

U.S. Department of Housing and Urban Development

2020 Chief FOIA Officer Report

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 Leadership

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at the Assistant Secretary or equivalent level. Is your agency's Chief FOIA Officer at this level?

Yes.

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

Chad Cowan – Principal Deputy Assistant Secretary for Administration

B. FOIA Training

3. 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.

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

HUD staff attended trainings provided by the Department of Justice's Office of Information Policy, including:

- **Introduction to the Freedom of Information Act**
- **The Freedom of Information Act for Attorneys and Access Professionals**
- **Advanced Freedom of Information Act Seminar**
- **FOIA Litigation Seminar**

Employees also attended FOIA and Privacy training offered by the Graduate School USA, and training on the use of the FOIAXpress software platform offered by AINS.

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

60%

6. 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.

Although all Headquarters FOIA staff attended at least one substantive FOIA training during the reporting period, many FOIA employees in field offices around the country did not. Out of HUD’s ten regional offices, four reported that none of their FOIA staff had received substantive training during the year. In response, HUD leadership has planned to focus more efforts on providing training to staff in the field over the coming year. The plan is to send Headquarters staff members to selected regions throughout the year, to provide comprehensive training on the FOIA process from intake to closure, on the use of the FOIAXpress processing platform, and on managing FOIA appeals and litigation. Because Headquarters staff members in Washington, D.C. are able to attend numerous substantive training sessions throughout the year at no cost, they will be able to transfer this expertise directly to field staff who do not have such opportunities. The Department intends to focus first on regions which have had significant staff turnover and who receive the largest number of, or the most complex, requests.

C. Outreach

7. Did your FOIA professionals engage in any outreach or dialogue 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.

Several regional offices reported successes in working with frequent requesters, members of the media, and high-profile advocacy groups. Dialogue focused on the overall FOIA process, fees and, most importantly, the Department’s electronic record collection capabilities and limitations. Region 2 has reported a better understanding of the FOIA and more efficient processing. Region 7 cites a clearer line of communication between regions and the ability to coordinate multi-regional requests through the appropriate channels without delay.

D. Other Initiatives

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

In an effort to ensure that non-FOIA professionals are aware of, and prepared to handle, obligations under the FOIA, the Department has focused on two mechanisms: training and revised performance plans. First, the Department incorporated a FOIA component into its annual training modules, which all employees must complete. This ensures that employees across the agency, not just those working day-to-day with FOIA, have an understanding of basic FOIA principles and their responsibilities under the statute. Additionally, several program areas at Headquarters, as well as regional offices around the country, have begun incorporating FOIA components into employees' annual performance ratings, accounting for both direct and incidental duties relating to the processing of FOIA requests by the agency.

9. 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.

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 2019, 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 2019 Annual FOIA Report.

11.25 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.

The Department plans to enhance communications between the FOIA Branch and the components of the agency that search for and collect responsive records. When a request

for expedited processing is approved, the underlying request is marked accordingly in the Department's FOIA tracking system. This approval should be communicated to staff members in all necessary areas, not just within the FOIA Branch, to ensure that such requests are properly prioritized and are given the attention necessary to meet the heightened threshold. The Department recently introduced a clearance tracker on our internal SharePoint network, allowing specialists to more efficiently refer cases for legal clearance, and instantaneously notifying our attorneys when such a referral has been made. Adding a feature to highlight expedited cases will allow for both specialists and attorneys to bypass otherwise lengthy queues and improve turnaround times.

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.

HUD conducted numerous informal self-assessments during this reporting period. Specifically, the Department focused on evaluating the efficacy of both (1) FOIA litigation processing, and (2) administrative record-keeping for each request. The goal was to conduct audits of each area, analyzing random case files to establish whether procedures were followed, deadlines were met, and records were properly maintained. The FOIA Branch, in conjunction with the Office of General Counsel, then conducted trainings for all FOIA staff to highlights techniques for reviewing voluminous record sets and meeting litigation deadlines, and for ensuring that administrative records for each request are properly generated, maintained, and labeled.

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 2019 (please provide a total number or an estimate of the number).

5 times

5. Optional -- Please describe:

- Best practices used to ensure that your FOIA system operates efficiently and effectively

Ongoing and continuous communication with the contractor that maintains the FOIAXpress software system. HUD's FOIA Branch Chief meets with the contractor personnel at least twice a month to discuss any reporting issues, user access issues, and any technical issues that may occur with the system itself.

- Any challenges your agency faces in this area

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 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.

HUD has not proactively disclosed any materials during the past reporting year.

2. 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?

N/A (See III.1 above)

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

N/A

4. Optional -- Please describe:

- Best practices used to improve proactive disclosures
- Any challenges your agency faces in this area

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. Is your agency leveraging or exploring any new technology to facilitate efficiency in its FOIA administration that you have not previously reported? If so, please describe the type of technology.

As noted above in II.2, the Department began using an internal SharePoint tracking site for both (1) requests being referred for legal clearance, and (2) FOIA litigation. Use of this site has improved HUD's ability to efficiently process FOIA requests in several ways. First, prior to this update, FOIA staff would regularly compile hard-copy folders to send for legal clearance on a case. Now, employees simply load documents into a request's online case log and electronically refer the matter for review and clearance. This allows our FOIA attorneys the opportunity to receive instant notification when a file has been referred, review the case more easily regardless of work location, and edit drafts electronically. Second, having a centralized clearance and litigation processing calendar allows the team to foresee upcoming deadlines and know when scheduling conflicts may occur. Rather than having ten specialists keeping track of ten processing schedules, the Department now has a centralized reporting site that integrates the work of all staff on one shared timeline.

2. 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. The Department performs regular reviews of each component of its internet and intranet websites. This includes a review of the FOIA website. This information is used to better inform HUD leadership about necessary updates, and to ensure that the website is functional and that its content is up-to-date, straightforwardly presented, and easily accessible. The FOIA Division is continuing to work on website updates and improvements in accordance with the guidance.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2019?

Yes. All four quarterly reports can be found at https://www.hud.gov/program_offices/administration/foia/foiarpts

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 2020.

N/A

5. 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 2018 Annual FOIA Report and, if available, for your agency's Fiscal Year 2019 Annual FOIA Report. **HUD's 2018 and 2019 Annual FOIA Reports, as well as the underlying raw statistical data, can be found at https://www.hud.gov/program_offices/administration/foia/foiarpts. The**

raw data reports are found under “HUD’S Raw Data Annual Report” as .XLS files and are broken down by year.

6. Optional -- Please describe:

- Best practices used in greater utilizing technology
- Any challenges your agency faces in this area

HUD has faced significant challenges with its use of electronic discovery (eDiscovery) record collection over the past year. Due to the prevalence of requests seeking email and calendar records, particularly from politically-appointed agency leadership, the Department has submitted a significant number of eDiscovery requests since the start of the new Presidential administration in 2017. This has led to a massive backlog within our eDiscovery system, with current turnaround times in excess of one year. While we trust this system for its objectivity and thoroughness, the tradeoff has been in our ability to collect records efficiently.

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 2019 Annual FOIA Report and, when applicable, your agency’s 2018 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 your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2019?

No. HUD's overall average number of days to process simple requests was 58.59 days.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2019 that were placed in your simple track.

71% (1435 simple requests/2018 total requests)

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 2018 and Fiscal Year 2019 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 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?

No. HUD's backlog increased from 860 at the end of FY18 to 932 at the end of FY19.

6. If not, did your agency process more requests during Fiscal Year 2019 than it did during Fiscal Year 2018?

No. HUD processed 2,245 requests in FY18, and 2,018 requests in FY19.

7. If your agency's request backlog increased during Fiscal Year 2019, 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.
- 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.

The increased backlog in FY19 can be attributed to three factors:

1. **As noted above in IV.6, the Department has faced issues with its use of eDiscovery to collect email and calendar records of certain HUD employees.**

Due to the number of requests in the eDiscovery queue, and the use of the system for other, non-FOIA purposes, turnaround times for the collection of records has increased from approximately 4 months to well over a year.

- 2. HUD's FOIA staff at the regional and field office levels have experienced significant turnover. While staff sizes have remained relatively constant, the experience levels in many of these offices has dropped significantly. The Department is exploring ways to utilize the expertise of Headquarters staff to better train those in the field, as the latter have less opportunity to attend substantive trainings in other areas of the country.**
- 3. A significant increase in the agency's FOIA litigation caseload has pulled resources away from the processing of "standard" requests. With an average production schedule of 500 pages per month for FOIA litigation, HUD's FOIA staff has had to balance litigation deadlines with continued processing of FOIA requests, typically at the expense of the latter. While HUD attorneys in various offices around the country oversee the processing timelines, the day-to-day review work is still conducted by the same FOIA staff attempting to handle everyday incoming cases.**

8. 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 2019. If your agency has no request backlog, please answer with "N/A."

44% (932 requests in backlog and end of FY19/2,140 requests received in FY19)

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?

No. The number of backlogged appeals (15) was the same at the end of both fiscal years.

10. If not, did your agency process more appeals during Fiscal Year 2019 than it did during Fiscal Year 2018?

No. HUD processed 50 FOIA appeals in FY18, and 40 FOIA appeals in FY19.

11. If your agency's appeal backlog increased during Fiscal Year 2019, 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.
- Any other reasons – please briefly describe or provide examples when possible.

The lack of a decrease in the agency's appeal backlog during 2019 stems primarily from a new method of treating appeals for tracking purposes.

- **In the past, when an appeal was received (by the Department's Office of General Counsel), once a determination was issued by the OGC Appeals Office, the appeal was closed in the Department's FOIA tracking system. This was true even when the determination was that further work was necessary by the FOIA Branch. For example, if the FOIA Branch issued a final response to a FOIA request, and mistakenly redacted a piece of information that should have been released, the OGC Appeals office would issue a determination saying that the case was being remanded back to the FOIA Branch for further processing. The appeal tracking number would be closed, and the FOIA Branch would re-open the initial FOIA tracking number to amend the underlying FOIA, correct the errors, and issue an updated response. Thus, the appeal tracking number would remain open only as long as the actual appeal process was taking place. Any substantive FOIA work (such as amending redactions) would be done under the FOIA tracking number, not the appeal tracking number.**
- **Under the new method, when a FOIA tracking number has been closed upon the issuance of a final response, it will remain closed even if an appeal is received and the case is remanded for further processing. If a requester appeals a FOIA response, an appeal number is opened, and the appeal tracking number is used for all subsequent processing efforts, including those by the FOIA Branch. Thus, appeal tracking numbers are staying open much longer than the timeframe required for the appeals office to process the appeal. When a case is remanded to the FOIA Branch (for instance, to correct erroneous redactions), the FOIA Specialist will perform that work under the appeal tracking number. The appeal tracking number will stay open as long as is necessary to re-process the request. If the appeals office issues its determination in 5 days, and the FOIA specialist needs 10 additional days to re-review the records, make corrections, and re-issue the final response, our reporting would show that the appeal took 15 days to close, as opposed to 5 days.**
- **The result has been an increase in the amount of time required to close out an appeal in our tracking system. While the appeals office may make determinations in the same amount of time (typically within two weeks), appeals tracked in the**

system can remain open for several weeks, or even months, while the FOIA staff goes back to the original request and makes any necessary updates needed issue a corrected response. While less appeals were received in 2019 than in 2018, the difference in tracking methodology has led to an increased amount of time needed to close those appeals.

N/A (See V.9 above)

12. 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 2019. If your agency did not receive any appeals in Fiscal Year 2019 and/or has no appeal backlog, please answer with "N/A."

33% (15 backlogged appeals/45 appeals received)

C. Backlog Reduction Plans

13. In the 2019 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2018 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 2019?

No. HUD's FOIA backlog at the end of FY18 was 860.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2019, what is your agency's plan to reduce this backlog during Fiscal Year 2020?

N/A. HUD's FOIA backlog at the end of FY19 was 932.

D. Status of 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 2018 and Fiscal Year 2019 when completing this section of your Chief FOIA Officer Report.

OLDEST REQUESTS

15. In Fiscal Year 2019, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

No.

16. 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 2018 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

In FY19, HUD closed six of the ten oldest requests reported at the end of FY18.

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

HUD made efforts to engage in early and consistent dialogue with requesters. Reviewing many of The Department's oldest cases revealed that quite often, the increased age of a request could have been avoided by clarifying a request early on, explaining to a requester the capabilities and limitations of the Department's collection and review processes, and asking if requesters would be willing to alter or reduce the scope of their original request. Requesters often cast an overly broad net when making an initial request—in an effort to ensure that they do not miss anything—and are eager and willing to work with the Department to find ways to home in on more specific records, if given the opportunity. Maintaining open lines of communication along the way is key to facilitating better understanding and greater cooperation later on.

TEN OLDEST APPEALS

18. In Fiscal Year 2019, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

No.

19. 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 2018 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

In FY19, HUD closed three of the ten oldest appeals reported at the end of FY18.

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

The FOIA Branch has expanded its weekly reporting to include more thorough information about FOIA appeals and litigation, ensuring that both FOIA staff and appropriate agency leadership are made aware of pending appeals, and what the age of those appeals is.

TEN OLDEST CONSULTATIONS

21. In Fiscal Year 2019, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

Yes.

22. 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 2018 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

HUD had one pending consultation at the end of FY18, and closed it in FY19.

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

23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2019.

The most significant obstacle HUD has faced in closing its ten oldest requests and appeals is limited technological capacity. HUD has over 200 requests currently awaiting eDiscovery searches. Our submission system has been at capacity for over a year, and new submissions are often scheduled for more than a year from the date of receipt. The more new submissions that are made, the more backlogged the system becomes.

24. 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

25. 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 2020.

In the past year, the Department has doubled the number of attorneys clearing FOIA packages for release and has recently added a second administrative reviewer to assist in finalizing specialists’ work. This will ensure that more packages are able to be reviewed and cleared and will allow for a greater focus on older and more complex cases on a regular basis.

F. Success Stories

Out of all the activities undertaken by your agency since March 2019 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 Department would like to highlight a particularly successful training program initiated in HUD's Region 3 office in Philadelphia.

- **In 2019, the annual FOIA training was conducted at each individual Field and Regional Office within Region 3, with support from the Regional FOIA Liaison, Field Office FOIA Liaison(s), and the Office of General Counsel. In response to additional feedback from the 2018 training evaluations, the 2019 presentations provided an opportunity for program office staff to evaluate an incoming request unique to their program division and practice redacting information. The interactive session allowed for hands-on learning and an in-depth discussion of FOIA administrative processes, exemptions, and cases specific to each program division with the FOIA Liaisons and Office of General Counsel. Evaluations from the training indicate the program office staff valued the opportunity to exercise these skills.**