



# **Central Intelligence Agency 2023 Chief Freedom of Information Act Report**

**March 2022 - March 2023**

## Jennifer Ewbank, Deputy Director for Digital Innovation and Chief FOIA Officer

### 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. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

#### 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 or above this level?

- Yes

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

- Jennifer Ewbank, Deputy Director for Digital Innovation

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 CIA's mission is to protect the Nation and advance its national security interests. In order to achieve this mission we must maintain the Nation's trust through accountability and oversight. At the heart of performing this mission, transparency through our public access programs stand at its core. This balance is incorporated into the Agency's strategic direction and is reflected in various imperatives to support the technology and work done in implementing the FOIA.

#### 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?

- No. The majority of the CIA's withholdings are based on exemption 1 and 3. By exercising exemption 1, its definition includes a harm assessment in its determination. Exemption 3 is specifically excluded from the foreseeable harm language in the statute.

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 interested 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?
- No
- 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);
  - ii. the number of times a *Glomar* response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).
- Not Applicable
- 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.
- In order to track and provide metrics on the use of the *Glomar* response, CIA would need to design and implement technical changes to its case management system. Additionally, CIA would have to make corresponding changes to its case management and review processes, and FOIA staff would need updated training on how to standardize the recording of these decisions.

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.

- CIA continues to work with several other partners to ensure openness and transparency, including the CIA Transparency Officer, the CIA Office of Privacy and Civil Liberties, the National Archives and Records Administration's Office of Government Information Services (OGIS), and the Interagency Security Classification Appeals Panel (ISCAP).

## 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.

- See response to Question 3 below.

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.

- Newly-arrived CIA public access professionals attend day-long internal training courses, such as a course focused on substantive understanding of how laws and executive orders apply to the CIA with regards to reviewing, declassifying, and releasing information to the public, or a course that provides an understanding of the FOIA statute, amendments, and case law. Other refresher training is provided to address updates in the FOIA statute and case law, processing and technological improvements, and FOIA issues related to this agency's unique equities and business.
- CIA public access professionals also attend conferences, meetings, and professional networking functions. During the reporting period, CIA personnel attended the DOJ/OIP's virtual training to keep abreast of the latest changes and developments in the field.

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%

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.

- Not Applicable

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?

- CIA attorneys and public access professionals have made efforts to sensitize components to the Agency's statutory requirements under the FOIA. CIA FOIA personnel provide briefings to senior officers, executive assistants, and records managers; web-based courses are available to all CIA personnel.

## **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.

- CIA did not engage in outreach or dialogue with the requester community, or open government groups outside the standard request process.

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.

- Yes, the CIA FOIA office continues to reach out to requesters to provide proactive status updates, answer other processing-related questions, and negotiate with requesters on scoping requests.

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).

- There were zero instances in which a requester sought assistance from the CIA FOIA Public Liaison in Fiscal Year 2022

## **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.

- CIA continually assesses current and anticipated FOIA demands in relation to the allocation of its resources. Through the use of regular reporting and metrics, resources can be surged or reallocated as needed. The office responsible for processing public access requests has recently created a production manager position focused on monitoring and facilitating the allocation of review resources across programs.

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.

- Production metrics are used to track progress against both quarterly and yearly targets. These metrics are utilized by both review and case management professionals to quickly view current progress in order to best meet production goals by making adjustments to workforce priorities.

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

- FOIA-related performance standards are included in the objectives of employees who administer the FOIA.

### Section III: Proactive Disclosures

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 CIA FOIA office partners with the CIA's Office of Privacy and Civil Liberties, the Office of Public Affairs, and other Agency stakeholders to identify any disclosures falling under this category that occur during a given fiscal year.

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.

- CIA strives to release FOIA records proactively if they are of public interest and there are no other issues that would negate posting to the CIA website (<https://www.cia.gov/readingroom/>). We are currently in the process of addressing a backlog in posting records from CY2017 – CY2021.
- Additionally, in FY2022, the CIA Historical Programs Staff (HPS) released special collection of records through its Targeted Release Program:
  - Nixon and the People's Republic of China: CIA's Support of the Historic 1972 Presidential Trip (<https://www.cia.gov/readingroom/collection/nixon-collection>)

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

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.

- The CIA website was redesigned in 2020, and included updates to the CIA Electronic Reading Room. The CIA FOIA office continues to review and assess the organization of records available in the CIA Electronic Reading Room, and consider how to increase the accessibility of current and future records and improving the overall website user experience.

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, the CIA FOIA office collaborates closely with IT personnel to facilitate the posting of records to the CIA's Electronic Reading Room.

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

#### **Section IV: Steps Take 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.

- See answer to Question 3.

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. CIA continues to investigate and test Artificial Intelligence/Machine Learning tools to assist the review process, as well as its applicability for integration into our production systems. We have recently integrated a capability to utilize pattern detection, which is intended to support redaction consistency. As this new capability is being introduced, we do not have a sense of the overall impact on added efficiency to the review process.

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

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.

- Not Applicable

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.

- CIA's Fiscal Year 2021 Annual FOIA Report is located at: <https://www.cia.gov/readingroom/foia-annual-report>.
- CIA's Fiscal Year 2022 Annual FOIA Report and the raw data will be posted at the same site when available.

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?

- No.

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

#### **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

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

- CIA has deployed an electronic means for submitting Privacy Act requests in compliance with the CASES act. Requesters may now submit their Privacy Act requests for access to records in two ways: via the US Postal Service and online via the CIA's electronic submission 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.

- 11.15 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.

- CIA will continue reviewing current operating procedures to ensure that requests for expedited processing are immediately highlighted for consideration.

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, CIA processing of simple track requests averaged 10.33 days in Fiscal Year 2022.

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

- Not Applicable

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.

- Simple track requests made up 9.59% of CIA's processed FOIA requests.

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?

- Not Applicable

### 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

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?

- No

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:

- ✓ 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
- The primary driver of the FOIA backlog increase for Fiscal Year 2022 was competing review requirements, which required temporary reallocation of those resources throughout the fiscal year. Additionally, FOIA resources were leveraged to assist in a large data migration effort in support of an attempt to refresh our workflow system, which reduced case processing support.

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."

- 124.79%

## **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?

- Yes

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?

- Not Applicable

16. If your agency's appeal 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:

- Not Applicable

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."

- 334.21%

### **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?

- Yes. CIA continued to utilize existing technological resources to identify and target backlogged cases for closure, including at the appellate level. As noted in response to question 12, the primary driver of the FOIA backlog increase in Fiscal Year 2022 was competing review requirements which required temporary reallocation of review resources during the fiscal year.

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.

- CIA will continue to rely on metrics to ensure both focus and visibility on the backlog to ensure a balanced resource distribution.

## **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.

- CIA closed two (2) of its ten oldest initial requests in Fiscal Year 2022.

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

- Through our metrics program, CIA provides its reviewers and case managers with details regarding all open cases, not only the 10 oldest. These details allow our staff to continually identify additional old cases upon which to focus.

### **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?

- No

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.

- CIA closed zero (0) of its ten oldest appeals in Fiscal Year 2022.

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

- Through our metrics program, CIA provides its reviewers and case managers with details regarding all open cases, not only the 10 oldest. These details allow our staff to continually identify additional old cases upon which to focus.

### **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?

- No

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.

- CIA closed five (5) of its ten oldest consultations in Fiscal Year 2022.

#### **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 CIA FOIA office compiles lists of its 10 oldest requests, appeals, and consultations at the beginning of each fiscal year. This list is leveraged to track progress and identify opportunities to advance each case toward closure, and develop collaborative solutions to address cases with multiple, complex equities. CIA also works with internal and external parties to identify opportunities to close cases more expeditiously. CIA remains focused on closing each of the 10 oldest requests, appeals, and consultations.

#### **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. Depending on demand, FOIA litigation support is required to utilize the same resources which process initial requests, thus potentially affecting work on backlog reduction. For the litigation cases we receive, the most common cause for is failure to respond in a timely fashion.

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).

- CIA had 1,625 requests during Fiscal Year 2022 which involved unusual circumstances.