



# Chief FOIA Officer Report 2014

*"Our mission is to ensure equal access to education and to promote educational excellence throughout the nation"*

## FY 2014 Chief FOIA Officer Report

Name and Title of Chief FOIA Officer: Denise L. Carter, Principal Deputy Assistant Secretary, Office of Management, U.S. Department of Education (ED)

### I. Steps taken to Apply the Presumption of Openness

#### *FOIA Training:*

1. Did your agency hold any agency FOIA conferences, or otherwise conduct training during this reporting period?

*Answer: Yes.*

As part of our continuous effort to apply a presumption of openness and to improve transparency, ED conducted internal training and also held several hourly Quality Assurance meetings with its FOIA community throughout fiscal year 2013.

2. If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.

ED administered two sessions for its annual FOIA training:

Session One - "Overview of the Department's FOIA Process"

(There were 32 attendees at this session)

Session Two - "Overview of the FOIA"

(There were 50 attendees at this session)

In addition to the above, on February 11, 2013, ED facilitated an interagency FOIA symposium titled "Faster, Better, Cheaper: Building a High Quality FOIA Operation." The program was intended for managers and supervisors and was limited to 48 individuals to allow appropriate opportunity for sharing. There were four attendees from ED.

ED also conducted individualized small group training sessions on an ad hoc basis. See below example of ad hoc training conducted:

FOIA Exemption b(4) Training: Consisted of a comprehensive overview of the Freedom of Information Act b(4) Exemption in conjunction with an overview of ED's procurement process and processing requests for contracts. Identified the benefits of making proactive disclosures and discussed common issues with the reviewing process stemming from designations made under the b(4) Exemption. The estimated number of attendees was 25.

The four Quality Assurance meetings held during fiscal year 2013 focused on providing insight and increasing awareness within the FOIA community. The average number of attendees for these meetings was around 45 persons. Examples of meetings held:

- 2<sup>nd</sup> Quarter Meeting – The primary focus for the meeting was to summarize the recent Citizens for Responsibility and Ethics in Washington (CREW) vs. Federal Election Commission (FEC) court decision.
- 4<sup>th</sup> Quarter Meeting – The Director of the Office of Information Policy led a discussion on the FOIA Oversight and Implementation Act of 2013 and the impact of the CREW vs. FEC court decision. The session was opened to include attendees from other agencies' FOIA operations.

**3. Did your FOIA Professionals attend any FOIA training, such as that provided by the Department of Justice?**

*Answer:* Yes. ED FOIA professionals attended FOIA training provided by the Department of Justice, the Office of Government Information Services, the American Society of Access Professionals, and the International Association of Privacy Professionals.

**4. Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period.**

*Answer:* Estimated attendance was 90 percent.

**5. OIP has issued guidance that every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year. Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year.**

*Answer:* We are discussing how best to meet the new requirement for substantive FOIA training for all FOIA professionals. ED's central FOIA Office is developing an internal plan to ensure this training is complete by March 2015.

**Outreach:**

**6. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement.**

*Answer:* ED FOIA professionals, including persons within its central FOIA Office, attended and actively participated in FOIA requester Roundtable Discussions sponsored throughout fiscal year 2013. This engagement has assisted the ED FOIA Service Center in better understanding the requester public.

ED FOIA professionals are making a concerted effort to establish a line of communication early on with the requester public upon receipt of a FOIA request in order to make the process work better for all parties involved.

In fiscal year 2013, ED received recognition for its efforts to improve efficiencies.

- ED was the only federal agency to receive an "A" from the nonprofit organization "Cause of Action" for FOIA processing, and ED was recognized by the Department of Justice during its Sunshine Week publicity for its backlog reduction efforts.

***Discretionary Disclosures:***

- 7. Does your agency have a formal process in place to review records for discretionary release? If so, please briefly describe this process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases.**

*Answer:* Yes. ED FOIA professionals consider discretionary releases as a distinct step in the review process when applying FOIA Exemptions which allow for discretionary releases. ED is internally committed to working with its components to ensure records are reviewed in light of the memoranda issued by the President and the Attorney General, and whether or not the release of documents would adversely affect the mission of the agency.

The ED central FOIA Office, in conjunction with the Office of the General Counsel (OGC), provides technical advice, training, and related assistance to agency program office personnel with responsibility for FOIA administration to ensure a presumption of openness is applied to all decisions involving the FOIA.

- 8. During the reporting period did your agency make any discretionary releases of otherwise exempt information?**

*Answer:* Yes. ED has continued its effort to increase its use of discretionary releases. Each FOIA request is unique, and decisions to release or withhold records or portions thereof are made on a case-by-case basis after reviewing the records.

- 9. What exemptions would have covered the information that was released as a matter of discretion?**

*Answer:* In reviewing agency responses, ED primarily used FOIA Exemption b5 to redact information that was released as a matter of discretion (e.g., internal communications, email), and FOIA Exemption b2 to a lesser degree for material pertaining to internal agency matters of a relatively trivial nature.

- 10. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.**

*Answer:* The type of information that ED released as a matter of discretion that would otherwise be exempted pursuant to a FOIA exemption:

- The Gainful Employment Negotiated Rulemaking Process is a highly visible rulemaking effort that is of interest to numerous members of the public. Additionally, information released to the negotiators had the potential to be used for insider trading of stocks. In order to be as transparent as possible and to minimize the possibility that the information could be used illegally, ED made a very conscious effort to make sure that all materials sent to the negotiators were immediately posted to the agency's website. These materials included issue papers, draft regulations, supporting data, and all handouts received by the negotiators from any source (Federal or external). Documents and data provided to negotiators in advance of the negotiations were provided after the stock markets had closed and were immediately posted to our website so that the public had access to the information at approximately the same time as the negotiators. ED continues to maintain this information on our website so that there will be a historical record of the information provided and the dates that the information became available.

**11. If your agency was not able to make any discretionary releases of information, please explain why.**

*Answer:* N/A

***Other Initiatives:***

**12. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014.**

*Answer:* Yes. ED posted all of its required quarterly FOIA reports for Fiscal Year 2013.

**13. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please provide links in your description.**

*Answer:* ED in its continued effort to communicate and train personnel to ensure that the presumption of openness is being applied to all decisions involving the FOIA is fostering a department-wide practice of disclosure and transparency, engaging its leadership and staff more fully, working cooperatively with FOIA requesters, anticipating interest in records before requests are made and making requested records available promptly.

ED's central FOIA Office continued partnering with the OGC FOIA Attorneys to establish office hours on a monthly basis in order to address FOIA questions and concerns. Added emphasis was placed around ED continuing to apply a presumption of openness when making release determinations under FOIA.

ED also continued to hold meetings with the FOIA Senior Leaders within its principal offices to ensure compliance with internal procedures established by the Chief FOIA Officer that were consistent with the agency's FOIA directive, the FOIA, and applicable related rules, regulations, and policies.

## II. Steps Taken to Ensure that Your Agency Has an Effective System In Place for Responding to Requests

### *Personnel:*

During Sunshine Week 2012 OPM announced the creation of a new job series entitled the Government Information Series, to address the work performed by FOIA and Privacy Act professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

1. Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series?

*Answer:* No. All new hires have been in the new series, but we have not yet completed the paperwork of converting the position descriptions for existing FOIA professionals to the Government Information Specialist Series.

2. If not, what proportion of personnel has been converted to the new job series?

*Answer:* Since OPM announced the creation of the Government Information Specialist Series to address the work performed by FOIA and Privacy Act professionals, ED has hired one new employee to this new job series. ED has converted one of the eight FOIA staff members within the central FOIA Office to the new series.

3. If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted?

*Answer:* Since OPM announced the creation of the Government Information Specialist Series to address the work performed by FOIA and Privacy Act professionals, ED started the process for converting all FOIA professionals' position descriptions to the Government Information Specialist Series.

ED will establish the necessary follow up internally to ensure all FOIA professionals' position descriptions are converted to the new series.

### *Processing Procedures:*

4. For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

*Answer:* No. ED received seven requests for expedited processing during Fiscal Year 2013. A determination to allow expedited processing was made on all but one of these requests, which brought ED's average to 13.83 days.

The ED central FOIA Office adjudicates requests for expedited processing and issues determination letters for all Headquarters programs. ED Field Offices adjudicate requests for expedited processing and issue determination letters for their respective Field Office. The ED Field Office responsible for receiving in and making the determination for this

request has been advised to be more vigilant when reviewing incoming requests in order to ensure requests for expedited processing are adjudicated within ten calendar days or less.

5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.

*Answer:* No. The percentage of consultations and referrals ED receives is less than 1% annually. Therefore, ED has not taken any steps to make the handling of consultations and referrals more efficient and effective.

#### ***Requester Services:***

6. Do you use e-mail or other electronic means to communicate with requesters when feasible?

*Answer:* Yes. ED routinely uses e-mail to communicate with requesters when feasible. ED's central FOIA office also has a designated mailbox ([EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov)) that is used to communicate with requesters.

7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?

*Answer:* Yes. ED provides notice of the mediation services offered by OGIS in its FOIA Appeal determination letters.

8. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc.

*Answer:* ED's central FOIA office has refined its FOIA Monthly Report for FOIA professionals, management, and legal to review which conveys the number of processed, pending and backlogged FOIA requests and appeals. The report is used to track efficiency and improve processing performance across ED. Additionally, FOIA responsiveness is now reported in the bi-weekly Office Leaders meetings and Principle Office Coordinators are rated green, yellow, or red based on their responsiveness and timeliness.

ED is continuing to refine its quality assurance/quality control (QA/QC) program for FOIA to include the QA/QC for the data captured in the electronic case management tracking system.

These internal audits and reviews of ED's FOIA operations are useful for identifying areas for improvement and for implementing best practices.

### III. Steps Taken to Increase Proactive Disclosures

*Posting Material:*

1. Do your FOIA professionals have a system in place to identify records for proactive disclosures?

*Answer: Yes.*

2. If so, describe the system that is in place.

*Answer:* ED's central FOIA Office in partnering with the OGC FOIA Attorneys continues to communicate and train personnel to make records publicly available without waiting for specific requests from the public.

ED components actively coordinate with the central FOIA Office to update materials in the electronic FOIA Library. Additions to the ED FOIA Library are available for public viewing at <http://www2.ed.gov/policy/gen/leg/foia/readingroom.html>.

When ED receives frequent requests for particular records, the central FOIA Office will notify the custodial component of the records to provide the releasable version of the records to post to the FOIA Library and/ or other venues.

ED continues to use various venues to notify the public of important events and will provide information updates online on the web. Examples include, but are not limited to, the following:

- Electronic newsletters @ <http://www.ed.gov/>
- ED.gov Blog @ <http://www.ed.gov/>
- Media releases @ <http://www.ed.gov/>
- Twitter @ <https://twitter.com/usedgov>
- Facebook @ <https://www.facebook.com/ED.gov>
- YouTube @ <http://www.youtube.com/user/usedgov>

ED has continued its commitment to improve its FOIA performance by fostering a department-wide practice of disclosure and transparency; engaging its leadership and staff more fully; working cooperatively with FOIA requesters; anticipating interest in records before requests are made, and making requested records available promptly.

3. Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.

*Answer:* ED posted the following material this past reporting period online through ED.gov at <http://www2.ed.gov/policy/gen/leg/foia/readingroom.html>:

- Institute of Education Sciences posted 23 Statewide Longitudinal Data Systems grant applications.
- Race to the Top – Early Learning Challenge Phase Two applications were posted to the RTT public site.
- Federal Student Aid initiated the posting of all 2013 Final Program Review Determinations.
- Office of Innovation and Improvement (OII) has been working to proactively release data on successful grantees for each competition. OII's goal is to release the following information for all competitions from 2009-2013:
  - Applicant Name
  - Abstract
  - Application
  - Year 1 Award Amount
  - Total Award Amount
  - Reviewers' comments and scores
  - Raw Score

OII has released the information for the 2013 grantees (some applications still need to be posted) and is working to release the same information for 2009 through 2012.

ED also continued to provide FOIA Library visitors access to common FOIA requested documents and also hyperlinks directly to program offices to make it easier for the public to locate the most recent copy of the document they are seeking without needing to submit a FOIA request. Examples include, but are not limited to, the following:

- Clery Act Reports - [http://www2.ed.gov/policy/gen/leg/foia/readingroom\\_2.html](http://www2.ed.gov/policy/gen/leg/foia/readingroom_2.html)
- Grants ("Math and Science Grants") - <http://nces.ed.gov/Programs/SLDS/stateinfo.asp>
- Contracts ("ACS Contract") - [http://www2.ed.gov/policy/gen/leg/foia/readingroom\\_2.html](http://www2.ed.gov/policy/gen/leg/foia/readingroom_2.html)

The ED component responsible for providing independent forums for the fair, impartial, equitable, and timely resolution of disputes involving the U.S. Department of Education and recipients of federal education funds now posts all decisions recently issued by that office.

*Making Posted Material More Useful:*

4. 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, such as soliciting feedback on the content and presentation of posted material, improving search capabilities on the site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.?

*Answer:* Yes. ED is continuously updating its on-line web pages to respond to the needs of the public.

5. If so, provide examples of such improvements.

*Answer:* ED's Office of the Chief Information Officer (OCIO) is taking steps to make the agency's posted information more useful to the public. For example, ED's OCIO's Assistive Technology Team has held numerous training sessions for ED staff on a variety of topics, including the Section 508 standards, the document accessibility initiative, and accessible web design.

6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized?

*Answer:* Yes. ED continues to use social media (including but not limited to Facebook and Twitter) to notify the public of important events and will provide information updates.

7. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.

*Answer:* Yes. Documents must meet accessibility requirements before posting to the web (i.e., section 508 of the Rehabilitation Act of 1973). The OCIO is training ED staff on how to incorporate accessible document design into the day-to-day work process, which is making a significant difference as an increasing number of documents produced by the Department components are being made accessible as a routine part of their production.

OCIO, along with the Office of the Undersecretary and the Training and Development Center, also provides regular review, training and technical assistance on the development and remediation of Word, PDF, PowerPoint and Excel documents so that they meet ED's requirements for accessible document design (published in 2012). This accessibility enhancement initiative is aimed at meeting ED's requirements for accessible design, and it continuously moves the agency toward the goal of ensuring that all documents posted on its websites are accessible to and usable by individuals with disabilities.

8. Describe any other steps taken to increase proactive disclosures at your agency.

*Answer:* The ED service area in which the central FOIA office resides developed a "Spotlight Report" for individual ED component offices detailing how each office is doing for all of the statutes that the service area implements: Freedom of Information Act, Public Records Act, Family Educational Rights and Privacy Act, Federal Records Act, Privacy

Act, etc. Visits were made with executives from each component office to discuss the reports and find ways to improve performance. In these discussions components were encouraged to increase proactive disclosures where feasible.

#### IV: Steps Taken to Greater Utilize Technology

##### *Online tracking of FOIA requests:*

1. Can a FOIA requester track the status of his/her request electronically?

*Answer:* Yes. A FOIA requester can track the status of his/her request electronically over the internet through the ED FOIA Library at <http://www2.ed.gov/policy/gen/leg/foia/foiatoc.html>.

2. If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?

*Answer:* ED posts and maintains an online log of its FOIA requests (aka, Status Log) in the FOIA Library at <http://www2.ed.gov/policy/gen/leg/foia/foiatoc.html> which is accessible on the web through [www.ed.gov](http://www.ed.gov). The Status Log is updated on a bi-weekly basis.

3. Describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.

*Answer:* ED's requests status log provides the following information:

- Request ID (e.g., 13-00005-F)
- Receipt Date (e.g., 01/01/2013)
- Closed Date (e.g., 12/01/2013)
- Status - ED's request log has a legend which lists the following statuses throughout the lifecycle of processing a request.
  - Requesting Feedback: seeking answers to specific questions or clarification from the requester when the request is unclear.
  - Conducting Search: searching all sources within the department likely to contain responsive records.
  - Reviewing Records: determining when the records located and/or deemed to be responsive are releasable in part.
  - Processing Request: preparing on interim and/or final response to send to the requester.

4. In particular, does your agency tracking system provide the requester with an estimated date of completion for his/her request?

*Answer:* No. ED's tracking system does not provide the requester with an estimated date of completion for requests.

5. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability? If not, please explain why.

*Answer:* N/A.

*Use of technology to facilitate processing of requests:*

6. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

*Answer:* Yes. ED enhanced the remote access service to personnel by deploying <https://anywhere.ed.gov>. Anywhere.ed.gov provides access to an ED standard desktop and key ED resources that will enable end users to access the intranet, email, network drives and standard applications you need while working remotely. In addition, ED implemented an email archiving solution to assist in high-volume email searches.

The ED central FOIA office will continually review how our FOIA system operates and recommend improvements where needed.

7. If so, describe the technological improvements being made.

*Answer:* The current version of the case management tracking system will be upgraded to further enhance the use of the following functions:

- Remote Access for end users
- "Find & Redact" feature
- Session "time out" notifications (*previous version would not alert user when system was about to shut down*)
- Ability to create subfolders in document manager

ED Program offices are continuing to utilize SharePoint for collaboration on document reviews to improve timeliness.

ED is continuing its use of an email archiving solution to assist in high-volume email searches.

8. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program?

*Answer:* Yes. Cloud Computing Services - ED could achieve further efficiencies by moving its case management tracking system from the agency's network to reside in the Cloud where it will be hosted by our client vendor. This hosted platform would allow ED to optimize technology to its full potential in a low-hassle, hands-off, hosted environment.

Also, a document review module that filters documents using clustering, keyword search and de-duping that produces a reduced final set of relevant documents.

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

### *Simple Track Requests:*

1. 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.

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

*Answer:* Yes. ED has multi-track processing queues to manage its FOIA requests. The requests categorized as simple are placed in the simple track.

- b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?

*Answer:* No.

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

*Answer:* N/A.

### *Backlogs and "Ten Oldest" Requests, Appeals and Consultations:*

2. 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. 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 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.

### Backlogs

- a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012?

*Answer:* Yes. ED had a 5% case reduction by reducing the backlog of requests from 217 in Fiscal Year 2012 to 205 in Fiscal Year 2013.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?

*Answer:* No.

### Ten Oldest Requests

- c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?

*Answer:* No.

- d. 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 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed two of them, you should note that you closed two out of seven "oldest" requests.

*Answer:* No. ED closed 6 of the 10 oldest FOIA requests by the end of Fiscal Year 2013.

### Ten Oldest Appeals

- e. In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?

*Answer:* No.

- f. If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C.(5) of your Fiscal Year 2012 Annual FOIA Report.

*Answer:* ED closed 3 of the 10 oldest FOIA appeals by the end of Fiscal Year 2013.

### Ten Oldest Consultations

- g. In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012?

*Answer:* N/A. ED did not receive any consultations during this past reporting period.

- h. If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report.

*Answer:* N/A.

***Reasons for Any Backlogs:***

3. If you answered "no" to any of the questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:

Request and/or Appeal Backlog

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals?

*Answer:* Yes.

- b. Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff?

*Answer:* No.

- c. Was the lack of a reduction in the request and/or appeal backlog caused by an increase in the complexity of the requests received?

*Answer:* Yes.

- d. What other causes, if any, contributed to the lack of a decrease in the request and/or appeal backlog?

*Answer:* The lack of clear procedures and resource constraints have contributed to the lack of a decrease in the appeal backlog.

"Ten oldest" Not Closed

- e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012.

*Answer:* No. The obstacles ED faced in closing its ten oldest requests, and appeals is the result of the following:

- The complexity of many of the requests received.
- The often time consuming number of reviews performed prior to making a determination and responding.

- The limited number of resources devoted to FOIA activities negatively impacted the FOIA process.

Additionally, many of the requests require ED to consult with various components within the agency which also results in decreased efficiency.

- f. If your agency was unable to close any of its ten oldest requests or appeals 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.*

*Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:*

Given the importance of these milestones, it is critical that Chief FOIA Officers assess the causes for not achieving success and create plans to address them.

4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2014.

*Answer:* ED's central FOIA Office will increase its monitoring of the ten oldest requests and appeals to ensure cases are progressing in accordance with statutory, regulatory, and Departmental requirements and priorities. ED will provide periodic and other internal reports for management and FOIA professionals regarding the oldest pending requests and appeals. The purpose of these reports is to increase awareness, generate dialogue and further facilitate the processing of these backlogged requests and appeals.

5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency's plan for achieving backlog reduction in the year ahead

*Answer: N/A.*

*Interim Responses:*

OIP has issued guidance encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information.

6. Does your agency have a system in place to provide interim responses to requesters when appropriate?

*Answer:* Yes. ED FOIA professionals routinely review their FOIA inventory queues to ensure cases are progressing in accordance with statutory, regulatory, and Departmental requirements and priorities. When appropriate, interim responses will be provided to

requesters. ED's central FOIA Office provides monthly updates of the existing requests for review and discussion to also facilitate the processing of the backlogged requests.

7. If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

*Answer:* The estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year is 35%.

### Use of FOIA's Law Enforcement "Exclusions"

In order to increase transparency regarding the use of the FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to "treat the records as not subject to the requirements of [the FOIA]," 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. Did your agency invoke a statutory exclusion during Fiscal Year 2013?

*Answer:* No. ED did not invoke any statutory exclusion during Fiscal Year 2013.

2. If so, what was the total number of times exclusions were invoked?

*Answer:* N/A.

### Spotlight on Success

The Department of Education continues to embrace the principles of open government. Last fiscal year Cause of Action, a non-profit, nonpartisan government accountability organization, conducted an investigation grading the Federal Government. They set out to determine federal agencies compliance with transparency in the FOIA process. The organization submitted FOIA requests to sixteen different agencies regarding spending on promotional items between January 2009 and April 2012. Cause of Action graded federal agencies on an "A" to "F" grading scale based on their compliance of three sets of criteria: timeframe, redactions, and fee waivers.

Overall, federal agencies averaged a "C-" and only one office received a grade of above a "B." That office was the Department of Education, which received the investigations only "A." ED received two requests from Cause of Action and averaged a response time of twenty-one days. Cause of Action's review of ED's response resulted in a maximum score of five; three points for timeframe, one for redactions, and one for fee waivers.

To learn more about the investigation please visit the website: <http://www.gradingthegovernment.com/>.

Or, read the article on the Washington Post's website titled, "*Sunshine Week: Watchdog groups check administration's transparency*," which can be found at the link below:

<http://www.washingtonpost.com/blogs/federal-eye/wp/2013/03/14/sunshine-week-watchdog-groups-check-administrations-transparency/>.

Since we submitted our last Chief FOIA Officer Report, i.e., March 2013, ED made it a priority to continue to improve the overall FOIA program efficiencies. To increase transparency, participation, and

collaboration, ED established an internal dashboard that is intended to convey high-level information about the FOIA administration (amongst other data metrics used to score other Departmental programs) quickly to its senior most officials responsible for overseeing these functions in their respective components. These officials are able to grasp the meaning of the data without distracting details at a glance. By establishing this type of senior-level reporting, ED is likely to achieve greater efficiency in FOIA processing, particularly improving timelines.

As evident from this report, ED continues to make great strides in its efforts to increase the overall FOIA program efficiencies, reduce backlogs, and make proactive releases of information to the public.