

Congressional Response Report

Freedom of Information Act
Response Process

OIG

Office of the Inspector General
SOCIAL SECURITY ADMINISTRATION

August 21, 2015

The Honorable Ron Johnson
Chairman, Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In a June 23, 2015 letter, you asked that we review issues relating to the Social Security Administration's (SSA) *Freedom of Information Act* response process.

My office is committed to combating fraud, waste, and abuse in SSA's operations and programs. Thank you for bringing your concerns to my attention. The report highlights various facts pertaining to the issues raised in your letter. To ensure SSA is aware of the information provided to your office, we are forwarding a copy of this report to the Agency.

If you have any questions concerning this matter, please call me or have your staff contact Kristin Klima, Congressional and Intragovernmental Liaison at (202) 358-6319.

Sincerely,



Patrick P. O'Carroll, Jr.
Inspector General

Enclosure

cc:
Carolyn W. Colvin

Freedom of Information Act Response Process

A-03-15-50107



August 2015

Office of Audit Report Summary

Objective

To determine whether non-career officials at the Social Security Administration (SSA) were involved in the *Freedom of Information Act* (FOIA) response process and, if so, whether their involvement resulted in undue delays of responses or withholding of documentation or portions of documentation that would have otherwise been released without their involvement.

Background

FOIA establishes a legal right of access to federal agency records based on the principles of openness and accountability in government. Enacted in 1966, FOIA gives any person the right to request records created by federal agencies. On January 21, 2009, the President issued two memoranda, *Transparency and Open Government* and *Freedom of Information Act*. Both documents focused on increasing the amount of information made public by the Government.

In a September 2010 report, we concluded that SSA's political appointees were sometimes made aware of, or reviewed, information requests; however, there was no evidence of FOIA information requests being detoured, unusually scrutinized, delayed, or hindered by SSA political appointees.

Findings

Generally, SSA non-career officials were not involved in the FOIA response process. Through interviews with key management officials in the Office of Privacy and Disclosure, we learned that career service employees, such as FOIA Analysts and Coordinators, were involved in developing and responding to FOIA requests. While non-career officials were sometimes made aware of FOIA requests, we did not find evidence suggesting that they impeded the FOIA response process. Further, the Chief FOIA Officer certified that non-career officials were not involved in decisions regarding the Agency's responses to FOIA requests.

Moreover, our review of 150 sample FOIA requests received October 1, 2011 to June 30, 2015 did not show any indications that the 18 non-career officials at SSA had delayed or approved FOIA responses. We found no evidence that delays in providing responses to FOIA requestors resulted from non-career officials' involvement. According to SSA, the loss in staff responsible for processing FOIA requests was the primary reason for the delays and backlog of cases. Further, SSA received several significant and complex FOIA requests from the press that required extensive staff time and effort to review and process.

TABLE OF CONTENTS

Objective	1
Background	1
SSA's FOIA Process.....	1
Scope and Methodology	3
Results of Review	3
Interviews with Staff Involved in FOIA Response Process	4
Review of FOIA Requests	5
Conclusions.....	5
Appendix A – Scope and Methodology	A-1
Appendix B – SSA's Processing of FOIA Requests	B-1
Appendix C – Flowchart of FOIA Process	C-1
Appendix D – Congressional Request.....	D-1
Appendix E – SSA Non-Career Positions.....	E-1
Appendix F – Chief FOIA Officer Certification.....	F-1
Appendix G – Major Contributors.....	G-1

ABBREVIATIONS

DERO	Division of Earnings Records Operations
eFOIA	Electronic Freedom of Information Act
FOIA	<i>Freedom of Information Act</i>
FY	Fiscal Year
OGC	Office of the General Counsel
OIG	Office of the Inspector General
OPD	Office of Privacy and Disclosure
SSA	Social Security Administration

OBJECTIVE

Our objective was to determine whether non-career officials at the Social Security Administration (SSA) were involved in the *Freedom of Information Act* (FOIA) response process and, if so, whether their involvement resulted in undue delays of responses or withholding of documentation, or portions of documentation, that would have otherwise been released without their involvement.

BACKGROUND

FOIA establishes a legal right of access to federal agency records based on the principles of openness and accountability in government. Enacted in 1966, FOIA gives the right to any person to request records created by federal agencies unless the records are protected from public disclosure by an exemption or exclusion.¹ On January 21, 2009, the President issued two memoranda, *Transparency and Open Government*² and *Freedom of Information Act*³. Both documents focused on increasing the amount of information made public by the Government. For example, the FOIA memorandum directed agencies to adopt a presumption in favor of disclosure in all FOIA decisions to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open government.

SSA's FOIA Process

The Office of Privacy and Disclosure (OPD) within SSA's Office of the General Counsel (OGC), directs SSA's FOIA activities.⁴ The Deputy Executive Director of OPD is the SSA Freedom of Information Officer. Only the Deputy Executive Director, or his or her designee, may determine whether to release or withhold SSA records in response to FOIA requests, except as otherwise provided by regulation. Staff in OPD and the Division of Earning Records Operations (DERO) is responsible for processing FOIA requests. OPD processes the most complex requests and appeals. DERO primarily processes requests for copies of Social Security number (SSN) applications and the Numident⁵ records of deceased individuals.

SSA's Electronic Freedom of Information Act (eFOIA) system is an Internet-based application that enables users to request SSA records through the Agency's Website. Paper requests, such as mail, hardcopies of faxes, and email are scanned into eFOIA, whereas requests submitted

¹ 5 U.S.C. § 552.

² Presidential Memorandum, *Transparency and Open Government*, January 21, 2009.

³ Presidential Memorandum, *Freedom of Information Act*, January 21, 2009.

⁴ See Appendix B and Appendix C for more information on SSA's FOIA Process.

⁵ The Numident is a record of identifying information (such as name, date of birth, mother's maiden name, etc.) provided by the applicant on his/her Application for a Social Security Number (Form SS-5) for an original SSN and subsequent applications for replacement SSN cards. Each record is housed in the Numident Master File in SSN order.

through the Internet go directly into eFOIA. SSA also maintains all documentation pertaining to FOIA requests in case folders. During Fiscal Years (FY) 2008 to 2014, SSA processed about 227,000 FOIA requests (see Table 1). Approximately 212,000 (93 percent) FOIA requests were completely granted and 15,000 (7 percent) were either partially granted or fully denied. At the end of FY 2014, 2,504 FOIA requests remained pending. According to SSA staff, staffing shortages among personnel who process FOIA requests was the primary cause for the increase in pending cases in FY 2014.

Table 1: FOIA Requests Processed (FYs 2008 to 2014)

FY	Granted	Partially or Fully Denied	Total Processed	Pending at End of FY
2008	33,389	1,277	34,666	1,060
2009	26,344	5,207	31,551	849
2010	31,099	1,913	33,012	834
2011	30,498	1,947	32,445	845
2012	29,218	2,366	31,584	590
2013	38,269	1,186	39,455	294
2014	23,208	1,481	24,689	2,504
Total	212,025	15,377	227,402	6,976

On June 23, 2015, Chairman Ron Johnson, Senate Homeland Security and Governmental Affairs Committee, requested we determine whether non-career officials at SSA were involved in the FOIA response process from January 1, 2007 to the present, and if so, assess the impact of non-career officials' involvement with FOIA responses.⁶ The Chairman also requested that we obtain a certification from the Agency's Chief FOIA Officer regarding non-career officials' involvement in the FOIA response process.⁷ As of June 30, 2015, there were 18 non-career officials at SSA.⁸

In our September 2010 report, we reviewed SSA's FOIA process to determine the extent to which political appointees were made aware of FOIA requests and had a role in request reviews or decision-making.⁹ During that review, we found that SSA's political appointees were

⁶ See Appendix D for copy of the request.

⁷ In 2005, agency heads were directed to designate a senior official to serve as the Chief FOIA Officer of the agency. Executive Order 13392, *Improving Agency Disclosure of Information* (December 14, 2005). The General Counsel is SSA's Chief FOIA Officer.

⁸ Non-career officials are individuals with the following appointment type positions: Presidential Appointment/Senate-Confirmed, Non-career Senior Executive Service, and Schedule C confidential or policy-determining nature. See Appendix E

⁹ SSA OIG, *Congressional Response Report: Political Appointee' Role in the Social Security Administration's Freedom of Information Act Requests* (A-15-10-20185), September 2010.

sometimes made aware of, or reviewed, information requests; however, there was no evidence of FOIA information requests being detoured, unusually scrutinized, delayed, or hindered by SSA political appointees. For the September 2010 review, we focused on FOIA requests received in FY 2010 and earlier.

Scope and Methodology

We obtained FOIA requests received and assigned to OPD from October 1, 2011 to June 30, 2015. We concentrated on OPD because it processes SSA's most complex requests and all appeals. In addition, we focused on FOIA requests that were over 20 days old.¹⁰ We did not review FOIA requests prior to October 1, 2011 because of our prior audit work and SSA's document retention policy.¹¹ Our population consisted of 5,705 FOIA requests (see Appendix A for more details about our methodology). We selected for review 150 FOIA requests, see Table 2.

Table 2: FOIA Population and Sample Selection

Status of FOIA Request	FOIA Requests	Sample Size
Denied ¹	4,549	50
Granted ¹	945	50
Longest Pending ²	186	25
Longest Processed ³	25	25
Total	5,705	150

Note 1: Sample selection was random.

Note 2: Selected the 25 cases with the longest pending time.

Note 3: Selected the 25 cases with the longest processing time.

RESULTS OF REVIEW

Generally, SSA non-career officials were not involved in the FOIA response process. Through interviews with key management officials in OPD, we learned that career service employees, such as FOIA Analysts and Coordinators, were involved in developing and responding to FOIA requests. While non-career officials were sometimes made aware of FOIA requests, we did not find evidence suggesting that they impeded the FOIA response process. Further, the Chief FOIA Officer certified that non-career officials were not involved in decisions regarding the Agency's responses to FOIA requests.

¹⁰ 5 U.S.C. § 552(a)(6)(A), requires a response be provided to grant or deny FOIA requests within 20 working days, except in unusual circumstances.

¹¹ National Archives and Records Administration, General Records Schedule 14 requires SSA to destroy fully granted FOIA request 2 years after the request and partially denied or fully denied FOIA requests 6 years after the request.

Our review of 150 sample FOIA requests did not show any indication that the 18 non-career officials at SSA had delayed or approved FOIA responses. We found no evidence that delays in providing responses to FOIA requestors resulted from non-career officials' involvement. According to SSA, the loss in staff responsible for processing FOIA requests was the primary reason for the delays and backlog of cases. Further, SSA received several significant and complex FOIA requests from the press that required extensive staff time and effort to review and process.

Interviews with Staff Involved in FOIA Response Process

Key management officials in OPD informed us that career service employees, such as FOIA analysts and coordinators, were involved in developing and responding to FOIA requests. We interviewed 21 FOIA analysts who process the most complex FOIA requests.¹² In addition, we interviewed 10 FOIA coordinators who assist FOIA analysts in gathering information from other SSA components to make a decision regarding the FOIA request. Based on our interviews, we found that SSA's non-career officials were sometimes made aware of FOIA requests, but were not involved in preparing or making decisions on whether to release information in response to FOIA requests. When SSA receives a request, a FOIA analyst determines whether the request is simple or complex. Simple requests focus on a narrow request, such as an application for an SSN. Complex requests require further development to determine the feasibility of providing the requested data. FOIA Analysts work with the respective coordinators to obtain information needed to make a decision for each FOIA request. FOIA coordinators gather the necessary information and forward it to the analyst. The analyst reviews the compiled information and sends the request for approval to OPD's Executive and Deputy Executive Director. When a legal review is needed, the proposed response is sent to SSA's Office of General Law. Whether approved or denied, the analyst makes the determination and prepares a response for the requestor.

Moreover, on July 23, 2015, the Chief FOIA Officer, who was the Agency's Acting General Counsel, certified that non-career officials were not involved in decisions regarding the Agency's FOIA response process.¹³ Specifically, the Chief FOIA Officer certified that, to the best of her knowledge and belief, based on the information reasonably available to her at the time of this certification, that no non-career official has been involved in the decision regarding the Agency's response to a FOIA request.

¹² See Appendix B and Appendix C for more information on SSA's FOIA process.

¹³ The General Counsel for SSA is a non-career official. See Appendix F for a copy of the Chief FOIA Officer's certification.

Review of FOIA Requests

Based on our review of 150 sample FOIA requests, we did not find instances of non-career official involvement in the FOIA response process.¹⁴ We reviewed the case files for 150 sample cases, which included documentation of research and information retrieved from other components to assist with FOIA decisions. The case files did not contain evidence that any of the 18 non-career officials at SSA had prepared, modified, or approved responses for the 150 FOIA requests. We found no evidence that delays in providing responses to FOIA requestors resulted from non-career officials' involvement. According to SSA, the delays in processing FOIA requests occurred because OPD had experienced a significant loss of personnel who process FOIA requests. The staff shortage resulted in a decline in FOIA production and an increase in pending requests. Further, Agency staff stated that SSA received several significant and complex requests from the press that entailed a large amount of records that required extensive staff time and effort to review and process.

Table 3: FOIA Sample

Status of FOIA Requests	Sample Size	Elapsed Days	21 to 100 Days	101 to 200 Days	201 to 300 Days	301 to 400 Days	Over 400 Days
Processed Cases							
Denied	50	21 to 281	41	7	2	-	-
Granted	50	21 to 290	40	6	4	-	-
Longest Processed	25	61 to 548	2 ^(a)	-	1 ^(b)	6	16
Pending Cases							
Longest Pending	25	242 to 446	-	-	10	13	2
Total	150		83	13	17	19	18

Note (a): SSA processed these cases in 61 and 84 days instead of 474 and 476 days as shown in eFOIA. The difference in processing time was the result of data entry errors.

Note (b): SSA processed this case in 219 days instead of 612 days as shown in eFOIA. The difference in processing time was the result of data entry errors.

CONCLUSIONS

Based on interviews with SSA staff involved with FOIA activities and review of FOIA case files, we found that non-career officials at SSA were sometimes made aware of FOIA requests; however, there was no indication that they were involved in the Agency's FOIA response process.

¹⁴ We were not able to review three FOIA requests because two case folders were destroyed in accordance with the 2-year retention period for FOIA requests that are granted and one case folder could not be located even though the partially denied FOIA request should have been retained for 6 years.

APPENDICES

Appendix A – SCOPE AND METHODOLOGY

To achieve our objective, we:

- Obtained and reviewed applicable Federal laws and regulations, and the Social Security Administration's (SSA) policies and procedures related to the *Freedom of Information Act* (FOIA) response process.
- Reviewed Office of the Inspector General reports and other relevant documents.
- Interviewed personnel in the Offices of Privacy and Disclosure (OPD) and Public Inquiry to gain an understanding of the FOIA request process.
- Obtained a listing of 36 non-career officials who worked for SSA from January 1, 2007 through June 30, 2015. We focused on the 18 non-career officials who held positions during October 2011 through June 2015.
- Identified SSA staff involved with the FOIA process.
 - We interviewed 21 FOIA analysts, 10 FOIA coordinators, and 5 Directors within OPD to ascertain to what extent non-career officials were involved in the FOIA response process.
- Obtained a certification from the Chief FOIA Officer that non-career officials were not involved in decisions regarding the Agency's responses to FOIA requests, see Appendix F.
- Obtained SSA's Annual Report on FOIA activities for Fiscal Years 2007 through 2014.
- Obtained a data extract of FOIA requests received during October 1, 2010 to June 30, 2015 and assigned to OPD.
 - Determined the number of FOIA requests that were over 20 days old. In addition, we excluded FOIA requests received prior to October 1, 2011 because of our prior audit,¹ as well as SSA's document retention policy.² Our population consisted of 5,705 FOIA requests received from October 1, 2011 to June 30, 2015.
 - Selected a sample 150 FOIA requests that were approved, denied, or pending, see Table A-1.
 - We reviewed case folders for 150 FOIA requests to determine whether there was evidence of non-career officials' involvement in the FOIA response process.

¹ SSA OIG, *Congressional Response Report: Political Appointees' Role in the Social Security Administration's Freedom of Information Act Requests* (A-15-10-20185) September 2010.

² National Archives and Records Administration, General Records Schedule 14 requires SSA to destroy fully granted FOIA requests 2 years after the request, and partially denied or fully denied 6 years after the request.

Table A-1: Sample Selection

Status of FOIA Requests	FOIA Requests	Sample Size
Denied ¹	4,549	50
Approved ¹	945	50
Longest Pending ²	186	25
Longest Time to Process ³	25	25
Total	5,705	150

Note 1: Sample selection was random.

Note 2: Selected the 25 cases with the longest pending time.

Note 3: Selected the 25 cases with the longest processing time.

We conducted our review at the Philadelphia Audit Division, Philadelphia, Pennsylvania and SSA's Headquarters in Baltimore, Maryland, from June through July 2015. We determined that the data used in this review were sufficiently reliable given the audit objective and intended use of the data. The primary entity reviewed was the Office of the General Counsel, Office of Privacy and Disclosure. We conducted this review in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix B – SSA’S PROCESSING OF FOIA REQUESTS

The Social Security Administration’s (SSA) Office of Privacy and Disclosure (OPD) within the Office of the General Counsel (OGC), directs the *Freedom of Information Act* (FOIA) activities within SSA, which include:

- developing FOIA policies and procedures,
- establishing national guidelines for handling FOIA requests,
- publishing the Annual Report on FOIA activities,
- reviewing FOIA and *Privacy Act* requests and appeals to determine the proper disclosure of records, and
- responding to FOIA requests.

The Deputy Executive Director of OPD is the SSA Freedom of Information Officer. Only the Deputy Executive Director, or his or her designee, may determine whether to release or withhold SSA records, including records in field offices and installations, in response to FOIA requests, except as otherwise provided by regulation. Under SSA’s regulations, an appeal of a denial of a FOIA request should be sent to the Commissioner or his/her designee. The Commissioner has delegated this authority to the Office of the General Counsel, who re-delegated it to OPD’s Executive Director.

OPD’s Executive Director and Deputy Executive Director report to SSA’s General Counsel. SSA’s General Counsel is a non-career official. There are no other non-career officials in OGC.

SSA FOIA requests are processed in the Agency’s Electronic Freedom of Information Act (eFOIA) system and are assigned to OPD or the Division of Earning Records Operations (DERO). DERO is within SSA’s Office of Operations. The Deputy Commissioner for Operations and subordinate management officials over DERO are career employees.

OPD

OPD generally processes the FOIA requests SSA receives, including the most complex requests, and all Agency appeals. OPD analysts thoroughly research each request for various reasons. In many instances, the material requested may be voluminous or an issue may be complex and necessitate research and consultation with other SSA components. Before responding to these requests, OPD must often request materials from other SSA components and, in some cases, obtain a legal review. FOIA coordinators serve as the focal point for FOIA activities under their jurisdiction. Analysts work with FOIA coordinators to obtain information needed to make a decision for each FOIA request. Each Associate Commissioner and Regional Commissioner has designated a FOIA coordinator to serve as the focal point for FOIA activities under his/her jurisdiction. FOIA coordinators’ responsibilities include (1) providing technical guidance to staff on FOIA matters and serving as liaison with the FOIA officers on disclosure policy matters; (2) coordinating the handling of FOIA requests, searching for and providing requested

documents to OPD, and identifying concerns about disclosures; (3) maintaining or collecting data for SSA's Annual Report to the Attorney General on FOIA activity; (4) coordinating the development and implementation of procedures for maintaining records of FOIA requests; and (5) coordinating training activities on FOIA matters. Once the FOIA coordinator gathers the necessary information, he/she forwards it to the analyst. The analyst reviews the compiled information, sends the request for approval to OPD's Executive and Deputy Executive Directors and, when legal review is needed, to the Office of General Law. Whether approved or denied, the analyst makes a determination and prepares a response to the requestor.

DERO

DERO primarily processes requests for copies of Social Security number (SSN) applications and the Numident¹ records of deceased individuals.

Processing of FOIA Request

All FOIA requests are captured in SSA's electronic Freedom of Information Act (eFOIA) system. Paper requests (mail, email, and fax) are scanned and imaged into eFOIA, whereas requests submitted through the Internet go directly into eFOIA. SSA also maintains all documentation pertaining to FOIA requests in case folders. When a request is entered into the system, or a person submits an online request, eFOIA generates an acknowledgement letter. The letter confirms receipt of the request and provides a reference number specifically assigned to the case along with a voice mailbox telephone number the requester can call to inquire on the status of his/her request.

SSA classifies FOIA requests into the following categories:

- **Simple (Fast Track)** – These are generally straightforward requests that do not require assistance from other components. In most cases, FOIA analysts do not need to conduct much research, or provide many responsive documents, so these are easier and faster to process. Some examples of simple requests include requests for benefit information, copies of disability applications, SS-5 or Numident requests. SS-5 and Numident requests are handled by DERO. OPD handles all other simple requests.
- **Complex** – These require the assistance of one or more SSA components and generally entail further research and analysis regarding the subject of the request. Depending on the request, it could take several weeks or months to develop, gather, and review responsive documents. Some examples of complex requests include requests for SSA program-related computer coding software, sensitive policy and procedures guides, administrative law judge application material, media-related inquiries, etc. OPD handles all complex requests.

¹ The Numident is a record of identifying information (such as name, date of birth, mother's maiden name, etc.) provided by the applicant on his/her *Application for a Social Security Number* (Form SS-5) for an original Social Security number (SSN) and subsequent applications for replacement SSN cards. Each record is housed in the Numident Master File in SSN order.

- **Appeals** – Under FOIA, requesters have the right to appeal any denial of information. Appeals can be made for simple or complex requests. OPD handles all appeals.

Below are the types of decisions made regarding FOIA requests:

- **Full Grant** – SSA will disclose all records in full in response to a FOIA request.
- **Full Denial** – SSA will not release any records in response to a FOIA request when the records are exempt under one or more FOIA exemptions (see Table B–1) or due to a procedural reason, such as when no records could be located.
- **Partial Grant/Partial Denial** – SSA decided to disclose portions of the records and to withhold other portions that are exempt under FOIA, or deny a portion of the request for a procedural reason.
- **Pending** – A request or administrative appeal for which SSA has not taken final action in all respects.

Table B–1: Nine FOIA Exemptions

Exemption	Description
1	Information that is classified in the interest of national security or foreign policy.
2	Internal agency personnel rules and practices.
3	Information that is prohibited from disclosure by another federal law.
4	Trade secrets and commercial or financial information that is confidential or privileged.
5	Inter-agency or intra-agency communications that are protected by legal privileges.
6	Information involving matters of personal privacy.
7	Records or information compiled for law enforcement purposes, to the extent that the production of those records: (A) could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions (if such disclosure could risk circumvention of the law); or (F) could reasonably be expected to endanger the life or physical safety of law enforcement personnel.
8	Information relating to the regulation or supervision of financial institutions.
9	Geological and geophysical information and data information concerning wells.

In accordance with FOIA, SSA strives to provide a response to all FOIA requests within 20 working days, except in unusual circumstances.² In the event of "unusual circumstances," the Agency may extend the deadline for a decision by sending written notice to the requester that

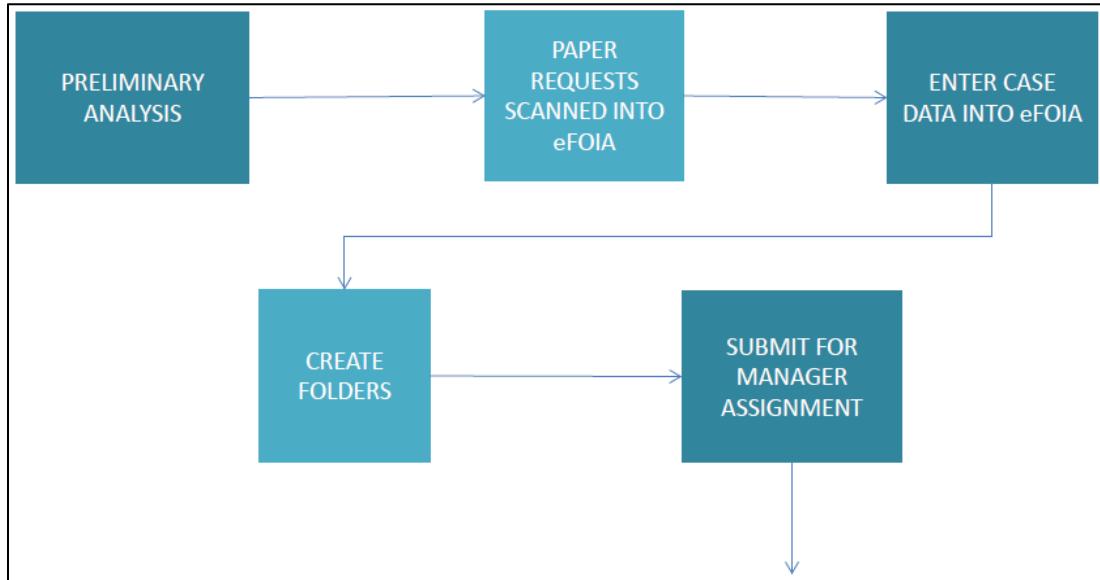
² 5 U.S.C. § 552(a)(6)(A).

includes the new deadline and a statement of the circumstances that make the extension appropriate.³

³ 5 U.S.C. § 552(a)(6)(B).

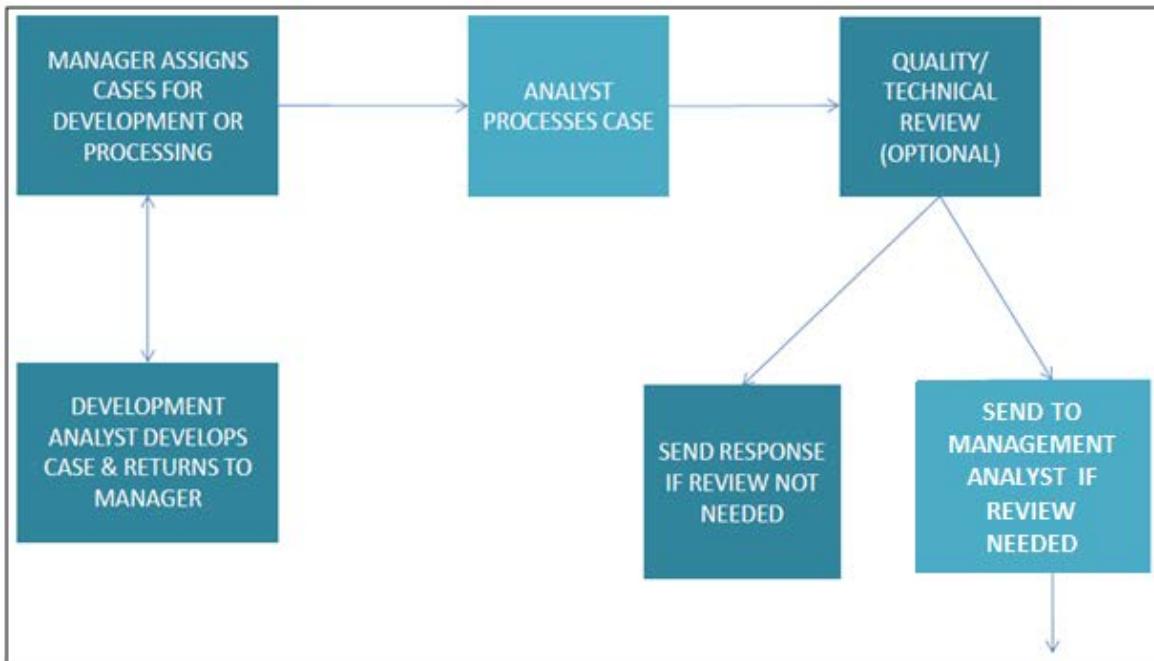
Appendix C – FLOWCHART OF FOIA PROCESS

Figure C–1: Office of Privacy and Disclosure (OPD) Workflow – Incoming Request



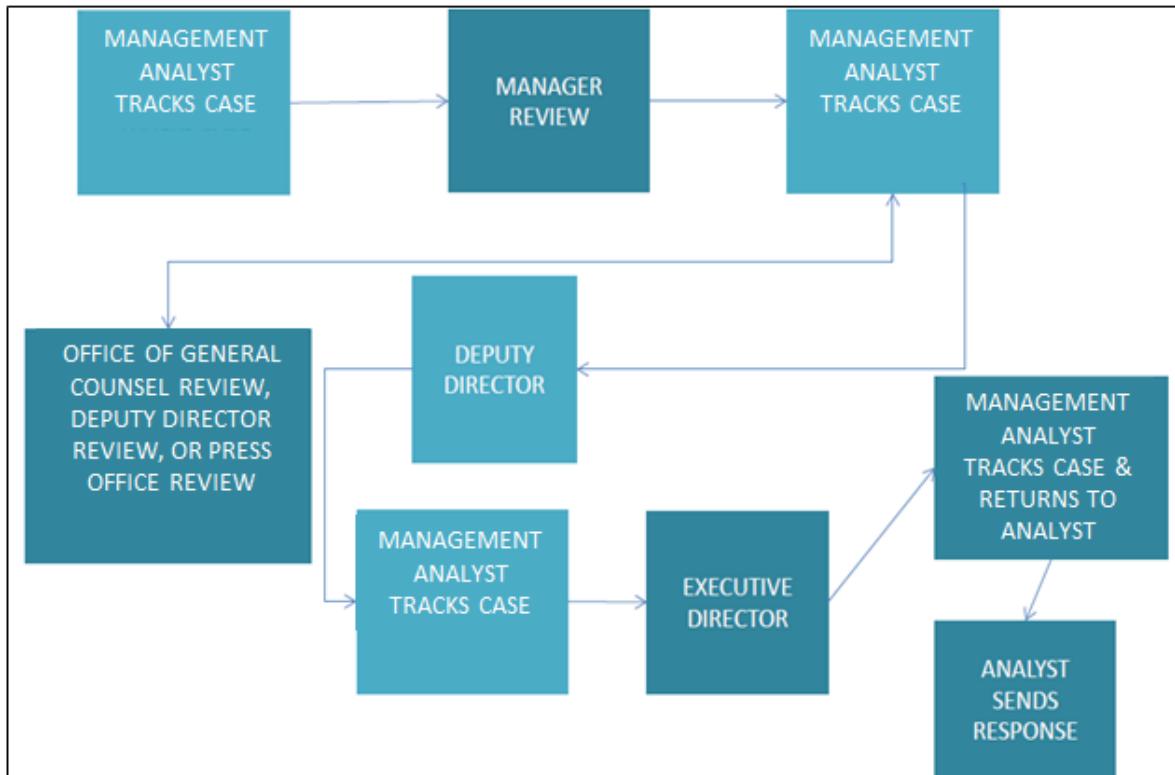
Note: Internet requests are entered into the *Electronic Freedom of Information Act* (eFOIA) management queue directly.

Figure C–2: OPD Workflow – Control Manager and Analysts



Note: eFOIA automatically assigns complex cases to analysts.

Figure C–3: OPD Workflow – Review and Approval Management and Analyst



Appendix D – CONGRESSIONAL REQUEST

RON JOHNSON, WISCONSIN CHAIRMAN
JOHN MCCAIN, ARIZONA
ROB PORTMAN, OHIO
BOB PFEIFFER, PENNSYLVANIA
JAMES LANKFORD, OREGON
MICHAEL B. PORTI, NEW HAMPSHIRE
KELLY A. TROXLE, NEW MEXICO
JOHN THUNE, SOUTH DAKOTA
BEN SASSER, NEBRASKA

SETH B. ASHDOWN, STAFF DIRECTOR
CARRIELE A. SATTER, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

June 23, 2015

The Honorable Patrick P. O'Carroll
Inspector General
U.S. Social Security Administration
6401 Security Boulevard, Suite 300
Baltimore, MD 21235

Dear Mr. O'Carroll:

The Committee on Homeland Security and Governmental Affairs is conducting oversight of how Executive Branch departments and agencies respond to Freedom of Information Act (FOIA) requests. The Committee recognizes the important role that FOIA plays in holding the government accountable to American taxpayers and seeks to ensure that government officials do not interfere with the FOIA process to inhibit transparency. Accordingly, as the Committee examines how departments and agencies comply with FOIA, the Committee is interested in learning about any involvement by non-career officials with the FOIA process at the Social Security Administration.

Enacted in 1966, FOIA bestows a right upon the American public to request records created by Executive Branch departments and agencies.¹ FOIA does not require requestors to articulate a reason for the request and creates a presumption of access so long as the request does not encompass any of the nine categories of information exempted from the statute.² This right of openness and transparency guaranteed by FOIA allows the American public to understand how their government is operating—a concept essential to perpetuate a flourishing democracy. FOIA, therefore, is a critical tool available to the American public to learn and understand how their government is acting on their behalf, as well as to hold the government accountable for its actions.

¹ 5 U.S.C. § 552.

² *Id.* at § 552(b). FOIA states that agencies may withhold the following nine categories: (1) information that is classified to protect national security; (2) information related solely to the internal personnel rules and practices of an agency; (3) information that is prohibited from disclosure by another federal law; (4) trade secrets or commercial or financial information that is confidential or privileged; (5) privileged communications within or between agencies; (6) information that, if disclosed, would invade another individual's personal privacy; (7) certain information compiled for law enforcement purposes; (8) information that concerns the supervision of financial institutions; and (9) geological information or wells. *Id.*

The Honorable Patrick P. O'Carroll
June 23, 2015
Page 2

Just one day after taking office, President Obama issued a memorandum to all heads of Executive Branch departments and agencies emphasizing that openness and transparency are fundamental aspects of FOIA.³ President Obama stated:

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.⁴

As described in the President's directive, FOIA is an essential tool vital to furthering transparency within government programs and operations. Department and agency personnel play an important role in ensuring FOIA requests are handled in a timely manner. In addition, Offices of Inspectors General (OIGs) across Executive Branch perform a critical role in providing oversight of agency operations and investigating allegations of misconduct related to the processing of FOIA requests.

Recent media reports indicate prior cases where non-career officials have been substantially involved in the FOIA response process. For example, during Hillary Clinton's tenure as Secretary of State, her staff carefully reviewed and scrutinized politically sensitive documents requested under FOIA—directly affecting what documents or portions of documents were ultimately released to requestors.⁵ Her staff's involvement in the response process led to delays, despite the Department's FOIA officer already having prepared and finalized responses for release.⁶ Additionally, in 2010, former Department of Homeland Security Secretary Janet Napolitano's non-career staff was substantially involved in the Department's FOIA response process by implementing an intricate review and approval process for FOIA responses, including redacting potentially embarrassing information, which compromised transparency and accountability to American taxpayers.⁷ These troubling examples raise particular concerns as the Committee seeks to ensure Executive Branch departments and agencies are following public

³ Memorandum from Pres. Obama to Heads of Executive Departments and Agencies, *Freedom of Information Act* (Jan. 21, 2009), available at https://www.whitehouse.gov/the_press_office/Freedom_of_Information_Act/ (last visited Jun. 23, 2015).

⁴ *Id.*

⁵ Laura Meckler, *Hillary Clinton's State Dep't Staff Kept Tight Rein on Records*, WALL ST. J., May 19, 2015, available at <http://www.wsj.com/articles/hillary-clintons-state-department-staff-kept-tight-rein-on-records-1432081701> (last visited Jun. 23, 2015).

⁶ *Id.*

⁷ *Id.*; see also H. Comm. on Oversight & Gov't Reform, *Staff Report: A New Era of Openness? How and Why Political Staff at DHS Interfered with the FOIA Process*, 112th Cong. (Mar. 30, 2011), available at http://oversight.house.gov/wp-content/uploads/2012/02/DHS_REPORT_FINAL_FINAL_4_01_11.pdf (last visited Jun. 23, 2015).

The Honorable Patrick P. O'Carroll
June 23, 2015
Page 3

records law and that non-career personnel are not adversely affecting the quantity, quality, and timeliness of information provided to the American public through the FOIA process.

In light of previous cases of involvement by non-career officials in the FOIA response process and the critical role that OIGs play in providing oversight of internal agency operations, the Committee wants to ensure that agencies are taking the appropriate steps to fully respond to FOIA requests without unnecessary delay, and that the involvement of non-career officials in the FOIA process does not result in less information being provided to the requestors than otherwise would have been provided. Further, the Committee wants to be sure that honest efforts by departments and agencies to respond to FOIA requests are not frustrated or compromised by the involvement of non-career officials in the FOIA response process.

In order to assist the Committee's oversight obligations, I ask that your office please analyze the involvement of non-career officials' involvement in the FOIA response process at the department or agency, if any, for the period of January 1, 2007, to the present. If non-career officials were involved in the FOIA response process, please analyze whether their involvement resulted in any undue delay of a response to any FOIA request or the withholding of any document or portion of any document that would have otherwise been released but for the non-career official's involvement in the process. If your analysis shows such a result, please provide the following information about each FOIA request:

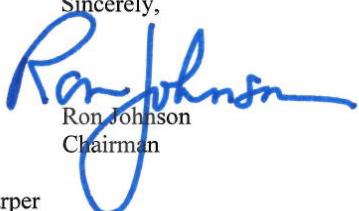
- a. Contents of the FOIA request;
- b. Recommendation by the department or agency's FOIA officer as to what information should be disclosed in response to the request;
- c. Name(s) and position(s) of non-career personnel who were involved with the response process;
- d. Details and supporting documents related to the processing of the response to the FOIA request;
- e. Documents that were ultimately disclosed in response to the request; and
- f. Documents or information that would have been disclosed in response to the FOIA request absent the involvement of non-career department or agency personnel.

As part of your analysis, I request that you seek a written certification from the department or agency's chief FOIA officer that 1) no non-career officials were involved in the department or agency's response to any FOIA request or 2) if such involvement occurred, the involvement of non-career officials has never resulted in the undue delay of a response to a FOIA request or the provision of less information than would have been provided but for the involvement of the non-career officials. Please provide this certification to the Committee in conjunction with your analysis.

I respectfully request that your office perform this analysis and report back to the Committee within 60 days. If you have any questions about this request, please have your staff contact Caroline Ingram of the Committee staff at (202) 224-4751. Thank you for your attention to this matter.

The Honorable Patrick P. O'Carroll
June 23, 2015
Page 4

Sincerely,



Ron Johnson
Chairman

cc: The Honorable Thomas R. Carper
Ranking Member

Appendix E – SSA NON-CAREER POSITIONS

Below is a list of the Social Security Administration's (SSA) non-career officials by position for Fiscal Years 2011 through June 2015.

Non-Career Position Title	SSA Office
Commissioner of Social Security ¹	Office of the Commissioner
Deputy Commissioner of Social Security	Office of the Commissioner
Chief of Staff ²	Office of the Commissioner
Senior Advisor to the Commissioner ²	Office of the Commissioner
Inspector General	Office of the Inspector General
Chief Information Officer ¹	Office of the Chief Information Officer
Associate Chief Information Officer for Vision and Strategy ¹	Office of the Chief Information Officer
General Counsel	Office of the General Counsel
Press Officer	Office of Communications
Deputy Commissioner for Communications	Office of Communications
Associate Commissioner for External Affairs	Office of Communications
Deputy Commissioner for Legislation and Congressional Affairs ²	Office of Legislation and Congressional Affairs
Senior Advisor to the Deputy Commissioner for Legislation and Congressional Affairs ¹	Office of Legislation and Congressional Affairs
Legislative Liaison	Office of Legislation and Congressional Affairs
Deputy Commissioner for Retirement and Disability Policy	Office of Retirement and Disability Policy
Associate Commissioner for Retirement Policy	Office of Retirement and Disability Policy
Chief Technology Officer	Office of Systems
Associate Deputy Commissioner for Systems	Office of Systems

Note 1: These positions are currently vacant. SSA staff that held these positions separated between June 2011 and April 2013.

Note 2: Multiple individuals currently hold these positions.

Appendix F – CHIEF FOIA OFFICER CERTIFICATION



SOCIAL SECURITY
Office of the General Counsel

Chief FOIA Officer Certification

I certify, to the best of my knowledge and belief, based on the information reasonably available to me at the time of this certification, that no non-career official has been involved in the decision regarding the agency's response to a Freedom of Information Act request.

Executed on July 23, 2015

Tina M. Waddell
Tina M. Waddell
Chief FOIA Officer

SOCIAL SECURITY ADMINISTRATION BALTIMORE, MD 21235-0001

Appendix G – MAJOR CONTRIBUTORS

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Linda Webster, Senior Auditor

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