

CONSUMER FINANCIAL PROTECTION BUREAU | MARCH 2023

# Chief FOIA Officer Report

High-volume receiving more than 50 requests in Fiscal Year 2022

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# Section I. FOIA Leadership and Applying the Presumption of Openness

The guiding principle underlying the Attorney General’s FOIA Guidelines is the presumption of openness. The guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration.

## A. Leadership Support for FOIA

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

Yes.

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

Jean Chang, Acting Chief Operating Officer

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

The CFPB has incorporated transparency, the cornerstone of FOIA, into its ~~2022-2026~~ 2022-2026 ~~strategic plan~~. One of CFPB’s objectives is to advance its work by providing “accurate, complete, and meaningful information about the financial and operating performance of the CFPB to promote integrity and transparency to internal and external stakeholders.” One of the ways the CFPB meets this objective is by providing transparency to external stakeholders through timely response to FOIA requests and through proactive disclosure of CFPB records on the CFPB website.

## B. Presumption of Openness

4. *The Attorney General’s 2022 FOIA Guidelines provides that “agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm*

*standard when reviewing records and applying FOIA exemptions.” Does your agency provide such confirmation in its response letters?*

Yes. The CFPB considers the foreseeable harm standard when reviewing records and applying FOIA exemptions. The CFPB also provides requesters our foreseeable harm language in each applicable final response letter “As amended in 2016, the Freedom of Information Act provides that a federal agency or department (hereinafter “agency”) may withhold responsive records only if: (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the nine exemptions that FOIA enumerates; or (2) disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A)(i). The CFPB has considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.”

5. *In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interest protected by a FOIA exemption. This is commonly referred to as a Glomar response. With respect to these responses, please answer the below questions:*

a. *In addition to tracking the asserted exemption, does your agency specifically track whether a request involved a Glomar response?*

Yes.

b. *If yes, please provide:*

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

The CFPB issued nine full Glomar responses during the reporting period.

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

- Exemption 7(A) - four times
- Exemption 7(E) - three times
- Exemption 8 – two times

c. *If your agency does not track the use of Glomar responses, what would your agency need to do to track in the future? If possible, please describe the resources and time involved.*

N/A

6. *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.*

On a monthly basis, the FOIA team requests the calendars of the CFPB's Director and Deputy Director for proactive disclosure. In 2022, the FOIA team consolidated all former employee's leadership calendars into searchable Section 508- compliant documents.

During the reporting period, the FOIA team began proactively disclosing Stop Trading on Congressional Knowledge (STOCK) Act notifications to our FOIA Reading Room. The STOCK Act requires CFPB Executives to file a statement notifying the CFPB Ethics Office of any negotiation for, or agreement of, future employment or compensation with a non-federal entity no later than three business days after commencement of the negotiation or agreement. The FOIA team has started releasing all STOCK Act notifications on a quarterly basis.

# Section II. Ensuring Fair and Effective FOIA Administration

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

## A. FOIA Training

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

During the reporting period, the FOIA team and designated FOIA Points of Contact (POCs) throughout the CFPB were regularly trained on their responsibilities in implementing the FOIA.

The FOIA team created and distributed to its POCs an updated reference guide on processing FOIA requests at the CFPB. This guide includes instructions on all levels of FOIA processing with a heavy focus on the area of search. The issuance of this updated guide was accompanied by a training session on the roles and responsibilities of FOIA POCs under the new FOIA POC Guide. Starting with this training, the FOIA team now hosts quarterly training for all designated FOIA POCs.

As emerging issues were identified, training was created and given during FOIA weekly meetings to ensure that all FOIA staff were properly and consistently trained on emerging issues. During the reporting period, a more robust quality control process has been implemented. In addition to ensuring FOIA responses were consistent and correct, this process provides ongoing feedback and training to our FOIA processing team.

Beginning in August 2022, the FOIA team conducted a FOIA refresher training series where each FOIA team staff member prepared and led a training of the FOIA team on a key topic.

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

Yes.

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

**Attended:**

- Procedural Requirements and Fees Training
- FOIA Tech Showcase
- DOJ Virtual Litigation Workshop

**Conducted by FOIA team members and attended by FOIA team staff:**

- Processing a Request from Start to Finish
- Quality Control Process
- Administrative Appeals
- Request For Documents Workshop and Relativity Capabilities
- Identifying CFPB Stakeholders
- Exemption 5
- Exemption 8
- Administrative Appeals
- Best Practices for Negotiation and Processing Strategies

**Conducted by FOIA team member and attended by CFPB FOIA POCs, Key FOIA Stakeholders and FOIA team staff:**

- FOIA POC Guide
- Conducting FOIA Searches
- Utilizing exemption 5 (including the foreseeable harm standard)

4. *Please provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.*

100 percent

5. *OIP has directed agencies to “take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year.” If your response to the previous question is that less than 80% of your FOIA professionals attended*

*training, please explain your agency's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.*

N/A

- 6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and if senior leaders at your agency received a briefing on your agency's FOIA resources, obligations and expectations during the FOIA process?*

The FOIA Manager has briefed senior staff including the CFPB Director, Deputy Director, Chief of Staff, Chief Operating Officer/Chief FOIA Officer, Deputy Chief Operating Officer, CFPB's General Counsel, and others. The FOIA Manager meets with the CFPB's leadership staff on a weekly basis and with Legal Division and Office of Legislative Affairs staff on a biweekly basis to keep them abreast of potential issues related to FOIA. When necessary, the meetings are used to discuss FOIA resources, obligations, and expectations during the FOIA process.

The FOIA team hosts quarterly virtual training for the designated FOIA POCs via Microsoft Teams.

## B. Outreach

- 7. Did your FOIA professionals engage in any outreach or dialogue, outside of the standard request process, 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.*

CFPB analysts regularly engage in requester outreach. Generally, this regular contact reduces appeals and litigation. The FOIA Public Liaison has reached out to CFPB frequent requesters to get input from them on their utilization of FOIA proactive disclosures during a "Design Sprint" which sought to improve the submission of FOIA requests and navigation of the CFPB's Reading Room.

- 8. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow*



*the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue, and, if applicable, any specific examples.*

During the reporting period, the CFPB implemented a procedure of having every incoming FOIA request reviewed by the FOIA Public Liaison for the purpose of identifying requests that would benefit from requester outreach. When a request is assigned for processing, the analyst receives guidance on requester outreach that is specific to the request. If the request is deemed not reasonably scoped, the analyst reaches out to the requester to clarify or narrow the request. The analyst also works with FOIA POCs and the eDiscovery team to identify material the requester is most likely interested in and uses this information to help the requester decide on how to best narrow the request. This has been effective in reducing voluminous search results.

9. *The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during Fiscal Year 2022 (please provide a total number or an estimate of the number).*

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## C. Other Initiatives

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

The FOIA team conducted an evaluation of the personnel resources needed to keep up with the 71 percent increase year-over-year in new incoming requests, the request backlog, and ongoing litigation while it continues to implement greater quality controls. This evaluation was used to inform CFPB leadership on how to best allocate agency resources to address current and anticipated FOIA needs.

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

The FOIA team produces both weekly and quarterly reports for its stakeholders using metrics from the case management software as well as Tableau to ensure efficient

management of our FOIA workload. These reports include metrics on the backlog, pending requests, received requests, closed requests, outstanding Requests for Documents (RFDs) and Subject Matter Expert (SME) document reviews. The weekly report also tracks all new incoming and pending requests, as well as the status of the fiscal year's 10 oldest requests. The quarterly report additionally tracks the number of RFDs and SME document reviews each office has completed. Data regarding both outstanding and completed RFDs and SME document review is exported from the FOIA case management system into Tableau and reports are run from Tableau.

The FOIA team uses its FOIA system to run ad-hoc reports on staff closure rates and the types of requests the staff is closing. These are used to track the workload of both individuals and the team in administrating the FOIA. The FOIA team analyzes analyst productivity to set fiscal year goals for analysts in terms of monthly case closures and team goals regarding the proportion of timely simple and complex request closures and backlog reduction. The team also sets team goals regarding lowering the percentage of requests remanded on appeal, lowering the number of FOIA appeals and decreasing litigation. The FOIA team leadership uses received requests metrics and analyst production metrics to extrapolate the amount of analyst Full Time Employees needed to keep up with the expected new incoming requests.

The FOIA System also tracks all requests that are assigned to analysts including all records associated with each request housed in that system. The intake team, led by the Public Liaison, looks at these to determine who should be assigned what incoming cases and what assignment directions to provide to analysts. Analysts use the database for all their casework, and to compare and analyze current requests in light of other similar or potentially overlapping requests. The FOIA team is also preparing to implement a "collaboration portal" add-on to our tracking system to communicate with FOIA POCs more efficiently on searches and SME document reviews.

12. *Optional -- If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.*

The FOIA team leadership reviewed the FOIA team's processes, communications with Stakeholders, SMEs and FOIA POCs as well as the quality of responses to requesters to make improvements to the quality of our responses, while ensuring greater awareness and transparency around our FOIA process and FOIA releases.

# Section III. Proactive Disclosure

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

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

The CFPB tags and links frequently requested records and proactive disclosures in our FOIAXpress tracking system. On a quarterly basis, a review is conducted by a senior analyst to identify any frequently requested record for posting to the Reading Room.

2. *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.*

- Experian Contract CFP-13-C-00003
  - This contract provided the CFPB with the credit records of sample consumers and the matching identifications without any personally identifying information.
  - <https://www.consumerfinance.gov/foia-requests/foia-electronic-reading-room/experian-contract/>
- Enforcement Policies and Procedures Manual, Version 3.2
  - This record is the Enforcement Policies and Procedures Manual, Version 3.2 updated in February 2021.
  - <https://www.consumerfinance.gov/foia-requests/foia-electronic-reading-room/enforcement-policies-and-procedures-manual-version-3-2/>
- SEFL Staff Memorandums
  - These records are Supervision Enforcement Fair Lending (SEFL) Staff Memorandums 2016-03 on SEFL Integration 3.3 and SEFL Examination Process Timing.
  - <https://www.consumerfinance.gov/foia-requests/foia-electronic-reading-room/sefl-staff-memorandums/>
- CFPB FOIA Log FY 2022
  - This is the log of FOIA requests received in FY2022.

- <https://www.consumerfinance.gov/foia-requests/foia-electronic-reading-room/cfpb-foia-log-fy-2022/>
  - ARC Decisions FY 2019-FY 2021
    - Charts of the Action Review Committee Decisions for FY 2019, FY 2020, and FY 2021.
    - <https://www.consumerfinance.gov/foia-requests/foia-electronic-reading-room/arc-decisions-fy2019-fy2021/>
  - STOCK Act Notifications of Future Employment Discussions or Agreement and Recusal
    - The Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act) requires CFPB Executives to file a statement notifying the CFPB Ethics Office of any negotiation for, or agreement of, future employment or compensation with a non-federal entity no later than three business days after commencement of the negotiation or agreement.
    - <https://www.consumerfinance.gov/foia-requests/foia-electronic-reading-room/stock-act-notifications-of-future-employment-discussions-or-agreement-and-recusal/>
  - CFPB Leadership Calendars
    - <https://www.consumerfinance.gov/about-us/the-bureau/leadership-calendar/>
3. *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. In October 2022, the CFPB's FOIA team worked with the CFPB's Design and Development team to complete a "Design Sprint" to improve the submission of FOIA requests and navigation of the CFPB's Reading Room. This design sprint utilized feedback from frequent FOIA requesters on filtering options in the CFPB's Reading Room. By better understanding users' processes in submitting a FOIA request and their expectations of a FOIA reading room, the CFPB's FOI team was able to improve the FOIA request submission process and the FOIA Reading Room.

The FOIA team also used data analytics to learn what proactive disclosures are the most highly viewed by the public and this information has guided our efforts to proactively disclose information that is most useful to the FOIA requestor community.

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

To allow greater access to published Reading Room materials, the CFPB now hyperlinks proactive disclosures and other CFPB publicly available documents in our FOIA log.

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

Yes. Technology and Innovation's Design and Development and Digital Teams stage all FOIA proactive disclosures before posting to the Reading Room or website.

6. *Optional-- Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.*

On a monthly basis, the FOIA team hosts a FOIA Working Group for proactive disclosure to streamline the review of multiple CFPB Program Office equities. This Working Group provides a monthly streamlined review of CFPB management calendars, followed by an equity review of any other items identified for proactive disclosure.

# Section IV. Steps Taken to Greater Utilize Technology

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

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

Yes.

2. *Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program.*

The CFPB's FOIA team utilized "Mouseflow" with assistance from the CFPB's Office of Technology and Innovation's (T&I) Digital Analytics team to contextualize data and user testing results with replays, visualizations, and public feedback on the CFPB's FOIA Reading Room webpage.

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

Yes. The CFPB's FOIA team uses the FOIAXpress Electronic Document Review, a FOIAXpress add-on, and Relativity to automate record processing. We estimate that these tools have saved hundreds of hours annually by removing duplicative and non-responsive documents through technology-assisted reviews.

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

Yes. As described above, the CFPB's FOIA team completed a "Design Sprint" to improve the submission of FOIA requests and navigation of the CFPB's Reading Room from our website.

5. *Did all four of your agency's quarterly reports for Fiscal Year 2022 appear on FOIA.gov?*

Yes.

6. *If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2023.*

N/A

7. *The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2021 Annual FOIA Report and, if available, for your agency's Fiscal Year 2022 Annual FOIA Report.*

<https://www.consumerfinance.gov/foia-requests/foia-electronic-reading-room/cfpb-annual-foia-report-fy2022/>

<https://www.consumerfinance.gov/foia-requests/foia-electronic-reading-room/cfpb-annual-foia-report-fy2021/>

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

Yes.

9. *Optional -- Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.*

The FOIA team utilizes technology to improve its communication with FOIA POCs and internal stakeholders through improved reporting and creating multiple touchpoints between stakeholders and the FOIA team. One challenge that we are addressing is the need for a collaborative space for FOIA POCs to provide input on their responses to searches and document reviews. To that end, the FOIA team is exploring implementing a collaboration portal for FOIA POCs to provide their input directly into a shared system.

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

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

## A. Remove Barriers to Access

1. *Has your agency established alternative means of access to first-party requested records outside of the FOIA process?*

Yes. The CFPB is committed to transparency in government operations and the effective administration of the FOIA and Privacy Act and has established a process to address first party requests regarding consumer complaints.

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

Individuals can access their CFPB consumer complaints and associated documents including the company’s response to the consumer without a FOIA or Privacy Act request through the Consumer portal.

## B. Timeliness

3. *For Fiscal Year 2022, 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 2022 Annual FOIA Report.*



The average number of days reported for adjudicating requests for expedited processing was 1.69 days.

4. *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 2022 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.*

N/A

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

Yes.

6. *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 2022?*

Yes. 6.14 days.

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

N/A

8. *Please provide the percentage of requests processed by your agency in Fiscal Year 2022 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.*

$(240 / 380) \times 100 = 63.16\%$ .

9. *If your agency does not track simple requests separately, was the average number of days to process all non-expedited requests twenty working days or fewer?*

N/A

## C. Backlogs

# Backlogged Requests

10. *If your agency had a backlog of requests at the close of Fiscal Year 2022, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?*

No, the backlog increased from 16 requests at the close of FY21 to 48 requests at the close of FY22 as new requests climbed by 71 percent in this reporting period.

11. *If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2022 than it did during Fiscal Year 2021?*

Yes, the CFPB processed 380 requests in FY 2022 as compared to 366 requests in FY 2021.

12. *If your agency's request backlog increased during Fiscal Year 2022, 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)*

*Impact of COVID-19 and workplace and safety precautions*

*Any other reasons – please briefly describe or provide examples when possible*

Three factors resulted in the FOIA team not being able to reduce the backlog:

1) In FY 2022, the number of incoming requests increased by 71 percent as compared to FY 2021.

2) As the backlog was reduced, the FOIA team reduced its contractor team by two staff (13 percent of its staffing) in the first two months of FY 2022. By late FY 2022, the backlog grew and the FOIA team has sought additional resources to address.

3) At the end of FY 2022, the FOIA team reviewed its processes to improve the quality of responses and increase communication with FOIA POCs and internal stakeholders. As part of this review, the FOIA team leadership conducted an evaluation on the quality of the team's work by examining the processing of all requests. During this assessment, additional quality control and SME review steps were added to the FOIA process. The assessment and the additional steps resulted in a slow-down in the speed of responses and additional requests aged into the backlog.

13. *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 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A."*

$48/437 * 100 = 10.98$  percent

## Backlogged Appeals

14. *If your agency had a backlog of appeals at the close of Fiscal Year 2022, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?*

N/A

15. *If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2022 than it did during Fiscal Year 2021?*

N/A

16. *If your agency's request backlog increased during Fiscal Year 2022, 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)*

*Impact of COVID-19 and workplace and safety precautions*

*Any other reasons – please briefly describe or provide examples when possible*

N/A

17. *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 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2022 and/or has no appeal backlog, please answer with "N/A."*

N/A

## D. Backlog Reduction Plans

18. *In the 2022 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2021 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 2022?*

N/A

19. *If your agency had a backlog of more than 1,000 requests in Fiscal Year 2022, please explain your agency's plan to reduce this backlog during Fiscal Year 2023.*

N/A

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

### Ten Oldest Requests

20. *In Fiscal Year 2022, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2021 Annual FOIA Report?*

No

21. *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 2021 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.*

The FOIA team closed 9 out of its 10 oldest pending perfected requests.

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

The FOIA team was able to close requests faster. In FY22, it was able to close simple requests in an average of six days, complex requests in an average of 79 days, and expedited requests in an average of three days. That is significantly faster than in FY 2021, when simple requests were closed in an average of 12 days, complex requests were closed in an average of 273 days, and expedited requests were closed in an average of 10 days.

To reduce the overall age of pending FOIA requests, the FOIA team was trained in effective electronic searches and meaningful ways to engage in requester outreach. Additionally, the designation of FOIA POCs gave the FOIA team direct access to SMEs who could assist the analyst in understanding the records.

## Ten Oldest Appeals

23. *In Fiscal Year 2022, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2021 Annual FOIA Report?*

Yes.

24. *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 2021 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.*

N/A

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

The FOIA team worked with the Legal Division (which processes FOIA appeals) to provide all needed information to adjudicate the appeal and thus improve processing times.

## Ten Oldest Consultations

26. *In Fiscal Year 2022, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2021 Annual FOIA Report?*

Yes.

27. *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 2021 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.*

N/A

## Additional Information Regarding Ten Oldest

28. *If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2023.*

The FOIA team has already closed its 10 oldest appeals and consultations. In CY 2023, the FOIA team’s leadership created a standing meeting with all the analysts assigned pending 10 oldest requests to expedite their closures and assist in removing any barriers to these requests’ closures.

## F. Additional Information About FOIA Processing

29. *Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency’s overall FOIA request processing and backlog. If possible, please indicate the number and nature of requests subject to litigation, common causes leading to litigation, and any other information to illustrate the impact of litigation on your overall FOIA administration.*

Yes, one request was subject to litigation during this reporting period. The request sought information that was related to news reports and the alleged cause of the litigation was failing to respond within the statutory time frame. To address the litigation, the FOIA team assigned an attorney contractor to work full time on the litigation production and a federal employee to oversee the litigation. The attorney contractor assigned to the litigation would have been otherwise utilized in processing FOIA requests. Therefore, the litigation reduced the resources available to process FOIA requests.

30. *How many requests during Fiscal Year 2022 involved unusual circumstances as defined by the FOIA? (This information is available in your agency's FY22 raw data).*

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