

*Office of the General Counsel***2015 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. 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 61 languages to over 100 countries, reaching a weekly audience of 215 million people 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 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 five 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 Mr. Paul Kollmer-Dorsey, the agency's Chief FOIA Officer and General Counsel.

I. Steps Taken to Apply the Presumption of Openness

Over the past year the FOIA Office has worked diligently to integrate and apply the presumption of openness to as many agency decisions involving the FOIA as possible. The FOIA Office's operating policies require the review of all proposed redactions and documents recommended for full withholding and application of the Presidential and Department of Justice guidance referenced above to maximize information made available to the public. 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 agency also has a robust FOIA appeal program consisting of an Access Appeal Committee comprised of at least three career civil service employees and 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. 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 frequently 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.

The agency remains committed to discretionary release of information that would otherwise be subject to lawful withholding under the FOIA. As an integral part of the agency's FOIA program, FOIA Office personnel review every proposed withholding or redaction of information for legal sufficiency and compliance with the FOIA. During that review, all material proposed for withholding under discretionary exemptions (primarily Exemptions 2 and 5) is further scrutinized to identify material suitable for discretionary release. Once such material is found, FOIA Office personnel then return to agency employees responsible for maintaining it to discuss whether the material can be released without resulting in foreseeable harm to the agency, its decision-making processes, or its operations.

One example of the agency's dedication to discretionary release was its release of a substantial number of records that could have been withheld pursuant to FOIA Exemption 5. In a request for correspondence between two former Presidential appointees, the FOIA Office identified a large number of email messages between the appointees that also included subordinate career employee communications that were protectable under the deliberative process privilege and subject to withholding under Exemption 5. After reviewing the information and conferring with other senior agency managers, the FOIA Office determined that releasing the information would not result in foreseeable harm to the agency or its operations and released more than 5,000 pages of responsive documents to the requester with minimal Exemption 5 redactions. Another example involved a requester's appeal from an initial determination that documents responsive to the request were required to be withheld pursuant to FOIA Exemption 7(F). The agency's Access Appeals Committee reviewed the request and, while it found that the initial determination to fully withhold the documents in question was appropriate, it invoked the spirit of openness and transparency to direct the agency to search for related documents that were beyond the original scope of the request but that might help shed greater light on the agency and its operations for the requester.

In order to ensure that the agency effectively administers its FOIA program as effectively and openly as possible, the Chief FOIA Officer requires all FOIA Office personnel to keep apprised of current FOIA policies and practices. The primary method of currency training is to follow updates from the Department of Justice's Office of Information Policy (OIP) website. Although the agency planned to have all FOIA Office personnel attend at least one training session sponsored by the Department of Justice in 2014, personnel shortfalls and resource constraints prevented employees from participating in external training. However, the Chief FOIA Officer will direct all FOIA Office personnel to attend at least one training session sponsored by the Department of Justice in calendar year 2015 to ensure their currency and competency in managing the agency's FOIA program.

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

2014 presented several challenges to the BBG's FOIA program, including the departure and addition of multiple FOIA Office personnel and an intra-agency reorganization that reduced the total number of personnel performing FOIA duties. Nonetheless, the agency remains committed to responding to requests as quickly and effectively as available resources permit. The Chief FOIA Officer regularly monitors the volume of requests submitted to the agency and the time required to process them to evaluate whether sufficient staffing and resources are being dedicated to ensure an effective system for FOIA administration.

One step the FOIA Office has taken to ensure timely responses to requests is to ensure initial processing of all newly received requests begins within 72 hours of receipt. The prompt inprocessing of requests enabled the agency's FOIA Office to maintain an average of 8 calendar days to adjudicate requests for expedited processing and successfully meet the 10 calendar day adjudication requirement under the FOIA.

Another step taken by the agency to ensure it has an effective system for responding to requests is to notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at the National Archives and Records Administration. All requesters are provided written notice of the services OGIS provides upon the conclusion of the agency's administrative appeal process.

Additionally, to ensure that requesters are fully and accurately informed of any assessed fees associated with their requests, the FOIA Office provides a detailed breakdown and explanation of all assessed fees. Search and review fees are broken out into separate categories and are listed by employee grade category, the number of engaged employees in each grade category, and the total number of employee hours dedicated to their request by grade category; any free hours are clearly deducted from the indicated totals. Duplication fees are listed by page number multiplied by the fee per page, with any free pages clearly excluded from the duplication total. When requesters indicate a maximum amount of fees they are willing to incur, they are promptly notified by the FOIA Office when estimated fees will exceed their threshold and asked how they prefer to proceed with their request. When a request is likely to involve a particularly time-consuming search for responsive records or the processing of a large volume of responsive records and may generate significant FOIA fees, requesters are provided a written estimate of the fees likely to be assessed and an explanation for how and why they are to be assessed.

The agency continues to work toward transitioning to a fully-electronic FOIA program, and currently is able to receive requests electronically via fax, complete the search and review processes electronically, and release requests electronically via compact disks. While the agency is still not able to accept request or deliver materials via email, it is optimistic that it will be able to develop the necessary regulations and internal procedures to do so in the coming year and further improve the effectiveness of its system to respond to requests.

III. Steps Taken To Increase Proactive Disclosures

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 were freely available to 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). 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 it is always seeking feedback from the public 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.

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

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. For example, when the agency received multiple requests last year for its Premium Class Travel Reports, the FOIA Office promptly posted the reports to its Electronic Reading Room where the public could access them immediately and free of charge. By proactively posting the reports online, which can be found at <http://www.bbg.gov/wp-content/media/2014/04/BBG-Premium-Class-Travel-Reports-FY11-through-FY13.xlsx>, the agency was able to refer subsequent requesters to its website to provide instant access to the records they were seeking.

IV. Steps Taken To Greater Utilize Technology

The agency continued to seek new ways to utilize technology to improve its FOIA program. Although it has not yet attained the capability to receive requests electronically, it is

continuing to aggressively pursue the ability to do so. The FOIA Office uses digital scanning equipment and processing software to process all requests electronically and, whenever possible, to provide records in the particular electronic format specified by the requester.

The vast majority of the agency's most valuable information 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. The agency's FOIA program strives to post information to its Electronic Reading Room in the most useful format possible, and the inclusion of several spreadsheets including tens of thousands entries regarding its archived legacy broadcasting content demonstrates the agency's commitment to improving the value of its information to the public. The agency has experienced no notable challenges in posting its desired high-value records to its websites to make them available to the public.

The agency has successfully leveraged its technological capabilities to post quarterly FOIA reports to its website, which can be found at <http://www.bbg.gov/about-the-agency/research-reports/foia-reports/>. 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 FAX if desired.

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

The agency currently uses a single-track system to process all FOIA requests on a first in, first out basis, but is reviewing whether or not a multi-track system would provide for more effective and efficient overall processing by separating simple requests from more complex ones; requests granted expedited handling are processed on a separate track regardless of complexity. Despite the agency's best efforts to respond to all FOIA requests within the 20-day statutory goal, the average number of days required to process all non-expedited requests in Fiscal Year 2014 was 35 days.

The agency had 7 backlogged requests at the end of Fiscal Year 2014, a decrease from 11 backlogged requests from Fiscal Year 2013. The backlog at the end of Fiscal Year 2014 represents 5% of the total number of requests received during the fiscal year. The agency did not have any backlogged appeals in Fiscal Years 2013 or 2014.

The agency was able to close 9 of the 10 oldest requests pending at the end of Fiscal Year 2013. Of the 9 requests that were closed, all were closed by releasing responsive documents to the requester and none were closed because the request was withdrawn. All appeals pending from Fiscal Year 2013 were closed in a timely manner in Fiscal Year 2014. The agency did not have any consultations pending at the end of Fiscal Year 2013.

The main obstacle to closing the remaining oldest request pending from Fiscal Year 2013 was the sheer volume of documents responsive to the request, which involved more than 5,000 pages of responsive documents. FOIA Office personnel processed and released responsive materials to the requester in seven interim releases as they became available. Although the request was still backlogged as of the start of Fiscal Year 2014, it has since been closed and no backlogged requests from Fiscal Year 2013 remain.

Use of FOIA's Law Enforcement "Exclusions"

The agency did not invoke any statutory exclusions pursuant to 5 USC 552(c) in Fiscal Year 2013.