

*Office of the General Counsel***2016 Chief FOIA Officer Report**

The Broadcasting Board of Governors (BBG) is the federal agency responsible for all U.S. Government-funded civilian international media. The BBG's mission is to inform, engage, and connect people around the world in support of freedom and democracy. Every week the Voice of America, Office of Cuba Broadcasting, and other elements of BBG-sponsored international broadcasting transmit more than 4,000 hours of original news and informational content in more than 60 languages to approximately 226 million people in over 100 countries via radio, terrestrial and satellite television, mobile devices, and the Internet and social media.

At the BBG, Freedom of Information Act (FOIA) requests are centrally managed by the Office of the General Counsel (OGC). The OGC's FOIA team (hereinafter, the "FOIA Office") receives all incoming FOIA requests, coordinates the search for and processing of requested materials, and reviews and releases responses to requesters in coordination with the agency's Chief FOIA Officer (currently the Interim General Counsel). The BBG does not employ full-time FOIA personnel, but rather utilizes personnel with part-time or occasional FOIA duties. Currently, the BBG's FOIA Office consists of three employees (including the Chief FOIA officer) who perform part-time FOIA duties to manage the program for the entire agency.

The BBG is committed to conducting its operations as openly and transparently as possible and consistently strives to meet all its expectations under the FOIA and the additional guidance provided by the President of the United States and the Attorney General. The agency's FOIA Office is always searching for innovative ways to provide more information in less time and to improve the service it provides to the public.

This report was prepared under the direction and supervision of Mr. David Kligerman, the agency's Chief FOIA Officer and Interim General Counsel. The report's structure follows the question-and-answer format specified in the Department of Justice guidelines for 2016 Chief FOIA Officer Reports applicable to agencies receiving fewer than 1,000 requests per year.

**Section I: Steps Taken to Apply the Presumption of Openness*****FOIA Training:***

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

FOIA professionals within the FOIA Office were not able to attend external FOIA training during the reporting period. FOIA Office staff did provide internal FOIA training to agency personnel supporting the FOIA program, including employees in the Voice of America and the agency's Office of Contracts.

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

All three members of the FOIA Office (100%) attended or provided substantive FOIA training during this reporting period.

3. *OIP has directed agencies to "take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year." If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.*

[Not applicable]

***Discretionary Releases:***

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

The FOIA Office has a system in place for reviewing records for discretionary release. The first stage of the system involves a review of all proposed redactions and documents recommended for full withholding and application of the Presidential and Department of Justice guidance regarding discretionary releases. Whenever the agency determines it cannot make a full disclosure of a requested record because of protectable information, it carefully considers whether it can make a partial disclosure. Before concluding that any information must be withheld from public release, FOIA Office personnel apply the "foreseeable harm" standard as outlined by the Attorney General and work with agency managers to assess the potential impact on agency operations prior to making a final decision on releasability. The second stage involves the agency's a robust FOIA appeal program, which consists of an Access Appeal Committee comprised of at least three career civil service employees. The Access Appeal Committee is advised by an agency attorney not associated with the FOIA Office to ensure legal objectivity. The Access Appeals Committee reviews all FOIA appeals for compliance, fairness, openness, and equity and releases previously withheld material or directs searches for additional materials when warranted to enhance agency openness and transparency. Finally, to help integrate key FOIA presumptions of openness and transparency into all agency operations and processes, the Chief FOIA Officer provides the Board of Governors periodic updates and highlights regarding the agency's FOIA performance, and FOIA Office personnel advise agency senior leaders and managers on the importance of public access to final agency records and decisions and their obligation to conduct agency operations in as open and transparent manner as possible.

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

Yes.

6. 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 2009 FOIA Memoranda.

Exemption 5.

7. 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.

The agency provided a substantial amount of information through discretionary release that could have been withheld pursuant Exemption 5 and the deliberative process privilege. For example, in responding to a request seeking information and correspondence among agency senior political appointees the FOIA Office released hundreds of pages of correspondence between senior agency employees that involved predecisional internal discussions and draft materials. However, the FOIA Office determined that the public's interest in the information outweighed any potential harm to the agency or its processes and made it available as a discretionary disclosure. Another example involved a request seeking correspondence between agency employees and a grantee providing technical computer services to the agency. That request generated hundreds of pages of draft and deliberative materials that could have been withheld pursuant to Exemption 5 but was instead released as a matter of discretion after determining that the information's value to the public outweighed potential harm to the agency or its processes.

8. If your agency was not able to make any discretionary releases of information, please explain why. For example, you should note here if your agency did not have an opportunity to make discretionary disclosures because you provided full releases in response to all requests or the only exemptions that were applied were those that do not lend themselves to discretionary release (i.e. Exemptions 1, 3, 4, 6, 7A, 7B, 7C, 7F).

[Not applicable]

9. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here. If any of these initiatives are online, please provide links in your description.

[Not applicable]

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

### ***Processing Procedures:***

1. For Fiscal Year 2015, 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 2015 Annual FOIA Report.

Eight.

*2. 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.*

[Not applicable]

*3. On July 2, 2015, OIP issued new guidance to agencies on the proper procedures to be used in the event an agency has a reason to inquire whether a requester is still interested in the processing of his or her request. Please confirm here that to the extent your agency may have had occasion to send a "still interested" inquiry, it has done so in accordance with the new guidelines for doing so, including affording requesters thirty working days to respond.*

The FOIA Office has not yet had occasion to send a “still interested” inquiry.

***Requester Services:***

*4. Agency FOIA Requester Service Centers and FOIA Public Liaisons serve as the face and voice of an agency. In this capacity they provide a very important service for requesters, informing them about how the FOIA process works and providing specific details on the handling of their individual requests. The FOIA also calls on agency FOIA Requester Service Centers and FOIA Public Liaisons to assist requesters in resolving disputes. Please explain here any steps your agency has taken to strengthen these services to better inform requesters about their requests and to prevent or resolve FOIA disputes.*

The FOIA Office centrally manages all agency FOIA requests and FOIA Office personnel already provide these services to members of the public. At this time there is not enough demand at the BBG to warrant establishing additional FOIA Public Liaisons or a separate FOIA Requester Service Center.

***Other Initiatives:***

*5. 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.*

In the current reporting period the FOIA Office assessed and revised its internal operating procedures to improve the speed and efficiency with which it processes requests. The assessment led to a number of administrative changes to its internal operating procedures to streamline the flow of information among FOIA Office personnel and to reduce correspondence times.

**Section III: Steps Taken to Increase Proactive Disclosures  
*Posting Material:***

*1. Describe your agency's process or system for identifying "frequently requested" records required to be posted online under Subsection (a)(2) of the FOIA. For example, does your agency monitor its FOIA logs or is there some other system in place to identify these records for posting.*

The FOIA Office monitors all incoming requests to determine when public interest in a particular record or records warrants considering proactively disclosing them on the agency's website in its FOIA Electronic Reading Room. Whenever the agency has two or more open requests for identical records, or has received three or more requests for identical records in a fiscal year, the FOIA Office proactively discloses the records responsive to those requests in its Electronic Reading Room on the agency's public website. If the agency receives three or more requests for substantially similar information within a fiscal year, the FOIA Office reviews its request files to determine there was a common set of records or documents released among them and, if there was, whether or not posting those records to the Electronic Reading Room would be likely to satisfy future like requests.

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

The agency routinely proactively discloses much of its high-value information to the public, and its public affairs offices, FOIA Office, and Open Government Team actively seek out additional information ripe for proactive disclosure.

All open meetings of the Broadcasting Board of Governors are made freely available for public observation over the Internet throughout the year, both via live feed during the meetings and on demand afterward, via the agency's public Internet website ([www.bbg.gov](http://www.bbg.gov)). The Board also proactively disclosed documents and records, such as formal Board resolutions, Board committee reports, and other items of potential public interest via the agency's public website.

The agency uses its website to provide timely and valuable information to the public and is always seeking feedback on ways to improve public access to its content and satisfaction with its presentation. In addition to providing an open public website with built-in search capabilities, the agency also maintains an official presence on multiple social media platforms, including Facebook and Twitter, in order to bring essential agency news and information to a wider public audience. Additional information on agency activities and operations can be found on its website at [www.bbg.gov](http://www.bbg.gov).

The agency makes its most valuable information, namely the audio and video content created for overseas audiences, directly accessible to the public. News and information produced by the Voice of America can be found at [www.voanews.com](http://www.voanews.com), while news and information created by the Office of Cuba Broadcasting can be found at [www.martinoticias.com](http://www.martinoticias.com).

3. *When making proactive disclosures of records, are your agency's FOIA professionals involved in coding the records for Section 508 compliance or otherwise preparing them for posting? If so, provide an estimate of how much time is involved for each of your FOIA professionals and your agency overall.*

The agency's FOIA professionals are not involved in Section 508 compliance or preparing records for posting online.

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

No.

5. *If so, please briefly explain those challenges.*

[Not applicable]

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

The agency proactively disclosed information regarding the open meetings of its Board of Governors during the past year, including on-demand videos of the meetings themselves and documents associated with the meetings. Proactively disclosed materials related to Board meetings can be found at <http://www.bbg.gov/blog/category/event/board-meeting/?type=past>.

The agency also proactively posted a high-resolution PDF version of the annual calendar the agency designs and publishes for distribution to its overseas audiences, and the calendar can be found at [http://www.bbg.gov/wp-content/media/2016/01/VOA2016\\_Calendar.pdf](http://www.bbg.gov/wp-content/media/2016/01/VOA2016_Calendar.pdf).

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

Yes, the agency's Public Affairs office issued press releases and public announcements to advertise Board meetings and highlighted the fact that videos of the meeting and other documents and information were available for viewing and download on the agency's public website.

***Other Initiatives:***

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

[Not applicable]

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

### ***Making Material Posted Online More Useful:***

*1. Beyond posting new material, is your agency taking steps to make the posted information more useable to the public, especially to the community of individuals who regularly access your agency's website?*

The vast majority of the agency's most valuable information, namely its broadcasting content, is presented to the public in a variety of different formats and from a number of different platforms, including via the World Wide Web and social media applications. The agency is constantly looking for ways to make its broadcasting content more useful and engaging to the public and it actively solicits user feedback on ways to improve it. For materials posted to the agency's Electronic Reading Room, the agency strives to post them in a format that will facilitate the greatest access or utility for the information the materials contain.

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

Examples of the agency making materials posted in the Electronic Reading Room more useful include uploading records of hundreds of thousands of records of legacy broadcasting content in searchable Word and Excel format and uploading the agency's 2016 calendar, which is designed primarily for distribution to overseas audiences, in a high-resolution PDF format to facilitate high-quality reproduction.

### ***Other Initiatives:***

*3. Did your agency successfully post all four quarterly reports for Fiscal Year 2015?*

All four quarterly reports were posted on the agency's public website, but due to a change in the agency's website address only two of the four quarterly reports appeared on FOIA.gov.

*4. 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 2016.*

The agency is working with OIP to correct the errors between the agency's public website and FOIA.gov and will ensure all four quarterly reports are successfully posted to FOIA.gov in FY16.

*5. 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 that are utilized by your agency to communicate with requesters?*

The agency's primary electronic means of communication with requesters is via facsimile, especially for submitting requests and appeals. The FOIA Office does not have established procedures for communicating with requesters via email and relies primarily on facsimile or USPS mail service for formal communications with requesters. However, the FOIA Office does communicate with requesters via email on administrative matters when possible.

*6. If your agency does not communicate electronically with requests 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?*

The agency is still working to develop a centralized organizational FOIA email account and the necessary supplemental regulations to enable full email correspondence with requesters and members of the FOIA community while still ensuring adequate program oversight and management. FOIA requesters are notified via the agency's website and all written FOIA Office correspondence about the program's limitations regarding email use and electronic communication capabilities, and they are given the option of communicating electronically via facsimile if desired.

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

### ***Simple Track:***

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

No, the agency FOIA program currently does not have multiple track processing.

*2. If so, for your agency overall in Fiscal Year 2015, was the average number of days to process simple requests twenty working days or fewer?*

[Not applicable]

*3. Please provide the percentage of requests processed by your agency in Fiscal Year 2015 that were placed in your simple track.*

[Not applicable]

*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?*

No.

*5. If your agency had a backlog of requests at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?*

Yes.

6. *If not, explain why and describe the causes that contributed to your agency not being able 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.*
- *A loss of staff.*
- *An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.*
- *Any other reasons – please briefly describe or provide examples when possible.*

[Not applicable]

7. *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 2015.*

The agency's number of backlogged requests (4) was 8.8% of the total number of requests received in FY15 (45).

## **BACKLOGGED APPEALS**

8. *If your agency had a backlog of appeals at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?*

The agency did not have any backlogged appeals at the end of FY14 or FY15.

9. *If not, explain why and describe the causes that contributed to your agency not being able reduce 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.*
- *Any other reasons – please briefly describe or provide examples when possible.*

[Not applicable]

10. *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 2015. If your agency did not receive any appeals in Fiscal Year 2015 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 2015 Annual FOIA Report by the number of appeals received in Fiscal Year 2015, 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.*

[Not applicable]

***Status of Ten Oldest Requests, Appeals, and Consultations:***

***TEN OLDEST REQUESTS***

*11. In Fiscal Year 2015, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2014 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 2014 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.*

The agency was able to close nine of its ten oldest perfected FY14 requests in FY15.

*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 ten oldest requests were closed because they were withdrawn by the requester.

***TEN OLDEST APPEALS***

*14. In Fiscal Year 2015, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2014 Annual FOIA Report?*

The agency had no appeals pending at the end of FY14.

*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 2014 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.*

[Not applicable]

### **TEN OLDEST CONSULTATIONS**

*16. In Fiscal Year 2015, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2014 Annual FOIA Report?*

The agency had no consultations pending at the end of FY14.

*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 2014 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.*

The agency had no consultations to close in FY15.

### **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 2014.*

The agency was unable to close its sole remaining oldest request from FY14 because the request is in litigation.

*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.*

[Not applicable]

*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 2016.*

The agency has already closed 5 of its 7 oldest open requests reported at the end of FY15, and the remaining oldest open request from FY15 will be closed well before the end of FY16. The remaining oldest open request from FY14 is still in litigation and the agency is waiting for clearance from the Department of Justice to close it. The agency hopes to receive clearance to close its final oldest perfected request in FY16.

### **Use of the FOIA's Law Enforcement Exclusions**

*1. Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2015?*

No.

*2. If so, please provide the total number of times exclusions were invoked.*

[Not applicable]