://www.fcc.gov/foia>, directly from the OGC 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 summary graphs of the annual and quarterly FOIA reports that previously could only be viewed using links to the FOIA.gov website, 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 2020?

Yes.

4. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2021.

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 2019 Annual FOIA Report and, if available, for your agency's Fiscal Year 2020 Annual FOIA Report.

For the agency's FY 2019 and FY 2020 Annual FOIA Reports, please see: <https://www.fcc.gov/reports-research/reports/annual-foia-reports/freedom-information-act-annual-report-fy-2019> and <https://www.fcc.gov/reports-research/reports/annual-foia-reports/freedom-information-act-annual-report-fy-2020>.

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 during the reporting period, and utilizes Adobe Acrobat Pro software for processing records. The FOIA Service Center meets on a monthly basis with other agencies using FOIAonline. 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 challenging for staff for whom FOIA processing is only a small part of their work portfolio. Nevertheless, the use of these technologies enabled the agency to maintain FOIA processing during telework required in response to COVID-19.

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

The Department of Justice has emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations.

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's FY 2019 and 2020 Annual FOIA Reports.

A. Simple Track

Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a

category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

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

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

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

Yes. 13.07 days.

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

65.1 percent, or 377 of 579 total simple 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 2019 and Fiscal Year 2020 when completing this section of your Chief FOIA Officer Report.

BACKLOGGED REQUESTS

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

No. The agency's backlog did increase, but only slightly, from 16 at the end of FY 2019 to 21 at the end of FY 2020.

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

No. The agency processed 703 requests during FY 2019 and 579 requests during FY 2020.

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

- An increase in the number of incoming requests.

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

As indicated above, the agency’s request backlog increased by only 5 requests, and the FY 2020 total of 21 backlogged requests is well below the agency’s historic average. As explained above, we believe that FOIA processing was delayed as a result of COVID-19, although less than initially projected.

8. If you had a request backlog, please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2020. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) *divided by* (requests received from Section V.A) x 100. If your agency has no request backlog, please answer with “N/A.”

3.67 percent, or 21 of 572 incoming initial FOIA requests.

BACKLOGGED APPEALS

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

No. While remaining a low figure, the number of backlogged appeals increased from three at the end of FY 2019 to 10 at the end of FY 2020.

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

Yes. The agency processed 18 appeals in FY 2020 and 15 appeals in FY 2019.

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

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

Although the FOIA appeals backlog remained a low figure as indicated in response to question 9. above, the increase from three at the end of 2019 to 10 at the end of FY 2020, is in substantial part due to the increase in the number of incoming appeals, from nine appeals received in FY 2019 to 25 received in FY 2020. In addition, the appeals that are backlogged generally involve complex issues, reflecting the

agency's efforts during FY 2020 to resolve issues with FOIA requesters informally rather than in a written appeal decision.

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

Forty percent, or 10 of 25 total appeals received during FY 2020, were backlogged. As indicated above, the appeals that are backlogged generally involve complex issues, reflecting the agency's efforts during FY 2020 to resolve issues with FOIA requesters informally rather than in a written appeal decision.

C. Backlog Reduction Plans

13. In the 2020 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1,000 requests in Fiscal Year 2019 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2020?

Not applicable.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2020, please explain your agency's plan to reduce this backlog during Fiscal Year 2021.

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

OLDEST REQUESTS

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

No. Seven of the ten oldest requests that were reported pending in the FY 2019 Annual FOIA Report requests remained pending at the end of FY 2020.

16. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2019 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

The agency closed during FY 2020 three of the ten oldest requests that were listed as pending in its FY 2019 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 2020, did your agency close the ten oldest appeals that were reported pending in Section VII.C.5. of your Fiscal Year 2019 Annual FOIA Report?

No.

19. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2019 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

As indicated above, only three appeals were pending at the end of FY 2019. The agency closed one of these during FY 2020.

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, OGC has been given authority to attempt to resolve appeals informally with the consent of the requester.

TEN OLDEST CONSULTATIONS

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

Yes. The agency reported only one pending consultation in its FY 2019 Annual FOIA Report, which was received on September 27, 2019, one business day before the end of the FY reporting period. During FY 2020, the agency received two additional consultations. The agency processed all three consultations, and thus reported no pending consultations at the end of FY 2020.

22. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2019 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

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 2020, the Commission was able to close three of its ten oldest requests, one of only three total appeals, and the sole consultation, that were reported pending in its FY 2019 Annual FOIA Report. As explained above, we believe that FOIA processing was delayed as a result of COVID-19, although less than initially projected.

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 2021.

The Commission closed another oldest pending appeal and expects to close the remaining oldest pending appeal and seven oldest pending requests, during FY 2021. As indicated above, during FY 2020 the agency closed the sole consultation pending at the end of FY 2019.

F. Success Stories

Out of all the activities undertaken by your agency since March 2020 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency’s efforts. The success story can come from any one of the five key areas, but should not be something that you have reported in a prior year. 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.