2018 Chief FOIA Officer's Report

U.S. Department of Housing and Urban Development

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Section 1: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying DOJ'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.

A. FOIA Training

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

Yes.

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

All members of Headquarters staff attended training conducted by the Department of Justice's Office of Information Policy. These training courses included *Introduction to the Freedom of Information Act*, *The Freedom of Information Act for Attorneys and Access Professionals,* and, for the HUD attorneys who process FOIA requests, the *FOIA Litigation Seminar*.

In addition, regional offices conducted in-house training sessions covering a variety of topics, including guidance for program offices whose sole involvement in the FOIA process is record collection. FOIA staff in regions IV and X attended Department of Justice training focusing on the FOIA Improvement Act of 2016. Regions I, VI, IX, and X worked with HUD's Office of General Counsel to provide training for both FOIA staff and members of affiliated program offices. Training topics included FOIA exemptions, the Privacy Act, proactive disclosures, and submitter notices.

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

83%

4. 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

B. Outreach

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

Located in the nation's largest media market, which also contains the country's most dense concentration of public housing, HUD's Region II office in New York regularly engaged with media requesters, fair housing advocates, and private attorneys to discuss FOIA matters such as the application of fees, the agency's search capabilities, and updates to FOIA statutes and implementing regulations.

Headquarters employees attended an open speaker session led by prominent FOIA requesters from the media, discussing aspects of the FOIA process most pertinent to media requesters, open government groups, and "watchdog" organizations. In addition, a keynote speaker at the annual AINS FOIA Users Group Conference was Nate Jones, Director of the Freedom of Information Act Project at the National Security Archive (NSA). The NSA has filed over 50,000 FOIA requests since 1985. Mr. Jones shared with the FOIA staff many of the successes and struggles he has encountered while dealing with numerous Federal agencies through the FOIA, as well as providing insight regarding industry best practices.

C. Other Initiatives

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

In FY17, HUD made Department-wide FOIA training a priority. Due to the inability of many regional employees to attend OIP training in Washington, HUD focused on making FOIA e-learning training modules available to all Department staff. Through the HUD Virtual University, employees can remotely access online classes related to FOIA policies and procedures.

Employees of the FOIA Branch and the Office of General Counsel have also worked one-on-one with staff members from various program offices on matters related to FOIA requests, appeals, and litigation. In the field, several regional offices have provided training specifically for non-FOIA professionals. Regions IV and V provided training for members of HUD's Multifamily staff, made available to all employees either in-person or via video conference. Region VII provided region-wide training for all program offices, covering FOIA exemptions and processing in-depth. Region X held a training titled "FOIA and Your Responsibilities as a Federal Employee" to educate all employees about the scope of the FOIA and their role in assisting overall agency processing.

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

All FOIA requests involving the emails, calendars, and shared drive records of HUD employees are coordinated through Headquarters via the use of electronic discovery (eDiscovery). As opposed to custodian self-searches, the use of the eDiscovery system allows for the objective and dependable collection of electronic records, providing requesters with the most complete and open access to agency records of this type.

For every FOIA release that redacts or withholds information under an applicable exemption, the package must be cleared by the Office of General Counsel. Particularly since the implementation of the FOIA Improvement Act of 2016, the General Counsel's office has instructed FOIA staff to err toward releasability. Redactions and withholdings, particularly under applicable exemptions, must be supported by a reasonable showing of foreseeable harm if the information is released. This has led to a more liberal approach to the release of information that, in the past, may have been withheld.

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

DOJ's FOIA Guidelines emphasize that "[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 the 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.

1. For Fiscal Year 2017, 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 2017 Annual FOIA Report.

6.78 days

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.

N/A

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report data, using active workflows and track management, reviewing and updating processing procedures, etc.

- Note: In September 2017, OIP released a FOIA Self-Assessment Toolkit as a resource for agencies conducting a self-assessment of their FOIA program. The Toolkit is available on OIP's website for all agencies to use.

The Department engages in regular self-assessments of the FOIA process. Utilizing information gleaned from an agency-wide FOIA Process Improvement session, in combination with annual reporting data, the entire FOIA process from intake to closure has been reexamined for inefficiencies and duplicative efforts. Beginning in FY17, time-wasting steps have been removed from the Department's FOIA processing timeline to further streamline our efforts. One example is the increased training in, and use of, our FOIA Management System software (FMS2) by program office FOIA liaisons and Office of General Counsel attorneys. Electronic record uploads by program office staff, and electronic review by OGC attorneys, has eliminated significant paper waste and decreased review times. In addition, increased signature authority by FOIA Specialists has helped to eliminate significant red-tape slowdowns, particularly for simple requests.

4. 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 FY 2017 (please provide a total number or an estimate of the number).

25 times (estimate)

5. Optional Survey Question: If possible, please provide an estimate of the average number of pages that your agency processes for each request. You may provide estimates for each track.

Simple – 200 pages (estimate)

Complex – 500 pages (estimate)

6. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as improving search processes, eliminating redundancy, etc., please describe them here.

See Section 1, Part C, Question 7 above regarding eDiscovery processes. Due to the significant increase in requests for email records in FY17, the Department now streamlines all such requests through one central online portal, coordinated by the FOIA staff at Department Headquarters in conjunction with the Office of General Counsel. Though the backlog of this system has grown due to increased interest in email records, the centralized processing portal allows for improved ease of access and monitoring of requests.

Additionally, program offices receiving a high volume of request assignments now share search responsibility amongst all FOIA liaisons. This system of shared distribution allows FOIA Specialists to assign requests to all members of a particular program office at once, rather than selecting a single FOIA liaison. Shared distribution ensures that FOIA requests will not stagnate as a result of isolated staff absences, and ensures more complete

coverage and more efficient intake of each request. The result a faster turnaround by program offices conducting such searches.

Section III: Steps Taken to Increase Proactive Disclosures

The Department of Justice has long 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.

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

Neighborhood Watch Early Warning System (Neighborhood Watch) is a secure web-based application designed to provide comprehensive data querying, reporting and analysis capabilities for tracking the performance of loans originated, underwritten, and serviced by FHA-approved lending institutions. Neighborhood Watch is used by FHA employees, lending institutions and the general public to monitor the performance of insured mortgage loans by highlighting instances of high defaults and claims among lending institutions by geographic area, loan characteristic, and other factors. - https://entp.hud.gov/sfnw/public/

HUD Mortgagee Letters - https://www.hud.gov/program_offices/administration/hudclips/letters/mortgagee

HUD Handbooks - https://www.hud.gov/program_offices/administration/hudclips/handbooks/

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

Requesters frequently file FOIA requests seeking information already published on HUD's online portal. Rather than reproduce records for release, requesters are directed to the publicly-available version online. Over time, many commercial and media requesters have become accustomed to this practice, and will begin their search online (often finding the information they seek without having to formalize a FOIA request). This is the most common method of communicating the presence of online materials directly to requesters. At times in the past, the Department has also utilized social media (Facebook, Twitter) to convey the presence of high-interest online materials to the general public.

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.

4. If yes, please provide examples of such improvements.

One major step in HUD's proactive disclosure effort has been to ensure the availability of multiple file types. While the most common releases are made to requesters via PDF, many requesters seek records containing hard data in the form of XLS, XLSX, and CSV spreadsheets. The Department has focused not only on continuing to proactively disclose pertinent materials, but also on making those disclosures usable by the widest array of requesters.

5. If there are any other steps your agency has taken to improve proactive disclosures, please describe them here. For example, has your agency engaged requesters in determining how and what to post? Has your agency used web analytics to inform your proactive disclosures?

Departmental websites and hyperlinks are reviewed—and updated, when necessary—to ensure that the most current material is posted and that the ease of access to disclosed information is not interrupted by outdated shortcuts.

Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information more accessible. 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 that describes your agency's efforts in this area.

1. Has your agency identified any best practices to leverage 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 please describe the best practices, the types of technology used and the impact on your agency's processing.

HUD has increased training in and usage of our FOIA Management System (FMS2) agency-wide. This platform was previously utilized only by the FOIA Branch for request tracking and document redaction. In the past year, we have expanded the pool of trained users to include program area specialists and FOIA attorneys in the Office of General Counsel. The former group can now upload responsive documents directly to the FMS2 platform for review, eliminating the time and waste involved with traditional paper-record transmission. The latter group utilizes FMS2's document review feature to load a legal review layer on top of the FOIA Specialist's initial review layer, allowing for virtual side-by-side comparisons of work done by FOIA staff and HUD attorneys.

2. Did your agency successfully post all four quarterly reports for Fiscal Year 2017?

Yes.

3. 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 2018.

N/A

4. 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 2016 Annual FOIA Report and, if available, for your agency's Fiscal Year 2017 Annual FOIA Report.

https://www.hud.gov/program_offices/administration/foia/foiarpts

5. If there are any other steps your agency has taken to improve use of technology in FOIA, please describe them here.

In addition to FMS2, the most important technology our FOIA team utilizes is an eDiscovery platform for the collection and review of email and calendar records affiliated with @hud.gov accounts. The utilization of eDiscovery has benefitted our agency in the following ways:

a) **This platform automatically tags duplicate documents, and allows for users to adjust settings to only view unique items and to bulk tag duplicates, rather than performing the same work multiple times;**

b) **The export of documents collected through eDiscovery can be sent either to an online review system or to a .PST file for review in Microsoft Outlook. This flexibility allows for different users to find the method that works best for a particular review, and gives each user the opportunity to work in the format most comfortable for him/her.**

c) **Collecting data through eDiscovery ensures the most objective search possible. We can now conduct a collection of a custodian's records with no involvement of the custodian himself/herself. This ensures that the final product being released to the requester is full, accurate, and completely transparent.**

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

The Department of Justice has emphasized the importance of improving timeliness in responding to requests. This section of 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 2017 Annual FOIA Report and, when applicable, your agency's 2016 Annual FOIA Report.

A. 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 2017, was the average number of days to process simple requests twenty working days or fewer?

No - the average processing time for requests was 27.82 days.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2017 that were placed in your simple track.

68% (Simple requests processed / total requests processed = 1,293/1,890 = .684 = 68%)

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

B. 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 2016 and Fiscal Year 2017 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 2017, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2016?

No. The backlog reported at the end of Fiscal Year 2016 was 328 requests. The backlog at the end of Fiscal Year 2017 was 527 requests.

6. If not, 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.**
- A loss of staff - **Yes.**
- 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 - **Yes. With the change in administration, the Department received a significant increase in the number of requests, specifically those related to the Secretary and other Departmental political appointees. The largest area of growth, when measured by category of requester, was from requests made by members of the media, often related to the communications and calendars of agency leadership, particularly as they relate to the White House and/or Trump administration.**
- Any other reasons – please briefly describe or provide examples when possible - **With the significant increase in the number of communication-based requests (i.e. requests asking for specific employees' emails, text messages, etc.) comes an increase in the Department's use of electronic tools to search for responsive records. The Department's primary source of collecting email and electronic calendar records is through the use of an eDiscovery tool, which is managed by an outside contractor. This system is limited in terms of the number of data pulls that can be run each day, and the scheduled dates of data pulls are automatically assigned by the system. Thus, the Department has not only had to deal with a growing backlog of eDiscovery searches, but has no control over when those searches take place. As an example, eDiscovery searches submitted in January of 2018 are scheduled to be conducted in June of 2018.**

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 2017.

23% (527 requests in backlog / 2,296 requests received in FY17)

BACKLOGGED APPEALS

8. If your agency had a backlog of appeals at the close of Fiscal Year 2017, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2016?

Yes. The backlog reported at the end of Fiscal Year 2016 was 12 appeals. The backlog at the end of Fiscal Year 2017 was 5 appeals.

9. If not, 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.

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

N/A.

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 2017. If your agency did not receive any appeals in Fiscal Year 2017 and/or has no appeal backlog, please answer with "N/A."

9% (5 appeals in backlog / 56 appeals received in FY17)

C. Backlog Reduction Plans

11. In the 2017 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2016 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 2017.

No. The Department had a backlog of less than 1,000 requests in Fiscal Year 2016.

12. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2017, what is your agency's plan to reduce this backlog during Fiscal Year 2018?

N/A

D. 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 2016 and Fiscal Year 2017 when completing this section of your Chief FOIA Officer Report.

TEN OLDEST REQUESTS

13. In Fiscal Year 2017, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2016 Annual FOIA Report?

No.

14. 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 2016 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

In Fiscal Year 2017, the Department closed nine of the ten (9/10) oldest requests reported at the end of Fiscal Year 2016. One of the ten (1/10) oldest requests reported in Fiscal Year 2016 remains open.

15. 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?

No. Four of the nine (4/9) requests closed were withdrawn. Three (3) were voluntarily withdrawn by the requesters, and one (1) was administratively withdrawn. No interim responses were sent for any of the requests.

TEN OLDEST APPEALS

16. In Fiscal Year 2017, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2016 Annual FOIA Report?

No.

17. 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 2016 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

In Fiscal Year 2017, the Department closed seven of the ten (7/10) oldest appeals reported at the end of Fiscal Year 2016. Three of the ten (3/10) oldest appeals reported in Fiscal Year 2016 remains open.

TEN OLDEST CONSULTATIONS

18. In Fiscal Year 2017, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2016 Annual FOIA Report?

N/A (no consultations pending at the end of Fiscal Year 2016)

19. 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 2016 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

N/A

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

20. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2017.

Although we were able to close 90% of our oldest cases and 70% of our oldest appeals during FY17, the primary obstacle to being able to close *all* of our oldest cases is the small size of our staff compared to our overall caseload. The number of cases assigned to each specialist demand that a significant portion of each workday be dedicated to intake, drafting of acknowledgement letters, analysis of fee waiver and expedition requests, and proper assignment for all new cases. Thus, there is limited time to dedicate to the review and closure of older cases when such significant time is needed to stay on top of new cases. One specialist with the agency is assigned, at the time of this draft, over 300 active requests. Thus, small increments of work must be dedicated to many cases every day, rather than dedicating a great deal of work to a small set of cases. A package with 30,000 responsive pages may have to be reviewed at a rate of 100 pages per day, to ensure that adequate attention is paid to all other active requests.

21. 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

22. 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 2018.

The Department had a great deal of success in Fiscal Year 2017 in terms of closing out the oldest requests and appeals. Having closed 90% of our oldest cases and 70% of our oldest appeals from the previous reporting year, the goal is to continue to utilize our most effective tactics in the coming year. Our most effective method has been to institute a heavy focus on open, informal communication with the requester community. Staying in touch with requesters, particularly through phone calls and short emails, allows us to gauge amenability to interim responses or restructured requests.

F. Success Stories

Out of all the activities undertaken by your agency since March 2017 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas. As noted above, OIP will highlight these agency success stories during Sunshine Week. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

- **The New York Regional Office facilitated and participated in several meetings between Field Policy Management, the Office of Community Planning and Development, and the Office of General Counsel to discuss processing, next steps, and document searches regarding a voluminous FOIA request from a high profile Fair Housing Advocacy group. The request involved pending litigation and hundreds of HUD documents over a 10-year period. To promote transparency and expedite the response, the requester and his staff were given the opportunity to review huge files on-site and select specific documents needed. The selected documents were copied and immediately forwarded to the requester, resulting in a very satisfied client.**