

**U. S. Census Bureau**  
**2019 Chief FOIA Officer Report**  
**Vernon Curry, PMP**  
**Chief FOIA Officer, Chief Privacy Act Officer**

## **Section 1: Steps Taken to Apply 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 least at the Assistant Secretary or equivalent level. Is your agency's Chief FOIA Officer at or above this level?

Yes, The U.S. Census Bureau's Chief FOIA Officer currently resides in the Chief Administration Office. He reports directly to David Ziaya who is the Associate Director to the Deputy Director of the U.S. Census Bureau.

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

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### *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?

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

*Yes, my entire staff to several Department of Justice FOIA trainings throughout fiscal year 18.*

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.

100% of the Census Bureau's FOIA staff attended substantive FOIA training.

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.

N/A

### *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, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

*Yes, a major outreach accomplishment for Census Bureau FOIA staff in FY18 was the partnering with the Open Government staff for the Sunshine Week event that was held on March 13-15, 2018 at the Department of Commerce. On day one of the event, guest speakers spoke about Transparency: FOIA, Privacy Act, and Open Government, to an audience that included a cross-section of individuals from the federal government and the requester community. On day two, we held workshops on the History of FOIA and How to Make a Privacy Act Request as well as went over previous Privacy Act high profile cases. The event received high accolades from the public and private sectors that attended.*

### *D. Other Initiatives*

8. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA, please indicate whether your agency has considered including FOIA-related performance standards in employee work plans for employees who have any role in administering the FOIA.

- *FOIA training for supervisors and managers allowed qualifying individuals to gain management credit for each hour of class attended. Those individuals have a mandatory requirement to attain a specific number of management credit hours per year:*
  - *"Freedom of Information Act (FOIA) Requests for Title 13 Records," a class that provided an opportunity to supervisors and managers to become familiar with*

*various FOIA laws and regulations, as they pertain to daily Census activities. As part of the class, the aforementioned individuals were taught the agency requirements to answer FOIA requests that may include Title 13 records. They were also taught the basic steps involved in fulfilling FOIA requests, how the FOIA office responds to requests that include Title 13 protected records, and the general rules every program area should know about the FOIA.*

- *“Master the Freedom of Information Act (FOIA) Series – Part 1,” a class that provided an opportunity to supervisors and managers to become familiar with various FOIA laws and regulations, as they pertain to daily Census activities. As part of the class, the aforementioned individuals were taught the agency requirements to answer FOIA requests, how to prepare Fee Estimates, how to search for and retrieve responsive documents, how to handle and answer Privacy Act requests, the definition of proactive disclosure, the requirements for making a FOIA request, and the general rules every program area should know about the FOIA.*

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.

The FOIA Office incorporated a communication strategy to ensure that all needed parties throughout the Census Bureau are aware and on one accord as far as communication to the public on high profile FOIA cases. Previously, the Communication, Directors, and Policy Office Directorates had limited communication regarding FOIA cases other than taskers sent to them. Currently, as new high profile cases arise, the FOIA Office communicates directly and often to these directorates so that necessary responses to the public from all communication vehicles are informative.

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

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 describes your agency's efforts in this area.

### ***A. Processing Procedures***

1. For Fiscal Year 2018, 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 2018 Annual FOIA Report.

4-5 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.

Not applicable.

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.

*The Census FOIA Office reviewed their tracking numbers in FOIA online to make sure the total counts were accurate. Furthermore, the FOIA Office time stamps all incoming requests so ensure proper tracking of the time requests come in and process. We then map these time stamps to FOIA online for accuracy.*

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.

## *B. Requester Services*

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 2018 (please provide a total number or an estimate of the number).

Maybe 1 time in 2018

5. Please describe the best practices used to ensure that your FOIA system operates efficiently and effectively and any challenges your agency faces in this area. For example, improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents.

*Simple Request Average = 8 – 9 pages*

*Complex Request Average = 500 – 700 pages (mainly because of high profile Decennial Census cases).*

### 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.

#### A. Posting Material

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

*The Census FOIA Office has created a 2020 Census page off of our FOIA Library for content we proactively disclosed because we felt it would be of public interest.*

1) *Records Related to Subjects Planned for the 2020 Census and ACS*

- a. [https://www.census.gov/about/policies/foia/foia\\_library/frequently\\_requested\\_records/sogi-records.html](https://www.census.gov/about/policies/foia/foia_library/frequently_requested_records/sogi-records.html)  
[https://www.census.gov/about/policies/foia/foia\\_library/frequently\\_requested\\_records/sogi-records.html](https://www.census.gov/about/policies/foia/foia_library/frequently_requested_records/sogi-records.html).

2. Describe how your agency identifies records that have been requested and released three or more times (required to be proactively disclosed pursuant to 5 U.S.C. § 552 (a)(2)(D)).

The Census Bureau posts a list of all active FOIA cases that is furnished to upper management on a weekly basis. An analyst reviews these lists regularly for either the same or similar requests. If three or more requests are identified, we inform upper management and post to the FOIA Public Library.

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.

*We plan to use tools like WebDiscovery that allows us to customize a FOIA request list of our frequent FOIA requesters to directly let them know about new releases that may interest them.*

#### **B. Other Initiatives**

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?

*We have taken steps to create additional sections and pages on our FOIA public website that identify public disclosures more clearly and easily. By creating sections in our FOIA Library for frequently requested topics like the “2020 Census”, “American Community Survey”, and other frequently related topics, this makes it easier for requesters to locate information. Furthermore, we updated our public site to include more Decennial Census related material being that*

### **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.

#### **A. Making material Posted Online More Usable**

1. Is your agency leveraging technology to facilitate efficiency in conducting searches, including searches for emails? If so, please describe the type of technology used. If not, please explain why and please describe the typical search process used instead.

*The Census FOIA Office continues to identify and research new technology to better process FOIA requests more efficiently. We continue to use FOIA Online to track and share requests. We also use SharePoint to track the types of requests we receive as well as to create metrics on the types of requests received. We are also using SharePoint to host our templates so that updates and changes are conducted in a collaborative effort.*

#### **B. Other Initiatives**

2. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in IOP’s guidance on FOIA websites?

Yes

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2018>

Yes

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 2019.

Not applicable.

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 2017 Annual FOIA Report and, if available, for your agency's Fiscal Year 2018 Annual FOIA Report.

*FOIA Annual reports are hosted through FOIA Online:*

<https://foiaonline.regulations.gov/foia/action/agency/report/criteria#>.

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

## **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 2018 Annual FOIA Report and, when applicable, your agency's 2017 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? If your agency uses a multi-track system beyond simple, complex, and expedited to process requests, please describe the tracks you use and how they promote efficiency.

2. If so, for your agency overall in Fiscal Year 2018, was the average number of days to process simple requests twenty working days or fewer?

Yes.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2018 that were placed in your simple track.

*63% were put in Simple tracking. The high percentage is due to the high request for W-2's and SF-50's for 2020 Decennial jobs.*

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?

Not applicable.

### *B. Backlogs - Requests*

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.

5. If your agency had a backlog of requests at the close of Fiscal Year 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

At the end of Fiscal Year 2017, The Census had 15 backlog requests. We closed several of these cases but some are in appeal or involving the 2020 Citizenship Question.



6. If not, did your agency process more request during Fiscal Year 2018 than it did during Fiscal Year 2017?

No

7. If your agency's backlog increased, explain why. 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. (2020 Decennial complex cases) Over 40 cases involving thousands of documents pertaining to the Citizenship question.***
- Any other reasons – please briefly describe or provide examples when possible.

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 2018. (Calculation: (Number of backlogged requests from FY2018 divided by Number of requests received in FY 2018) x 100.

N/A

### *C. Backlogs – Appeals*

9. If your agency had a backlog of appeals at the close of Fiscal Year 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

N/A

10. If not, did your agency process more appeals during Fiscal Year 2018 than it did during Fiscal Year 2017?

N/A

11. If your agency's appeal backlog increased, explain why. 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

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 2018. If your agency did not receive any appeals in Fiscal Year 2018 and/or has no appeal backlog, please answer with "N/A." (Calculation: (Number of backlogged appeals from FY 2018 divided by Number of appeals received in FY 2018) x 100.

N/A

#### *D. Backlog Reduction Plans*

13. Last year, any agency with a backlog of over 1,000 requests in FY 2017 was asked to provide a backlog reduction plan. 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 2018?

Not applicable

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2018, what is your agency's plan to reduce this backlog during Fiscal Year 2019?

Not applicable

#### *E. Status of Ten Oldest Requests, Consultations, and Appeals*

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 2017 and Fiscal Year 2018 when completing this section of your Chief FOIA Officer Report.

Yes!

#### *E. TEN OLDEST REQUESTS*

15. In Fiscal Year 2018, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2017 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 2017 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

Had less than ten oldest requests. Only one request involving 2020 Citizenship lawsuit.

17. 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

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

Received more staff.

#### *F. TEN OLDEST APPEALS*

19. In Fiscal Year 2018, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

Not applicable

20. 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 VI.C.(5) of your Fiscal Year 2018 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

Not applicable

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

Not applicable

### *G. TEN OLDEST CONSULTATIONS*

22. In Fiscal Year 2018, did your agency close the ten oldest pending consultations that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

Yes

23. 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 2017 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Not applicable

### *H. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans*

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

2020 Citizenship Lawsuit case was litigated in New York and was out of the Census Bureau's hands to close.

25. 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
- Date when your agency sent the consultation
- Date when you last contacted the agency where the consultation was pending.

Not applicable

26. 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 2019.

## **VI. SUCCESS STORIES**

Out of all the activities undertaken by your agency since March 2018 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 2019. 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.

*Being abreast on the latest FOIA education material is critical to the success of a FOIA program. It allows for efficiency and better communication on consults, referrals, and appeals. Although the Department of Justice gives several classes a year on FOIA and the Privacy Act, Census realized that it was hard to get into these classes because of limited seating. The Census reached out to the Department of Justice to host a FOIA training session at Census for Department of Commerce employees so that all DOC employees can take advantage of updated information to help all in their FOIA cases. The first training was held in March with 20 participants from the Department of Commerce attending. FOIA staff were able to ask questions related to their FOIA requests which helped them tremendously. The Census FOIA Office has already coordinated a second annual training for Commerce employees that will be held sometime in May 2019.*