<u>Office of the Director of National Intelligence</u>

<u>2014 Chief FOIA Officer Report</u>

<u>ODNI's Chief FOIA Officer – Mark Ewing</u>

This report covers the period beginning with March 11, 2013 through March 10, 2014 and outlines the steps the ODNI has taken to "improve FOIA operations and facilitate information disclosure." The ODNI is deeply committed to transparency to the best of its abilities without harming national security.

Section I: Steps Taken to Apply the Presumption of Openness

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

FOIA Training:

1. **Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?** Yes. FOIA training slides continue to be available to the ODNI workforce through our internal website. In addition, ODNI teamed up with other agencies within the Intelligence Community to provide FOIA process and equity recognition training to a wider audience. Also, we are working with another agency to determine the best redacting tool to ensure that redactions are not lifted off documents.

2. **If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.** Within the ODNI we briefed approximately 50 people on the FOIA process, the fundamentals of FOIA, and explained the nine exemptions and how they are used to protect information. External to the ODNI, we provided training to over 100 personnel on IC FOIA Day. We discussed the challenges of responding to FOIA requests in times of limited resources. This one day conference was open to all FOIA personnel working within the IC as well as our colleagues at NARA.

3. **Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?** Yes. ODNI FOIA professionals attended FOIA training provided by the Department of Justice, the American Society for Access Professionals, and the Graduate School at USDA.

4. **Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period.** Approximately 75% of the ODNI's FOIA professionals attended substantive training during this reporting period.

5. **OIP has issued guidance that every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year. Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year.** Currently ODNI provides in-house training to its FOIA professionals. High level training is made available to the workforce. The ODNI also provides community outreach, inviting speakers from other agencies to discuss topics of interest as part of our IC FOIA Day. ODNI has partnered with other agencies such as DoD and DoJ to leverage existing training. Finally, ODNI will provide brown bag training regularly for non-FOIA professionals who are routinely tasked with conducting FOIA search and review.

Outreach:

1. **Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA?** No. **If so, please briefly discuss that engagement.** N/A

Discretionary Disclosures:

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

2. **Does your agency have a formal process in place to review records for discretionary release? If so, please briefly describe this process. If you agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases.** ODNI routinely reviews material for discretionary releases and posts publicly available information both on the ODNI website (www.dni.gov) as well as the IC On The Record website ([www.icontherecord.tumblr.com)](www.icontherecord.tumblr.com). The ODNI CIO Information Management Branch works closely with ODNI Office of Public Affairs and other stakeholders to ensure the broadest level of transparency possible.
3. **During the reporting period did your agency make any discretionary releases of otherwise exempt information?** Yes. In several FOIA cases, the ODNI chose to release otherwise exempt material.
4. **What exemptions would have covered the information that was released as a matter of discretion?** Exemption 5 would have covered the material that was released as a matter of discretion.
5. **Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion**. Under the FOIA, ODNI conducts a line by line review of responsive records to determine what information may be reasonably segregated and released. In addition, many documents are proactively reviewed prior to

receipt of a FOIA request and are made available to the public through posting on its public website. The ODNI continued to make available on its public website DNI statements, speeches, photographs, policy documents and technical standards to name a few.

In response to President Obama's direction to declassify and make public as much information as possible about certain sensitive programs, DNI Clapper authorized the declassification and public release of documents relating to collection under Section 501 of the Foreign Intelligence Surveillance Act (50 U.S.C. 1861). The ODNI has release over approximately 2300 pages of documents including 44 Orders and Opinions of the Foreign Intelligence Surveillance Court, 11 pleadings and other documents submitted to the FISC, 24 documents provided to Congress, and 20 reports, training slides, and other internal documents describing the legal basis for the programs and how they operate. He also released more than 400 pages of documents detailing the existence of collection activities authorized by former President Bush. These documents were properly classified, and their declassification was not done lightly. These releases reflect the Executive Branch's continuing commitment to make information about the implementation of FISA Sections 501 and 702 (50 U.S.C. 1881a) publicly available when appropriate, while ensuring the protection of the national security of the United States.

6. **If your agency was not able to make any discretionary releases of information, please explain why.** N/A

Other Initiatives

1. **Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013?** Yes. **If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014.** N/A
2. **Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.** ODNI continues to routinely review and post records to its public website. Although the website has been revised since the stand-up of the ODNI, the content has been maintained in an "archive" dating from 2005. (See item 7 above)

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

Describe here the steps your agency has taken to ensure that its system for responding to requests is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

Personnel:

During Sunshine Week 2012 OPM announced the creation of a new job series entitled the Government Information Series, to address the work performed by FOIA and Privacy Act professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

1. **Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series?** No.

2. **If not, what proportion of personnel has been converted to the new job series?** None

3. **If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted?** ODNI Human Resources is looking into the feasibility of converting FOIA professionals to the new job series.

Processing Procedures:

1. **For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing?** No. **If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.** ODNI is in the process of instituting a better triage process to address administrative issues, updating existing Standard Operating Procedures to ensure consistency, and researching tools that may ease the administrative process.

2. **Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.** Yes. ODNI is working on the development of Memorandums of Understanding with other agencies regarding specific data sets in order to ease the referral and consultation process where possible.

Requester Services:

1. **Do you use e-mail or other electronic means to communicate with requesters when feasible?** Yes.

2. **Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?** Yes.

3. **Describe in any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc.**
   a. ODNI is in the midst of reorganizing its FOIA office by processing disciplines (initial, appeals, and litigations). This will help streamline the process.

Section III: Steps Taken to Increase Proactive Disclosures

**Describe here the steps your agency has taken both to increase the amount of
material that is available on your agency website, and the usability of such
information, including providing examples of proactive disclosures that have been
made during this past reporting period (i.e., from March 2013 to March 2014). In
doing so, answer the questions listed below and describe any additional steps taken
by your agency to make and improve proactive disclosures of information.**

Posting Material:

1. **Do your FOIA professionals have a system in place to identify records for proactive
   disclosure?** The ODNI does not have a formal system in place to identify records for
   proactive disclosure; however, we have been successful in making routine proactive
   disclosures. ODNI has posted information on icontherecord.tumblr.com as well as at
   www.dni.gov. Please note that, proactive disclosures are solely the responsibility of the
   FOIA Office.   All ODNI components, working with both PAO and IMD, help identify
   records for proactive disclosure.
2. **If so, describe the system that is in place.** (See Above)
3. **Provide examples of material that your agency has posted this past reporting
   period, including links to where this material can be found online.** We have posted
   records on www.dni.gov and icontherecord.tumblr.com. (See Section 1, Question 10).

Making Posted Material More Useful:

1. **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, such as soliciting feedback on the
   content and presentation of the posted material, improving search capabilities on
   the ODNI site, creating mobile applications, providing explanatory material, etc.?**
   While ODNI has not actively solicited feedback, etc., it does proactively work with
   individuals who regularly access the DNI public website when new information is posted,
   or when a periodic report is posted that is known to be of interest an individual or
   organization. ODNI also responds to all inquiries to the DNI-PAO public email address,
   which is identified on the dni.gov public website. The ODNI also has a Facebook page;
   and posts content via You Tube, allowing for comments from the public.

   Additionally, ODNI uses a commercial digital communication management system,
   which allows the ODNI to provide citizens with better service and access to relevant
   information by proactively communicating official content through an RSS feed. This
   system supports the OMB's open government directive and offers transparency through
   the monitoring of the ODNI's website for updates and automatically created email alerts,
   proactively communicating new information to citizens. The ODNI currently has more

than 48,000 subscribers to its website and generates an average of 250,000 messages monthly to those subscribers.

2. **If so, provide examples of such improvements.** (See Above)
3. **Did your agency use any such means to publicize or highlight important proactive disclosures for public awareness?** No.
4. **Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.** No
5. **Describe any other steps taken to increase proactive disclosures at your agency.** ODNI's public website is continually under review to determine what improvements can be made in order to achieve greater transparency.

Section IV: Steps Taken to Greater Utilize Technology

Online tracking of FOIA requests:

1. **Can a FOIA requester track the status of his/her request electronically?** Not at this time.
2. **Describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.** The ODNI does not have an online tracking system wherein requesters can check on the status of their request at this time.
3. **In particular, does your agency tracking system provide the requester with an estimated date of completion for his or her request?** The ODNI does not have an online tracking system wherein requesters can check on the status of their request at this time. The ODNI will provide an estimated date of completion, in writing, upon request.
4. **If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability?** Not at this time.

*Use of technology to facilitate processing of requests***:**

1. **Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?** Yes. The ODNI is participating in a technology working group to find better ways to use technology to make FOIA processing more efficient
2. **If so, describe the technological improvements being made.** This is still being determined.
3. **Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program?** N/A

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

Simple Track Requests:

1. **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.**

    a. **Does your agency utilize a separate track for simple requests?** Yes

    b. **If so, for your agency overall, for Fiscal Year 2013, was the average number of days
        to process simple requests twenty working days or fewer?** No, the average number of
        days to process simple requests was 86.12 days.

    c. **If your agency does not track simple requests separately, was the average number of
        days to process non- expedited requests twenty working days or fewer?** N/A

Backlogs and "Ten Oldest" Requests, Appeals and Consultations:

2. **Sections 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. Section VII.E, entitled "Pending Requests –
    Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending
    Administrative Appeals," and XII.., 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
    2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer
    Report.**

    Backlogs

    a. **If your agency had a backlog of requests at the close of Fiscal Year 2013, did that
        backlog decrease as compared with Fiscal Year 2012?** No

    b. **If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that
        backlog decrease as compared to Fiscal Year 2012?** No

Ten Oldest Requests

a. **In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?** No
b. **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 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you had only seven requests listed as part of your "ten oldest" in Section VII.E. and you closed two of them, you should note that you closed two out of seven "oldest" requests.** ODNI managed to close five out of ten "oldest" requests.

Ten Oldest Appeals

a. **In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?** No.
b. **If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C.(5) of your Fiscal Year 2012 Annual FOIA Report.** ODNI managed to close two out of "ten oldest appeal" requests. We had 10 appeals in Section VI.C.(5) for FY12.

Ten Oldest Consultations

a. **In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012?** Yes
b. **If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report.** N/A

Request and/or Appeal Backlogs:

3. **If you answered "no" to any of the above questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, consultations. In doing so, answer the following questions then include any additional explanation:**

Request and/or Appeal Backlogs:

a. **Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?** Yes
b. **Was the lack of a reduction in the request backlog caused by a loss of staff?** Yes
c. **Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?** Yes

d. **What other causes, if any, contributed to the lack of a decrease in the request backlog?** ODNI had a contract change and a loss of resources for approximately six months and had to train new FOIA case managers which resulted in the lack of a decrease in our backlog.

"Ten oldest" Not Closed:

a. **Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012.** ODNI had a contract change and a loss of resources for approximately six months and had to train new FOIA case managers which resulted in the lack of a decrease in our backlog.
b. **If your agency was unable to close any of its ten oldest requests or appeals because you were waiting to hear back from other agencies on consultations you sent, please provide the date of 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

Plans for closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:

Given the importance of these milestones, it is critical that Chief FOIA Officers assess the causes for not achieving success and create plans to address them.

a. **If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2014.** ODNI hired additional staff to concentrate solely on reducing the backlog.
b. **If your agency had a backlog of more than 1000 pending request and did not reduce the backlog in Fiscal Year 2013, provide your agency's plan for achieving backlog reduction in the year ahead.** N/A

Interim Responses:

OIP has issued guidance encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information.

a. **Does your agency have a system in place to provide interim responses to requesters when appropriate?** Yes
b. **If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number of percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.** During FY13, ODNI provided interim releases to approximately four requestors.

<u>**Use of FOIA's Law Enforcement "Exclusions"**</u>

In order to increase transparency regarding the use of the FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to "treat the records as not subject to the requirements of [the FOIA]," 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. **Did your agency invoke a statutory exclusion during Fiscal Year 2013?** No
2. **If so, what was the total number of times exclusions were invoked?** N/A

<u>**Spotlight on Success**</u>

Out of all the activities undertaken by your agency since March 2012 to increase transparency and improve FOIA administration, describe here 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.

The IC CIO hosted the first IC-wide conference for FOIA officers on 5 June 2013. There were approximately 100 FOIA officers in attendance. The purpose of this event was to address the challenges of responding to FOIA requests in times of limited resources. All personnel working FOIA within the IC and our colleagues at NARA were invited.