

Federal Trade Commission

**Federal Trade Commission
2019 Chief FOIA Officer Report**

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INTRODUCTION

The Federal Trade Commission (FTC) is an independent law enforcement agency established in 1914. The FTC's dual mission is to promote competition and protect consumers in broad sectors of the economy. The FTC's work is performed by the Bureaus of Consumer Protection, Competition, and Economics. That work is aided by seven regional offices and a number of program offices.

The FTC administers its FOIA program through its Office of General Counsel. The FOIA program employs five attorneys and three government information specialists, with occasional support of contractors and other staff, and processes all record requests made to the agency. As Chief FOIA Officer for the FTC, I am pleased to report that the FOIA program continues to improve its administration of FOIA. In Fiscal Year 2018, the FTC processed approximately 1,460 FOIA and Privacy Act requests and had only six backlogged requests at the end of FY2017. Other FOIA successes and initiatives undertaken in 2018 include:

- During the reporting period, the FOIA program successfully upgraded its FOIAXpress request tracking and management system and moved that system to a cloud-based environment. Along with this upgrade, the program integrated the FOIAXpress public access link (PAL), a secure public-facing web portal that connects agencies with requesters.
- The FTC continued its strong performance in the first quarter of Fiscal Year 2019. Specifically, the agency received 188 FOIA requests in the first quarter of FY2019, over 70% of which are complex requests, and it processed and issued final responses to 163 requests. The agency also closed 31 of the 37, or over 83%, of the requests pending at the end of FY2018.
- FTC employees from the Office of General Counsel (OGC) received awards in 2018 for their outstanding contributions to the agency's FOIA program. A FOIA attorney received the FTC's Stephen Nye Award, which recognizes a junior attorney who has completed a major project or whose overall performance far exceeds that of a relatively new practitioner. Also, OGC's IT Specialist received AINS, Inc.'s Wayne R. Jewell award for his significant role in the FTC's transition to the upgraded FOIAXpress.

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 least at the Assistant Secretary or equivalent level. Is your agency’s Chief FOIA Officer at or above this level?

Answer: Yes. In a 2018 report, the Government Accountability Office (GAO) recommended that the FTC designate a Chief FOIA Officer at the assistant secretary level or equivalent. (GAO-18-365, June 25, 2018.) According to GAO, assistant secretary level is comparable to senior executive positions at levels III, IV, and V. The FTC designated a

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The FTC has FOIA performance elements for its FOIA professionals but has not incorporated such an element into non-FOIA professional performance standards. The percentage of a non-FOIA employee's time participating in the agency's FOIA program is too *de minimis* to warrant a unique FOIA performance standard. Non-FOIA professionals generally receive ratings on the timeliness, thoroughness, and quality of all their work including any FOIA responsibilities.

FOIA staff work with FTC offices and custodians whose records are the subject of FOIA requests, appeals, or litigation. FOIA staff routinely advise offices and custodians of their responsibilities under FOIA.

Aside from providing formal FOIA guidance and training, the FOIA office is always available to answer questions from FTC staff, and provides an individual FOIA contact to staff for all FOIA requests sent to staff for document searches so that the staff may ask questions, as needed.

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

Answer: Pursuant to the principles set forth in OMB's 2009 Open Government Directive and the U.S. Chief Information Office's 2016 Open Plan Guidance, the FTC created its [Open Government Plan](#). In keeping with that plan, the FTC has taken and continues to take steps to improve its transparency and enable customers and website visitors to more easily locate information. For instance, the FTC has made available online: [busienilaOD86DC /89cs 046.5\[\(A\)Tm \[\(C](#)

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.

Answer: N/A.

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.

Answer: Yes. The FTC's FOIA program continually conducts self-assessments of its timeliness in processing requests and the quality of its responses and customer service. In addition to reviewing the FTC FOIA Annual and Quarterly Report data to identify areas where the program might need to streamline and improve its processing procedures, the FOIA team generates biweekly management reports and holds biweekly staff meetings to, among other things, discuss backlogged and complex requests, strategize solutions, and identify areas in need of improvement. During the reporting period, the FOIA program identified several such areas, and as a result, undertook steps to improve its FOIA processing or procedures. Among other changes that were made, a number of FOIA response templates and language were revised to accord with case law and agency policy. In addition, work was commenced and is ongoing to update the public FTC FOIA webpages to make them more user-friendly and navigable.

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 2018 (please provide a total number or an estimate of the number).

Answer: Approximately 60 times.

5. Please describe the best practices used to ensure that your FOIA system operates efficiently and effectively and any challenges your agency faces in this area.

Answer:

- Upgraded its FOIAXpress system specifically to maximize efficiency, improve search capabilities, and increase collaboration between different program offices within the agency when searching for responsive records and reviewing requests. As part of this upgrade, the FTC moved to Public Access Link (PAL) online portal, through which requesters can submit and check the status of FOIA requests. These changes have streamlined the intake process and improved workflow generally.
- Maintains a FOIA Training Manual that covers standard operating procedure and training, to include step-by-step guidance on using the FOIAXpress system, searching for responsive records, processing records, making redactions, and responding to requesters.
- Trains non-FOIA professionals, and advises and communicates with records custodians during the course of processing FOIA requests as a way to resolve issues that arise, for instance, when preparing fee estimates or executing a search for documents.
- Holds bi-weekly meetings to review the status of outstanding requests, resolve pending issues, collaborate on processing requests to avoid redundancy, and identify process efficiencies and opportunities for greater customer outreach.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2018?

Answer: Yes. The FTC's quarterly reports can be accessed at <https://www.ftc.gov/policy/reports/policy-reports/foia-quarterly-reports>.

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.

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 2017 and Fiscal Year 2018 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 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?*

Answer: Yes. The number of backlogged requests in FY2017 was eight (8). That number in FY2018 was six (6)

10. If not, did your agency process more appeals during Fiscal Year 2018 than it did during Fiscal Year 2017?

Answer: N/A.

11. If your agency's appeal backlog increased during Fiscal Year 2018, 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 appeal

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 2017 and Fiscal Year 2018 when completing this section of your Chief FOIA Officer Report.

OLDEST REQUESTS

15. In Fiscal Year 2018, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

Answer: Yes.

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 2017 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

Answer: N/A.

17. Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?

Answer: Zero (0). The ten oldest requests were all processed to completion and final responses were provided to each.

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

Answer: N/A.

TEN OLDEST APPEALS

19. In Fiscal Year 2018, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

Answer: Yes.

20. 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 2017 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

Answer: N/A.

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

Answer: N/A.

TEN OLDEST CONSULTATIONS

22. In Fiscal Year 2018, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

Answer: N/A. The FTC did not have any pending consultations at the end of the fiscal year.

23. 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 2017 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

Answer: N/A.

E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans

24. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2018.

Answer: N/A.

25. 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.

Answer: N/A.

26. 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 2018.

Answer: N/A.

F. Success Stories

Out of all the activities undertaken by your agency since March 2018 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.

Answer:

Our success story is in the **Steps Taken to Greater Utilize Technology** category.

- The FTC successfully rolled out the upgraded FOIAXpress system. FOIA staff and OGC’s technical staff worked with AINS/FOIAXpress representatives for months to beta test new FOIA-processing products and participate in multiple trainings on the

new FOIAXpress tools and functionality. AINS honored our technical support specialist at their annual conference.

- In December 2018, the FTC implemented the PAL portal. The PAL allows FOIA requesters to submit requests online, correspond with FOIA staff members assigned to their requests, receive status updates, view the entire request submission history, receive final response letters and download records. Since implementing the portal, nearly 40% of all requests submitted to the FTC have been received via PAL.