



# 2015 CHIEF FOIA OFFICER REPORT

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.



DEPARTMENT OF EDUCATION  
OFFICE OF MANAGEMENT  
FREEDOM OF INFORMATION ACT (FOIA)  
SERVICE CENTER

## Table of Contents

<b>Message from the Chief FOIA Officer</b> .....	2
Department of Education Offices .....	3
<b>Section I: Steps Taken to Apply the Presumption of Openness</b> .....	4
FOIA Training .....	4
Outreach.....	6
Discretionary Releases.....	6
Other Initiatives .....	7
<b>Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests</b> .....	8
Personnel.....	8
Processing Procedures .....	9
Requester Services .....	9
Other Initiatives .....	10
<b>Section III: Steps Taken to Increase Proactive Disclosures</b> .....	10
Posting Material.....	10
Other Initiatives .....	12
<b>Section IV: Steps Taken to Greater Utilize Technology</b> .....	12
Online Tracking of FOIA Requests and Appeals: .....	12
Making Material Posted Online More Useful.....	13
Use of Technology to Facilitate Processing of Requests .....	14
Other Initiatives .....	15
<b>Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs</b> .....	16
Simple Track.....	16
Backlogs.....	16
Backlogged Requests .....	16
Backlogged Appeals .....	17
Backlog Reduction Plans .....	17
Status of Ten Oldest Requests, Appeals, and Consultations.....	18
Ten Oldest Requests .....	18
Ten Oldest Appeals.....	18
Ten Oldest Consultations.....	19
Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans .....	19
Interim Responses.....	20
Use of the FOIA’s Law Enforcement Exclusions.....	20
<b>Success Story</b> .....	20

## Message from the Chief FOIA Officer

The U.S. Department of Education's (ED) mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access. ED's Freedom of Information Act (FOIA) program is amongst many functions that contribute to the Department meeting and achieving its mission. I am pleased to submit the 2015 Chief FOIA Officer Report on behalf of the Department to the Attorney General of the United States in accordance with the guidance provided by the Department of Justice.

Andrew Jackson  
Chief FOIA Officer  
Assistant Secretary for Management  
Office of Management  
U.S. Department of Education

## *Department of Education Offices*

The Department of Education consists of Principal Offices. Several of the following ED offices and/or processing designations provided information in response to the overall FOIA compliance and transparency for this report:

- FSA Federal Student Aid
- IES Institute of Education Sciences
  - IES-NAGB National Assessment Governing Board
- OCFO Office of the Chief Financial Officer
  - OFCO- CAM Office of Contracts and Acquisitions Management
- OCIO Office of the Chief Information Officer
- OCO Office of Communications and Outreach
- OCR Office for Civil Rights (Headquarters)
  - Office for Civil Rights (Regional Enforcement Offices)
    - OCR-1 Boston, OCR Region I - Boston
    - OCR-2 New York, OCR Region II – New York
    - OCR-3 Philadelphia, OCR Region III - Philadelphia
    - OCR-4 Atlanta, OCR Region IV - Atlanta
    - OCR-5 Chicago, OCR Region V - Chicago
    - OCR-6 Dallas, OCR Region VI - Dallas
    - OCR-7 Kansas City, OCR Region VII - Kansas City
    - OCR-8 Denver, OCR Region VIII - Denver
    - OCR-9 San Francisco, OCR Region IX – San Francisco
    - OCR-10 Seattle, OCR Region X - Seattle
    - OCR-Metro D.C., OCR District of Columbia Office
    - OCR-12 Cleveland, OCR Region XII – Cleveland
- ODS Office of the Deputy Secretary
- OELA Office of English Language Acquisition
- OESE Office of Elementary and Secondary Education
- OGC Office of the General Counsel
- OIG Office of Inspector General
- OII Office of Innovation and Improvement
- OLCA Office of Legislation and Congressional Affairs
- OM Office of Management
  - OM-PIRMS Privacy Information & Records Management Services
- OPE Office of Postsecondary Education
  - Policy, Planning and Innovation (PPI)
- OPEPD Office of Planning, Evaluation and Policy Development
- OS Office of the Secretary
- OSERS Office of Special Education and Rehabilitative Services
- OUS Office of the Under Secretary
- OCTAE Office of Career, Technical and Adult Education

## Section I: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's [FOIA Memorandum](#) and the Attorney General'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.

### FOIA Training

#### **1. Did your agency conduct FOIA training during the reporting period for FOIA professionals?**

Yes. The Department of Education (ED) conducted FOIA training during this reporting period for FOIA professionals.

#### **2. If yes, please provide a brief description of the type of training conducted and the topics covered.**

Yes. ED offered various opportunities for FOIA professionals to attend training conducted on a number of topics that promoted further understanding of disclosure laws (FOIA and Privacy Act), including the following:

ED's central FOIA Office (i.e., FOIA Service Center (FSC)) provided the FOIA Coordinators within individual ED program offices two refresher courses on the Department's internal FOIA process, and the proper usage of the nine FOIA exemptions.

- The Department's Statistical Privacy Advisor, provided an in-depth training on protecting privacy in tabular data.
- Staff from the FSC and the Office of the General Counsel (OGC) conducted FOIA Appeals training for FOIA professionals. The FSC led the discussion on procedural issues that included an overview of the Department's FOIA Appeals process, trends in FOIA Appeals and best practices in how to avoid new FOIA Appeals. Staff from OGC covered a wide array of legal issues that encompassed the Department's legal requirements in responding to FOIA Appeals, documenting searches, and when Glomar responses are appropriate.

Additionally, we were honored to have the Office of Government Information Services (OGIS) address our FOIA professionals on two separate occasions:

1. The OGIS Director, led a discussion titled "OGIS and Building a Bridge between FOIA Requesters and Federal Agencies"; and
2. The OGIS Deputy Director, shared best practices for negotiating with the requester on the scope of information requested.

#### **3. Did your FOIA professionals attend any FOIA training or conference during the reporting period such as that provided by the Department of Justice?**

Yes. FOIA professionals from multiple ED program offices took advantage of the many training opportunities that were made available, including FOIA training provided by the Department of Justice's Office of Information Policy (DOJ), the American Society of Access Professionals (ASAP), and Graduate School USA:

- ASAP Annual National Training Conference.
- ASAP Food For Thought – 508 Compliance Luncheon.
- DOJ's Best Practices Workshop series.
- The Privacy Act @ 40: "A Celebration and Appraisal of the Privacy Act and the 1974 Amendments to the Freedom of Information Act" hosted by Georgetown Law School.
- DOJ's training on preparation of the FOIA Annual Report and the Chief FOIA Officer Report.
- Graduate School USA training on Freedom of Information and Privacy Acts

Additionally, ED FSC staff participated in the Proactive Disclosures Workshop organized by DOJ and have committed to participating in future workshops.

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

At least 90% of ED's FOIA professionals and staff with FOIA responsibilities attended substantive training during this reporting period.

**5. In the 2014 Chief FOIA Officer Report Guidelines, OIP asked agencies to provide a plan for ensuring that core, substantive FOIA training is offered to all agency FOIA professionals at least once each year. Please provide the status of your agency's implementation of this plan.**

- Include any successes or challenges your agency has seen in implementing your plan.

ED's FSC, in partnership with the OGC FOIA Attorneys, provided custom training to program offices within the Department for this reporting period in various formats.

For example, apart from the in-person individual or group training provided, ED's FSC and OGC FOIA Attorneys have established an open forum for all FOIA professionals to dialogue about new and emerging issues and for training purposes.

Also, the FSC is currently working on creating online training modules as well to be accessible through ED's Talent Management System training site.

Additionally, ED hopes to make DOJ FOIA training modules available to FOIA professionals when the modules are accessible to agencies.

Furthermore, all FOIA professionals are encouraged to attend off-site training provided by the DOJ.

## Outreach

### **6. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA?**

Yes, ED FOIA professionals routinely engage with individual requesters by writing, telephone, and/or e-mail to discuss the scope of FOIA requests and to negotiate satisfactory resolutions to requests in which information is exempt.

ED FOIA professionals assisted the Open Government/Open Data Working Group with updating the Department's Open Government Plan located online at the Open Government ConnectED SharePoint site. The narrative regarding the administration of the FOIA placed specific emphasis around improving initiatives, training, technology and proactive releases.

ED FOIA professionals, including persons within its central FOIA Office, attended and actively participated in FOIA requester Roundtable Discussions sponsored throughout fiscal year 2014. This engagement has assisted the ED FOIA Service Center in better understanding the requester public.

### **7. If you did not conduct any outreach during the reporting period, please describe why?**

N/A.

## Discretionary Releases

### **8. Does your agency have a distinct process or system in place to review records for discretionary release?**

Yes. ED has continued its effort to make discretionary releases of information and systematically applies the "foreseeable harm" standard.

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.

ED's FSC, in collaboration 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.

### **9. During the reporting period, did your agency make any discretionary releases of information?**

Yes. ED made several discretionary releases of exempt information as described in more detail below.

**10. What exemption(s) would have covered the material released as a matter of discretion? For a discussion of the exemptions that allow for discretionary releases, please see OIP's guidance on [implementing the President's and Attorney General's FOIA Memoranda](#).**

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).

For records covered by FOIA Exemption b5, ED FOIA professionals made determinations for each document in keeping with the fundamental principles of Open Government that the Attorney General recognized in his Guidelines.

In practice, ED professionals made discretionary releases of the material in instances where the agency could reasonably foresee that disclosure would not harm an interest protected by the aforementioned FOIA exemption.

**11. Provide a narrative description, as well as some specific examples, of the types of information that your agency released as a matter of discretion during the reporting year.**

All program offices within ED have made a sound effort in releasing information protected by the deliberative process. For example, internal, pre-decisional documents related to rulemakings and other significant decisions that would otherwise be withheld in their entirety pursuant to FOIA Exemption 5.

Other examples include drafts of documents and reports that didn't have major context differences from the final versions.

Although OCR determined that many of its records contain personally identifiable information and/or enforcement sensitive information, which does not allow for discretionary release, OCR began a practice of uploading nearly all of its civil rights resolution agreements to its website (after the redaction of Personally Identifiable Information). These resolutions were previously released only subject to FOIA requests but are now being proactively and routinely released as a discretionary matter. Additionally, in May 2014, OCR implemented new transparency practices regarding the disclosure of information for cases currently under investigation. OCR now releases to the public more discretionary information – including docket numbers, the date a case was open for investigation and the nature of the issues under investigation – and is also proactively and continuously making available lists of institutions under investigation. Previously, this information was only available through FOIA.

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

N/A.

***Other Initiatives***

**13. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA?**

Many of the program offices within ED have FOIA as a standing agenda item for their all-staff meetings.

The FSC provides monthly FOIA data for the Office of the Deputy Secretary's dashboard report which captures specific metrics on individual ED program office's activities. ED shares this dashboard report amongst its senior leadership as part of its efforts to enhance transparency, and to ensure appropriate accountability for FOIA handling throughout the Department.

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

To further reduce errors and increase transparency and responsiveness, the Department's principal offices' senior leaders met periodically during fiscal year 2014 to discuss FOIA operations and evaluate ideas to improve existing FOIA business processes.

## **Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests**

As the Attorney General emphasized in his [FOIA Guidelines](#), "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." It is essential that agencies effectively manage their FOIA program.

Please answer the following questions to describe the steps your agency has taken to ensure that your management of your FOIA program is effective and efficient. You should also include any additional information that that describes your agency's efforts in this area.

### **Personnel**

**1. In the 2014 Chief FOIA Officer Report Guidelines, OIP asked agencies about the status of converting all eligible FOIA professionals to the new Government Information Series. If your agency reported that its staff was eligible for conversion but had not yet converted all professionals to the new series, what is the current proportion of personnel that have been converted?**

Yes. All eligible ED FOIA professionals have been converted to the new series.

ED also has FOIA professionals (e.g., attorneys, managers, and administrative personnel) who have job responsibilities outside the scope of the Government Information Specialist series. These positions are not being converted to the new series.

**2. If your agency has not converted all of its eligible employees yet, what is your plan to ensure that all FOIA professionals' position descriptions are converted?**

N/A.

### Processing Procedures

**3. For Fiscal Year 2014, 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 2014 Annual FOIA Report.**

The average number of days was 14.

**4. 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.**

This fiscal year we are reporting an average slightly over ten calendar days due to an administrative oversight on two of our expedited requests. Because we adjudicated only three expedited requests this fiscal year, this error grossly inflated our average.

**5. If your agency has a decentralized FOIA process, has your agency taken steps to make the routing of misdirected requests within your agency more efficient? If so, please describe those steps.**

N/A.

**6. If your agency is already handling the routing of misdirected requests in an efficient manner, please note that here and describe your process for these requests.**

ED has a centralized FOIA process, so in the event that a program office receives a request in error, the request is sent back to the FOIA Service Center to be re-assigned to the appropriate office.

### Requester Services

**7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at the National Archives and Records Administration? See OIP Guidance, "Notifying Requesters of the Mediation Services Offered by OGIS." (July 9, 2010)**

Yes.

**8. When assessing fees, does your agency provide a breakdown of how FOIA fees were calculated and assessed to the FOIA requester? For example, does your agency explain the amount of fees attributable to search, review, and duplication? See OIP Guidance, "The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications." (Nov. 22, 2013)**

Yes. ED charges for processing requests under the FOIA in accordance with the Department's FOIA regulations and the [Office of Management and Budget's Guidelines](#).

ED provides FOIA requesters a breakdown of how FOIA fees were calculated and assessed. This breakdown includes an itemized description of the fees attributed to the amount of time assessed for search and/or review as well as copying costs for duplicating pages or burning CDs.

**9. If estimated fees estimates are particularly high, does your agency provide an explanation for the estimate to the requester? *See id.***

Yes.

### *Other Initiatives*

**10. If there are 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., please describe them here.**

ED is making a concerted effort to ensure its FOIA system operates efficiently and effectively, including:

- Facilitating cyclical meetings scheduled between FOIA professionals (particularly ED FOIA coordinators within program offices and the FSC) to foster collaborative work relationships, to improve search processes, to effectively troubleshoot problems and to facilitate more timely and substantive responses to FOIA requests.
- Enriching a continuous partnership between OGC and FSC in an effort to enhance FOIA Training, to improve FOIA handling practices, and to better understand all procedural and regulatory requirements.

Deploying upgrades to its FOIA tracking system specifically designed to maximize efficiency, improve search capabilities, and increase collaboration between different principal offices within the Department when searching for responsive records and reviewing requests.

## **Section III: Steps Taken to Increase Proactive Disclosures**

Both the **President** and **Attorney General** focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

### *Posting Material*

**1. Does your agency have a distinct process or system in place to identify records for proactive disclosure? If so, please describe your agency's process or system.**

Yes. ED's FSC 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.

**2. Does your process or system involve any collaboration with agency staff outside the FOIA office? If so, describe this interaction.**

Yes. ED's FSC collaborates internally with program offices across the Department as an ongoing effort to identify records for proactive disclosure. This is an ongoing effort in the Department's FOIA office, which, at times, requires an electronic search of the case management tracking system to identify frequently requested records. Two of the most commonly-requested categories of records within ED are the successful grant applications and contracts.

Also, ED's FSC in partnering with the OGC FOIA Attorneys continues to communicate to program offices to follow the rule of three to identify categories of records that have been frequently requested or for which there is an anticipated high public interest.

**3. Describe your agency's process or system for identifying "frequently requested" records that should be posted online.**

ED's FSC reviews every FOIA request prior to logging and assigning on a daily basis. During this process, FSC also identifies requests for records that should be proactively posted and works with the ED program offices that maintains those records in order to have them posted proactively.

When ED receives frequent requests for particular records, the FSC 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.

Additionally, ED's FSC reviews the report of incoming FOIA requests weekly and identifies frequently requested documents and topics that appear to be of interest to post online.

**4. Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.**

The Office for Civil Rights (OCR) has implemented new practices regarding the disclosure of information on cases currently under investigation. OCR is now proactively and continuously making available on a weekly basis, a list of postsecondary institutions that have pending Title IX sexual violence investigations which can be found on the following OCR page: <http://www2.ed.gov/about/offices/list/ocr/publications.html>

As part of its commitment to transparency in governance, the Office of Elementary and Secondary Education (OESE) posted all applications of the latest phase of Race to the Top-Early Learning Challenge (RTT-ELC) grant competition totaling over 17,839 total pages of documents. The applications can be found on the following OESE page: <http://www2.ed.gov/programs/racetothetop-earlylearningchallenge/awards.html>

Office of Innovation and Improvement (OII) has continued to proactively release data on successful grantees for each competition and from their program home page (<http://www.ed.gov/edblogs/oii/>), provides news about its programs, grantees, and initiatives — through articles, blogs, and press releases.

As part of its oversight duties, Federal Student Aid (FSA) routinely conducts program reviews to confirm that a school meets FSA requirements for institutional eligibility, financial responsibility, and administrative capability. During a program review, reviewers evaluate the school's compliance with FSA requirements, assess liabilities for errors in performance, and identify actions the school must take to improve its future administrative capabilities.

After completing a program review, FSA issues a Final Program Review Determination (FPRD). FSA is continuously posting the FPRDs to the following FSA page: <https://studentaid.ed.gov/about/data-center/school/program-reviews>

### *Other Initiatives*

**5. If there are any other steps your agency has taken to increase proactive disclosures, please describe them here.**

At the Department's Annual FOIA Awards Ceremony, FSC recognized FSA and OII for their outstanding efforts in identifying records for proactive disclosure. ED's goal is to raise awareness throughout the Department on the benefits of proactive disclosures and to encourage other program offices to increase their proactive disclosures.

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

A key component of the President's **FOIA Memorandum** was the direction to "use modern technology to inform citizens about what is known and done by their Government."

In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that describes your agency's efforts in this area.

### *Online Tracking of FOIA Requests and Appeals:*

**1. Can a member of the public track the status of his or her request or appeal electronically?**

Yes. Requesters can track their FOIA initial request electronically in the Department's online FOIA Library at <http://www2.ed.gov/policy/gen/leg/foia/foiatoc.html>.

There is no electronic tracking process for appeals.

**2. If yes, how is this tracking feature provided to the public? For example, is it being done through the regular posting of status logs, an online portal, or through another medium?**

This is done through a FOIA status log that is updated bi-weekly.

**3. If your agency does provide online tracking, please describe the information that is provided to the requester through this feature. For example, some online tracking features**

may tell the requester whether the request is "open" or "closed," while others will provide further details throughout the course of the processing, such as "search commenced" or "documents currently in review."

The status log provides detailed information on where the request is in the process, such as:

- Request ID (e.g., 14-00005-F)
- Receipt Date (e.g., 01/01/2014)
- Closed Date (e.g., 12/01/2014)
- 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 an interim and/or final response to send to the requester.

**4. If your agency does provide online tracking for requesters, does this feature also provide an estimated date of completion?**

No. The status log does not provide an estimated date of completion.

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

We plan to add appeals to the FOIA status log by the end of the 2<sup>nd</sup> quarter of fiscal year 2015.

***Making Material Posted Online More Useful***

**6. 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.

**7. If yes, please provide examples of such improvements.**

ED launched "New ED Data Inventory"! The Inventory is available as a searchable website and a JSON file. It contains descriptions about the data the Department collected

as part of program and grant activities as well as statistical data collections. The goal of the ED Data Inventory is to describe all data reported to the Department of Education, with the exception of personnel and administrative data. It includes data collected as part of grant activities, along with statistical data collected to allow publication of valuable statistics about the state of education in this country. The ED Data Inventory includes descriptive information about each data collection, along with information on the specific data elements in individual collections. The ED Data Inventory page can be found here: <http://datainventory.ed.gov/>

**8. Have your agency's FOIA professionals interacted with other agency staff (such as technology specialists or public affairs or communications professionals) in order to identify if there are any new ways to post agency information online?**

Yes. Staff from FSC routinely communicate with the technology team in order to identify if there are any new ways to post agency information online.

**9. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe those efforts.**

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>

**10. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?**

Yes.

**11. If so, please briefly explain what those challenges are.**

ED faces challenges posting some documents that do not meet the requirements for posting documents under Section 508.

***Use of Technology to Facilitate Processing of Requests***

**12. 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? If yes, describe the technological improvements being made.**

Federal Student Aid (FSA) is currently rolling out the FOIA Integrity Management System (FIMS) for enterprise-wide deployment developed in 2013 in collaboration with FSA's Business Transformation Team and Technology Office. The system which will connect to ED's department wide FOIA tracking system was developed to automate and improve the internal processing of FSA FOIA requests. Among the specific process improvements is an increased ability to track the real-time progress of request fulfillment across the agency and regions, improved documentation of search terms used, more accurate reporting on the efforts of FSA personnel to prepare response documents, and an enhanced ability to search and leverage prior FOIA responses.

**13. Are there additional tools that could be utilized by your agency to create further efficiencies?**

The Department has started the process to move our commercial-off-the-shelf (COTS) FOIA tracking system to a hosted environment. The benefits to this change include increased running speed for faster performance, and greater ease of implementing configuration changes which means less downtime for our end-users

### *Other Initiatives*

**14. Did your agency successfully post all four quarterly reports for Fiscal Year 2014?**

Yes.

**15. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2015.**

N/A.

**16. Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? See OIP Guidance, "The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications." (Nov. 22, 2013) If yes, what are the different types of electronic means are utilized by your agency to communicate with requesters?**

Yes. ED FOIA professionals primarily communicate directly with requesters through e-mail.

**17. If your agency does not communicate electronically with requesters as a default, are there any limitations or restrictions for the use of such means? If yes, does your agency inform requesters about such limitations? See *id.***

Due to file size limitations within our email system, a majority of our FOIA responses in which records are provided are done in hard copy on a CD. Yes, we inform the requesters about such limitations.

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

The **President** and the **Attorney General** have emphasized the importance of improving timeliness in responding to requests. This section your Chief FOIA Officer Report addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations. *For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2014 Annual FOIA Report and, when applicable, your agency's 2013 Annual FOIA Report.*

***Simple Track*** 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.

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

Yes.

### **2. If so, for your agency overall in Fiscal Year 2014, was the average number of days to process simple requests twenty working days or fewer?**

Our processing time for simple requests for Fiscal Year 2014 was 13 days.

### **3. Please provide the percentage of requests processed by your agency in Fiscal Year 2014 that were placed in your simple track.**

27% of requests processed this fiscal year were placed in the simple track.

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

N/A.

***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 2013 and Fiscal Year 2014 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 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013?**

At the close of Fiscal Year 2014, our backlog increased by 26%. Our backlog increased from 224 requests in Fiscal Year 2013 to 283 requests in Fiscal Year 2014.

This year there was an increase in the number of complex requests the Department received which strained the resources available to process requests. There were also program offices

that transferred FOIA duties within their office which created transitional periods that impacted the productivity of these programs.

Additionally, the government shutdown in October severely impacted the Department's ability to process FOIA requests.

**6. 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 2014.**

- **To calculate your agency's percentage, you must divide the number of backlogged requests reported in Section XII.A. of your Fiscal Year 2014 Annual FOIA Report by the number of requests received in Fiscal Year 2014, which can be found in Section V.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.**

There were 13% of requests that make up the backlog out of the total number of requests received this past fiscal year.

### **Backlogged Appeals**

**7. If your agency had a backlog of appeals at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013?**

At the close of Fiscal Year 2014, our backlog increased by 70%. Our backlog increased from 46 open appeals in Fiscal Year 2013 to 78 open appeals in Fiscal Year 2014.

**8. 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 2014. If your agency did not receive any appeals in Fiscal Year 2014 and/or has no appeal backlog, please answer with "N/A."**

- **To calculate your agency's percentage, you must divide the number of backlogged appeals reported in Section XII.A. of your Fiscal Year 2014 Annual FOIA Report by the number of appeals received in Fiscal Year 2014, which can be found in Section V.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.**

134%

### **Backlog Reduction Plans**

**9. In the 2014 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2013 was asked to provide a plan for achieving backlog reduction in the year ahead. Did you 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 2014?**

N/A.

**10. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2014, what is your agency's plan to reduce this backlog during Fiscal Year 2015?**

N/A.

***Status of Ten Oldest Requests, Appeals, and Consultations*** 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 2013 and Fiscal Year 2014 when completing this section of your Chief FOIA Officer Report.

### **Ten Oldest Requests**

**11. In Fiscal Year 2014, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2013 Annual FOIA Report?**

No.

**12. 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 2013 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 six of them, you should note that you closed six out of seven “oldest” requests.**

Three (3) of ED’s 10 oldest requests were closed during this fiscal year.

**13. 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?**

None of the three (3) cases were closed due to the requester withdrawing the request.

### **Ten Oldest Appeals**

**14. In Fiscal Year 2014, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2013 Annual FOIA Report?**

No.

**15. 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 2013 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.**

- **For example, if you only had seven appeals listed as part of your "ten oldest" in Section VII.C.(5) and you closed six of them, you should note that you closed six out of seven “oldest” appeals.**

Five (5) of ED’s 10 oldest appeals were closed during this fiscal year.

### Ten Oldest Consultations

**16. In Fiscal Year 2014, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2013 Annual FOIA Report?**

No pending consultations reported.

**17. 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 2013 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.**

- **For example, if you only had seven consultations listed as part of your "ten oldest" in Section XII.C. and you closed six of them, you should note that you closed six out of seven "oldest" consultations.**

N/A.

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

**18. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2013.**

In regards to the ten oldest requests, the biggest obstacle we faced in getting them closed was due to the complex, voluminous nature of the responsive records. For the ten oldest appeals, it was more of a resource issue this fiscal year.

**19. 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.**

N/A.

**20. 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 2015.**

The Department has brought on contract support to help with processing the ten oldest requests.

The Department has addressed the resource issue with appeals by doubling the size of the staff assigned to work on appeals. Monthly meetings between the OGC and the FOIA office are taking place to ensure that appeals are being addressed timely and appropriately.

### Interim Responses

**21. Does your agency have a system in place to provide interim responses to requesters when appropriate? See OIP Guidance, “The Importance of Good Communication with FOIA Requesters.” (Mar. 1, 2010)**

Yes.

**22. If your agency had a backlog in Fiscal Year 2014, 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.**

Of the 242 cases in our backlog, interim responses were provided in approximately 35% of the cases.

### Use of the FOIA’s Law Enforcement Exclusions

**Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2014? If so, please provide the total number of times exclusions were invoked.**

N/A.

### Success Story

In July 2014, the FOIA Service Center (FSC) distributed the first edition of ED’s FOIA newsletter, “*The FOIA Freedom Flyer*.” The Bi-Annual Newsletter is to keep the Department’s FOIA community informed regarding FOIA updates, FSC News, and FOIA Training and to ensure the [President’s FOIA Memorandum](#) and the [Attorney General’s FOIA Guidelines](#) are fully implemented within the Department.



# The FOIA Freedom Flyer

Issue II, December 2014

FOIA Service Center Newsletter

## FOIA AWARDS



On Thursday, December 11th, the Department of Education, as well as the FOIA Service Center (FSC) acknowledged the dedication and hard work of individuals and program offices. FOIA holds a unique place in our Department. Although not specifically written into most job descriptions or performance evaluations, FOIA plays a key role in our work and ED's image with the public. The FOIA Service Center staff thanks individuals and program offices for their strides to fulfill ED's mission to educate the public and provide an Open Government to all.

To highlight those honored at the FOIA Awards for being fantastic overall POs, Office of Innovation & Improvement (OII) and Office of the Chief Information Officer (OCIO) hold the gold star in their work with FOIA. Within these offices, you can find staff that take great pride in their FOIA program and successfully maintain their backlog of open cases. OII, in particular, has allotted the proper resources to address their FOIA needs and have implemented a forward-thinking FOIA culture through their work with proactively releasing data on successful grants!

Three offices have stood out over the last year for their work with proactive release. Federal Student Aid (FSA), Office of Elementary and Secondary Education (OESE), and Office of Civil Rights (OCR) have posted thousands of documents in the public forum.

Finally, but certainly not least, there were three shining stars whose efforts set the bar for quality FOIA service! Elizabeth Goldsmith, LaToya Tribone (FSA), and Terry Bradford (Office of General Counsel) were recognized for their work organizing and fulfilling FOIA requests.

The Annual FOIA Awards was followed by a delicious Dip Competition (winning recipe on page 3!) The FSC would like to thank everyone for their contributions to the FOIA effort and Education's mission. Without everyone's dedication, it would be mighty difficult to fulfill the public's need for knowledge. Thank you so much. And keep up the amazing work!

*(Right, 1st: Kimberly, Elizabeth and LaToya with Andrew; 2nd: Andrew and Terry; 3rd: Dip Competition); 4th: OII and Andrew; 5th: OCR and Andrew)*



## SPOTLIGHT on EXEMPTION(5)

Exemption 5 of the Freedom of Information Act protects "inter-agency or intra-agency memoranda or letters which would be available by law to a party other than an agency in litigation with the agency." The three primary and most frequently invoked privileges that have been held to be incorporated into Exemption 5 are the deliberative process privilege (referred to by some

courts as "executive privilege"), the attorney work-product privilege, and the attorney-client privilege. In order to justify nondisclosure under Exemption 5, an agency must show that the type of material it seeks to withhold is generally protected in civil discovery for reasons similar to those asserted by the agency in the FOIA context.