

VA



U.S. Department of Veterans Affairs

To fulfill President Lincoln's promise "To care for him who shall have borne the battle, and for his widow, and his orphan" by serving and honoring the men and women who are America's Veterans.

2023 CHIEF FOIA OFFICER REPORT GUIDELINES - AGENCIES RECEIVING MORE THAN 50 REQUESTS FISCAL YEAR 2021

2023 Chief FOIA Officer Report Guidelines Agencies Receiving More Than 50 Requests in Fiscal Year 2021

SECTION I: FOIA LEADERSHIP AND APPLYING THE PRESUMPTION OF OPENNESS

The guiding principle underlying the Attorney General's [FOIA Guidelines](#) is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

A. Leadership Support for FOIA

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. See 5 U.S.C. § 552(j)(1) (2018). Is your agency's Chief FOIA Officer at or above this level?

Yes

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

Kurt DelBene
Assistant Secretary for Information and Technology and Chief Information Officer

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

Transparency is a cornerstone of VA operations. Because transparency builds trust and trust is integral to the delivery of care, distribution benefits, and our daily interactions with Veterans, VA incorporates transparency into our core values found at [§ 0.601 Core Values](#).

B. Presumption of Openness

4. The Attorney General's 2022 FOIA Guidelines provides that "agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions." Does your agency provide such confirmation in its response letters?

Yes

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interested protected by a FOIA exemption. This is commonly referred to as a *Glomar* response. With respect to these responses, please answer the below questions:

- a. In addition to tracking the asserted exemption, does your agency specifically track whether a request involved a *Glomar* response?

No

- b. If yes, please provide:
 - i. the number of times your agency issued a full or partial *Glomar* response (separate full and partial if possible);
 - ii. the number of times a *Glomar* response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).
- c. If your agency does not track the use of *Glomar* responses, what would your agency need to do to track in the future? If possible, please describe the resources and time involved.

Tracking would involve a modification of our E-FOIA case tracking system.

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

N/A

SECTION II: ENSURING FAIR AND EFFECTIVE FOIA ADMINISTRATION

The Attorney General's [FOIA Guidelines](#) provide that "[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of FOIA obligations by the entire agency workforce." The Guidelines reinforce longstanding guidance to "work with FOIA requesters in a spirit of cooperation." The Attorney General also "urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency's FOIA administration" as part of ensuring fair and effective FOIA administration.

A. FOIA Training

1. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel

Department of Veterans Affairs (VA) Freedom of Information Act (FOIA) has a multichannel, "meet them where they are" approach to FOIA training. This approach provides training resources that range from formal monthly "Coaching Calls," to more informal "Lunch and Learns" where FOIA Officers can bring their specific case questions and get on the spot guidance to assist in moving their cases to completion. In addition to

larger trainings, VA FOIA often provides 1-1 training for FOIA officers that may be new to the field or working through novel issues.

While VA FOIA has a robust internal FOIA training program, we are also active external participants in the FOIA training space. VA FOIA led American Society of Access Professionals (ASAP) conference sessions with both VA-specific sessions as well as providing speakers for a variety of FOIA-related topics for a wide audience. VA FOIA team members also participated on industry webinars to spread the word on transparency initiatives at the VA.

While those dynamic sessions are important, VA FOIA also maintains a library of training resources on our internal SharePoint and VA FOIA team members regularly attend Department of Justice (DOJ) Office of Information Policy (OIP) trainings.

2. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend substantive FOIA training during the reporting period such as that provided by the Department of Justice?

Yes

3. If yes, please provide a brief description of the type of training attended or conducted and the topics covered

VA FOIA embraced hybrid training in Fiscal Year 2022 (FY22). While nearly 100 VA FOIA team members attended and presented sessions at the ASAP conferences in Virginia and Kansas, VA FOIA team members also presented at various industry webinars.

VA FOIA has monthly “Coaching Calls” on various FOIA topics including strategies to work with requesters, fee waivers, expedited processing and similar topics.

FOIA professionals took virtual FOIA trainings led by AINS LLC for FOIAXpress platform, VA Office of General Counsel (OGC) Information Law Group Training, Privacy Considerations Training (July 2022), Exemption 1 and Exemption 7 (June 2022) as well as numerous DOJ OIP webinars.

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

100%

5. OIP has [directed agencies](#) to “take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year.” If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency’s plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

N/A

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and if senior leaders at your agency received a briefing on your agency’s FOIA resources, obligations and expectations during the FOIA process?

VA FOIA provides briefings to program offices on demand in order to provide insight into the FOIA and distributes the DOJ OIP updated infographic ([FOIA Info Graphic \(justice.gov\)](https://www.justice.gov/foia-info-graphic)) widely to VA team members.

B. Outreach

7. Did your FOIA professionals engage in any outreach or dialogue, outside of the standard request process, with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

Yes, in terms of outreach, we introduced the Public Access Link and conducted multiple informal outreaches such as including VA FOIA Director presentations at Chief FOIA Officer meetings and being available to requesters participating in other industry events like in-person GOV CIO presentations and other webinars.

8. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue, and, if applicable, any specific examples.

Yes, FOIA professional contact requesters if there are any reasons for further clarification such as fees, if the scope is not broad enough or too broad. FOIA professionals also contact the requester to explain what the volume of a request with a broad scope may result in and assist the requester in understanding exactly what they need.

9. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during Fiscal Year 2022 (please provide a total number or an estimate of the number).

The FOIA Public Liaisons at VA conducted in excess of 500 interactions with requesters.

C. Other Initiatives

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

Yes, VA is evaluating the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands. VA is studying and is considering which in a suite of options we will ultimately adopt.

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

VA FOIA uses processing metrics to ensure efficient management of FOIA workloads and staff operations.

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

N/A

SECTION III: PROACTIVE DISCLOSURES

The Attorney General's [FOIA Guidelines](#) emphasize that "proactive disclosure of information is . . . fundamental to the faithful application of the FOIA." The Guidelines direct agencies to post "records online quickly and systematically in advance of any public request" and reiterate that agencies should post records "in the most useful, searchable, and open formats possible."

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

VA FOIA established a new 508 compliant reading room where we track our (a)(2) postings: [VA Public Access Link-Reading Room \(efoia-host.com\)](#)

2. Provide examples of any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

The VA has proactively disclosed a variety of information at the following links:

- **VA FOIA Library** <https://www.va.gov/FOIA/Library.asp>
 - **Veterans Benefits Administration (VBA) Performance**
 - <http://www.vba.va.gov/reports/aspiremap.asp>
 - **Veterans Population Data**
 - <http://www.va.gov/vetdata/Veteran Population.asp>
 - **Global War on Terror (GWOT) / Gulf War Veterans**
 - **Information System (GWVIS)** <http://www.va.gov/VETDATA/>
 - **Gross Distribution of Expenditures (GDX)**
 - <http://www.va.gov/VETDATA/Expenditures.asp>
 - **Senior Leadership Emails/Travel, THIRD PARTY LAND USES**
 - **Agent Orange**
3. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website?

Yes, The VA regularly post information in order to better serve Veterans and their beneficiaries. Examples include the Burn Pit Registry: [VA Airborne Hazards and Open Burn Pit Registry - Public Health](#) and the PACT ACT information page [The PACT Act And Your VA Benefits | Veterans Affairs](#)

4. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

The VA continues to make iterative improvements to our website. This year, VA FOIA made substantial efforts and significantly increased our plain language score to improve the user experience at our FOIA website.

5. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

Yes. VA FOIA routinely works with program offices to encourage them to post records proactively. This activity has the ultimate aim to obviate the need for requesters to make FOIA requests.

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

VA FOIA encourages departments to organize documents ensuring any information posted is concise and easy to access. Ensuring titles of resources are clear for the public to access encourages the public to use these resources to locate information they are looking for quickly. VA faced no challenges

SECTION IV: STEPS TAKE TO GREATER UTILIZE TECHNOLOGY

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's [FOIA Guidelines](#) emphasize the importance of making FOIA websites easily navigable and complying with the [FOIA.gov](#) interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

Yes. After DOJ OIP and National Archives and Records Administration (NARA)/Office of Government Information Services (OGIS) put on the FOIA NexGen Showcase, VA FOIA began a closer look at our current technology solution and posted Requests for Information. VA FOIA is in the process of meeting the requirements of HR2617 – the “Consolidated Appropriations Act, 2023,” Joseph Maxwell Cleland and Robert Joseph Dole memorial Veterans Benefits and Health Care Improvement Act of 2022, Title IV, SEC. 406 which requires a full review of our FOIA technology.

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program.

VA FOIA continued to use multiple eDiscovery tools to support our FOIA program. This year we launched the Public Access Link (PAL) tool in FOIAXpress, for posting documents and improving both our Reading Room and requester’s ability to download large files.

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.

N/A

4. OIP issued [guidance](#) in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

Yes

5. Did all four of your agency's [quarterly reports](#) for Fiscal Year 2022 appear on FOIA.gov?

Yes

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2023.

N/A

7. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2021 Annual FOIA Report and, if available, for your agency's Fiscal Year 2022 Annual FOIA Report.

[FOIA Library - Freedom Of Information Act FOIA \(va.gov\) has record of all Annual reports.](#) The system used to generate the Annual reports (FOIA.gov) does not provide a raw data file. All annual postings are retained via FOIA.gov and the FOIA library.

8. In February 2019, DOJ and OMB issued joint [Guidance](#) establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

Yes

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

N/A

SECTION V: STEPS TAKEN TO REMOVE BARRIERS TO ACCESS, IMPROVE TIMELINESS IN RESPONDING TO REQUESTS, AND REDUCE BACKLOGS

The Attorney General's [FOIA Guidelines](#) instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

A. Remove Barriers to Access

1. Has your agency established alternative means of access to first-party requested records outside of the FOIA process?

Yes

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

Public Access Link (PAL), VA FOIA Reading room

B. Timeliness

3. For Fiscal Year 2022, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2022 Annual FOIA Report.

16.89

4. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2022 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

VA is adding additional training and one-on-one assistance for the affected offices. VA is also adding expanded FOIA Public Liaison assistance to help affected offices better communicate with the requesters and provide updates in the system for Expedited Processing in FY23.

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

Yes

6. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2022?

Yes

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

N/A

8. Please provide the percentage of requests processed by your agency in Fiscal Year 2022 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100.

75%

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

N/A

C. Backlogs

BACKLOGGED REQUESTS

10. If your agency had a backlog of requests at the close of Fiscal Year 2022, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

Yes

11. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2022 than it did during Fiscal Year 2021?

N/A

12. If your agency's request backlog increased during Fiscal Year 2022, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming requests

Yes, the agency has seen an increase in requests this FY.

- A loss of staff

Like many employers in FY22, we experienced significant turnover.

- An increase in the complexity of the requests received (if possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase)

Requests for emails of numerous individuals in one request.

- Impact of COVID-19 and workplace and safety precautions

None

- Any other reasons – please briefly describe or provide examples when possible

None

13. If you had a request backlog, please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with “N/A.”

3.7%

BACKLOGGED APPEALS

14. If your agency had a backlog of appeals at the close of Fiscal Year 2022, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

No

15. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2022 than it did during Fiscal Year 2021?

No

16. If your agency’s appeal backlog increased during Fiscal Year 2022, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming appeals
- A loss of staff
- An increase in the complexity of the requests received (if possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase)
- Impact of COVID-19 and workplace and safety precautions
- Any other reasons – please briefly describe or provide examples when possible

There were a few factors that contributed to not reducing the backlog, such as an increase in the number we received for this FY, along with the complexity of the appeals and loss of personnel to attrition, new jobs, or new duties.

17. If you had an appeal backlog, please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2022 and/or has no appeal backlog, please answer with "N/A."

55%

D. Backlog Reduction Plans

18. In the 2022 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2021 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2022?

Yes, the VA is continuing its efforts in the area of backlog reduction, and we are ensuring each Administration and Staff Office receives the assistance needed to process their requests. The VA continues to use contracting staff alongside Federal personnel to conduct searches and process new requests in a timely manner while also working on backlogged requests.

19. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2022, please explain your agency's plan to reduce this backlog during Fiscal Year 2023.

N/A

E. Reducing the Age of Requests, Appeals, and Consultations

TEN OLDEST REQUESTS

20. In Fiscal Year 2022, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2021 Annual FOIA Report?

Yes

21. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2021 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

N/A

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

The VA has used best practices to ensure all the Ten oldest request are processed and closed. Such as, administrative closures, conducting searches within interagency drives and the FOIAXpress processing software to ensure all requests are complying under the FOIA guidelines. We continue to update all Standard Operating Procedure (SOP)s,

directives and administrative memos to ensure enterprise-wide consistency on responses and precise redactions to assist in reducing appeals.

TEN OLDEST APPEALS

23. In Fiscal Year 2022, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2021 Annual FOIA Report?

Yes

24. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2021 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A

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

The VA has used best practices to ensure all the Ten oldest request are processed and closed. Such as, administrative closures, conducting searches within interagency drives and the FOIAXpress processing software to ensure all requests are complying under the FOIA guidelines. We continue to update all SOPs, directives and administrative memos to ensure enterprise-wide consistency on responses and precise redactions to assist in reducing appeals.

TEN OLDEST CONSULTATIONS

26. In Fiscal Year 2022, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2021 Annual FOIA Report?

Yes

27. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2021 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

N/A

ADDITIONAL INFORMATION REGARDING TEN OLDEST

28. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2023.

N/A

F. Additional Information about FOIA Processing

29. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency’s overall FOIA request processing and backlog. If possible, please indicate the number and nature of requests subject to litigation, common causes leading to litigation, and any other information to illustrate the impact of litigation on your overall FOIA administration.

Yes. The impact is predictable increases in staff work and decreases in available staff time to process other cases. The overall impact of litigation is the straining of limited FOIA program resources.

30. How many requests during Fiscal Year 2022 involved unusual circumstances as defined by the FOIA? (This information is available in your agency's FY22 raw data).

N/A