Chief FOIA Officer Report
2013

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

FY 2013 Chief FOIA Officer Report

Name and Title of Chief FOIA Officer: Winona H. Varnon, Principal Deputy Assistant Secretary, Office of Management, U.S. Department of Education (ED)

I. Steps taken to Apply the Presumption of Openness

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

   Answer: No. ED did not hold an annual FOIA conference. Training during fiscal year 2012 was provided informally as follows:

   There were six hourly Quality Assurance meetings held throughout fiscal year 2012 with the Department FOIA Coordinators from the principal offices that focused on specific areas to increase efficiencies.

   ED also conducted individualized group training during the fiscal year using the training modules below.

   - FOIA Basic Overview Training

   - FOIA Training: Exemption 4

   - FOIA Training: Searching for Records

   - FOIA Training: Exemption 5

   - FOIA Training: Exemption 6 and & 7(C)

   - FOIA Training: Grantees

   ED is continuing its commitment to communicate and train personnel to leverage "Best Practices" for handling requests so that FOIA is openly applied wherever possible.

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

   Answer: Yes. ED FOIA professionals attended the Director's Lecture Series of training seminars that the Office of Information Policy launched in Summer 2012, and the "Refresher Training on the Guidelines for Preparation of Annual FOIA Reports" provided by the Department of Justice.

   ED FOIA professionals also attended the American Society of Access Professionals training and educational events held throughout the fiscal year including the following:

- The Annual National Training Conference

- Annual Symposium & Training Conference

- FOIA/Privacy Act Training Workshop

In addition, ED FOIA professionals attended ASAP "Food For Thought Training Seminars" and FOIA Training offered through USDA.

2. **Did your agency make any discretionary releases of otherwise exempt information?**

   Answer: Yes. ED made a concerted effort to increase its use of discretionary releases. The FOIA Service Center provided department wide training on not only the use of discretionary releases, but also proactive disclosure and open government in general. Individually, FOIA professionals were encouraged to examine exemptions in which discretionary releases could be exercised and to take extra time to determine if the information could be released.

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

   Answer: ED does not formally track whether a release of information is discretionary. However, FOIA Exemption b5 is primarily used to redact information that was released as a matter of discretion within the Department, and FOIA Exemption b2 to a lesser degree for material pertaining to internal agency matters of a relatively trivial nature.

4. **Provide a narrative description and/or examples of, the types of information that your agency released as a matter of discretion. (NEW)**

   Answer: ED's largest grant competition "Race-To-The-Top" generated a large amount of interest from the general public during fiscal year 2012. There were hundreds of applications filed but only a select number of grantees were chosen. In the spirit of transparency, ED has posted the applications and other related material to our website. ED FOIA personnel played an integral part in ensuring that the Department applied a presumption of openness principle when reviewing these applications.

5. **Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied**.

   Answer: ED's central FOIA Office partnered with the Office of the General Counsel FOIA Attorneys to establish office hours on a bi-weekly basis in order to address FOIA questions and concerns. There was added emphasis placed around ED continuing to apply a presumption of openness when making release determinations under FOIA.

ED also held quarterly meetings with the FOIA Senior Leaders within the Department's 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

1. **Do FOIA professionals within your agency have sufficient IT support?**

   Answer: Yes. ED FOIA professionals have sufficient IT support. The primary and secondary System Administrators for IT support can be contacted directly telephonically or electronically through email or indirectly by way of the FOIA Service Center Hotline.

2. **Do your FOIA professionals work with your agency's Open Government Team?**

   Answer: Yes. FOIA professionals within the Department work with the Department's Open Government Team.

3. **Has your agency assessed whether adequate staff is being devoted to FOIA administration?**

   Answer: Yes. ED's FOIA Service Center team has assessed staffing adequacy and has followed up in instances where additional staffing is believed to be beneficial.

   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 streamlining consultations, eliminating redundancy, etc.

   Answer: ED has refined its existing 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. The QA/QC reviews serve as an auditing or inspection function for the Department's FOIA operations, and as part of a continuous loop to suggest improvements and to implement best practices.

   ED has also determined through self assessments that having a more efficient way of searching documents would ensure that FOIA professionals are working effectively. In addition, ED purchased a software application during fiscal year 2012 to assist with the search process across the Department.

III. Steps Taken to Increase Proactive Disclosures

1. **Provide examples of material that your agency has posted this year.**

   Answer: ED 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

   - 2012 Ahead Conference Letters - 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

   ED also announced the winners of the Race-To-The-Top competition and posted the winning applications to ed.gov.

   http://www2.ed.gov/programs/racetothetop/index.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.

2. **Beyond posting new material, is agency taken 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 presentations of the posted material, improving search capabilities on the site creating 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.

3. **If so, provide examples of such improvements.**

   Answer: Such changes include conducting internal reviews of its pages to ensure search capabilities and usability of information, as well as for purposes of amending content when needed. (e.g., FOIA online request form)

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

   Answer: ED continues to use other venues to notify the public of important events and will provide information updates. Such venues include, but are not limited to, the following:

   - Electronic newsletters

   - ED.gov Blog

   - Media releases

   - Twitter

   - Facebook

   - YouTube

IV. Steps Taken to Greater Utilize Technology

1. **Can FOIA requests be made electronically to your agency?**

   Answer: Yes. ED FOIA requests are made electronically through e-mail, facsimile, and the Internet.

2. **If your agency is decentralized, can FOIA request be made electronically to all components of your agency?**

   Answer: Yes. All ED FOIA requests are managed and tracked centrally through its commercial off-the-shelf system.

   NOTE: While the vast majority of ED FOIA processing is centralized there are some program offices that have decentralized processes.

3. **Can a FOIA Requester track the status of his/her request electronically?**

   Answer: Yes. ED posts and maintains an online log of its FOIA requests (aka, Status Log) on the web at www.ed.gov in the FOIA Library. The Status Log is updated on a bi-weekly basis.

4. **If so, 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. (NEW)**

Answer: The format for which the Department provides requesters the ability to track their request is not part of a "tracking system." Rather, ED posts and maintains a current log of its FOIA requests electronically on the web at ed.gov. In addition to providing the requester with an open or closed status of their request, the log provides a detailed description for where the request is in the process.

5. **In particular, does your agency tracking system provide the requester with an estimated date of completion? (NEW)**

   Answer: No.

6. **If your agency does not provide online tracking of request, is your agency taking steps to establish this capability?**

   Answer: N/A. ED does provide online tracking through the online FOIA Status log at www.ed.gov.

   ED is taking steps to use the commercial product's feature [within the case management tracking system] to allow FOIA requesters to track the status of FOIA requests electronically in place of the current process for tracking requests.

7. **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's commercial product for tracking FOIAs has been upgraded to increase overall functionality.

8. **If so, describe the technological improvements being made.**

   Answer: The current version has been upgraded to include:

   - 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

   Program offices are utilizing SharePoint for collaboration on document reviews to improve timeliness.

   ED is using an email archiving solution to assist in high-volume email searches.

V. Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

1. **Refer to Section VII.A of your Annual FOIA Report for figures on FOIA Requests—Response Time for All Processed Requests**

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

   Answer: Yes.

   b. **If so, for your agency overall, for fiscal year 2012, was the average number of days to process simple requests twenty working days or fewer?**

   Answer: No. The agency's average number of days to process simple requests was 35.71 days; however, the median number of days to process simple requests was 19.

   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

2. **Refer to Sections XII.D(2) and XII.E(2) of your Annual FOIA Report for figure on backlogged requests/appeals, and Sections VII.E and VI.C(5) on the ten oldest pending request/appeals**

   a. **If your agency had a backlog of requests at the close of Fiscal Year 2012, did that backlog decrease as compared with Fiscal Year 2011?**

   Answer: Yes. ED reduced its backlog by 17 cases or 7 percent. As can be seen in the chart below, ED experienced a downward trend in backlogged cases over the past five years.

Backlogged Cases 2008--2012

	2008	2009	2010	2011	2012
Backlogged	348	295	341	255	238
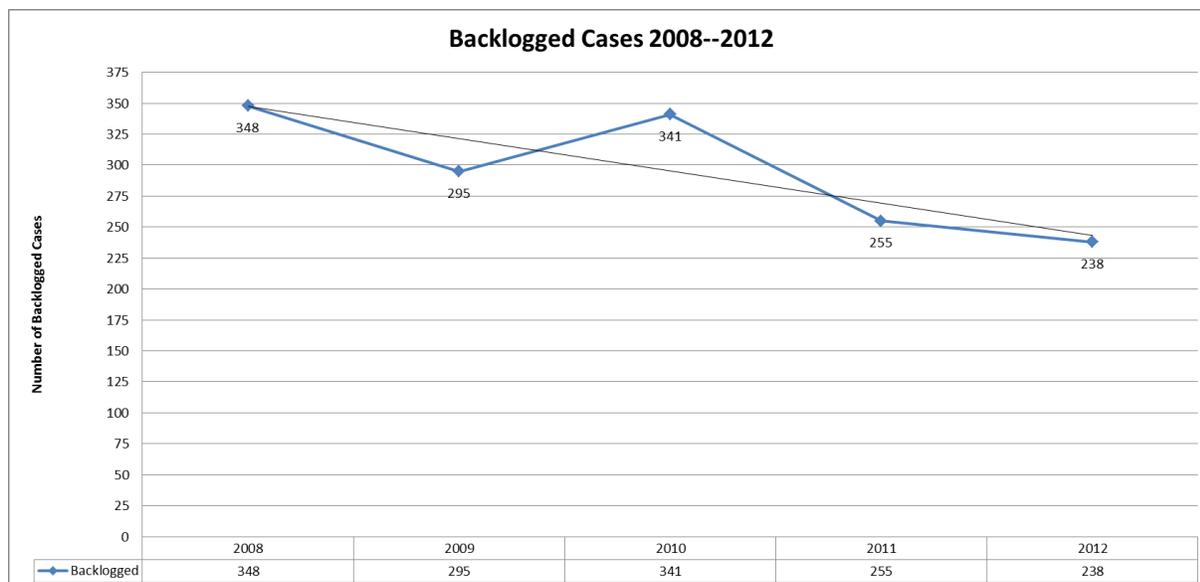
ED also decreased its number of pending cases over the past fiscal year. The Department reduced its number of pending cases by 22 percent or 100 cases.

b. If your agency had a backlog of administrative appeals in Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011?

Answer: The number of backlogged administrative appeals decreased from 39 as reported at the end of FY 2011 to 27 as reported at the end of FY 2012.

c. In Fiscal Year 2012, did your agency close the ten older requests that were pending as of the end of Fiscal Year 2011?

Answer: ED closed 9 of the 10 oldest FOIA Requests.

d. In Fiscal Year 2012, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2011?

Answer: ED closed 5 of the 10 oldest appeals.

3. If you answered "no" to any questions in "item 2," answer the following questions and include any additional explanation:

Request Backlog:

a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?

Answer: N/A

b. Was the lack of reduction in the request backlog caused by a loss of staff?

Answer: N/A

c. **Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?**

Answer: N/A

d. **What other causes, if any, contributed to the lack of decrease in the backlog?**

Administrative Appeal Backlog:

a) **Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?**

Answer: N/A

b) **Was the lack of a reduction in the appeal backlog caused by a loss of staff?**

Answer: N/A

c) **Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of appeals received?**

Answer: N/A

d) **What other causes, in any, contributed to the lack of decrease in the appeal backlog?**

Answer: N/A

4. **OIP issued guidelines encouraging agencies to make interim release on requests that involve a voluminous amount of material or require searches in multiple locations. If your agency had a backlog in Fiscal Year 2012, provide an estimate of the number of cases in the backlog where substantive, interim response was provided during the fiscal year, even though the request was not finally closed. (NEW)**

Answer: At the end of the fiscal year the Department had 26 pending cases in which information had been released on an interim basis. It can be estimated that between 50 and 75 separate FOIA requests had information released though an interim response.

5. **Answer the following questions concerning the use of the FOIA's statutory law enforcement exclusions 5 U.S.C. § 552 (C)(1), (2), (3):**

a. **Did your agency invoke a statutory exclusion during Fiscal Year 2012?**

Answer: Yes. ED invoked the (c)(1) exclusion during FY 2012.

b. If so, what were the total number times exclusions were invoked?

Answer: ED invoked the (c)(1) exclusion once during FY 2012.

Spotlight on Success

During FY 2012 ED made significant progress is fulfilling requests due to the efforts of the FOIA "Red Team" (Team) that was established in May by the Chief Privacy Officer. Five employees from the Office of Management (OM) were charged with closing out the open FOIA cases from FY 2009 and FY 2010 to reduce the Department's backlog by September 30th.

The Red Team identified 89 open cases. The Team began working closely with Program Offices (PO) to assist them in closing out their outstanding FOIA requests. The Team also developed a scorecard to help POs track their progress on key milestones. Senior leadership and PO staff used these scorecards in weekly meetings to help illustrate where progress was being made and to identify any issues relating to closing cases.

With senior leadership support, and commitment from the POs to reduce the backlog, the Red Team was able to help POs resolve open cases and identify bottlenecks in the business process that could prevent future backlogs. By September, the Team had closed 70 of 89 cases from FY 2009-2011, representing an impressive 79 percent completion rate. A decentralized component within the FOIA program was able to close out 19 of their 20 open cases (this resulted in a 95 percent overall completion rate).

In FY 2013, ED will continue to use the scorecards to ensure that FOIA requests are closed out in a timely manner. ED will also hold meetings with assigned POs to make sure that issues are identified early in the process. Ongoing communication and collaboration with the POs will once again be a key factor in the process.