Office of the Director of National Intelligence

2021 Chief FOIA Officer Report

(March 2020 – March 2021)

Section 1: Steps Taken 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. *See* 5 U.S.C. § 552(j)(1) (2018). Is your agency's Chief FOIA Officer at or above this level?

>   **Response**: Yes.

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

>   **Response**: Lora Shiao, Chief Operating Officer.

B. FOIA Training

3. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. *See* 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

>   **Response**: All new ODNI personnel (staff and contractors) are briefed on their responsibilities under the FOIA as part of their Entrance on Duty. In addition, FOIA information sessions are provided to components with other mission-related duties upon request. All employees hired by the Information Review and Release Group (IRRG) have specific FOIA-related performance standards listed in their employee work plans. In addition, IRRG leadership will regularly convey FOIA processes to non-FOIA staff, to ensure confusion is kept to a minimum when searches and reviews are sent to those components. However, due to limitations and restrictions on in-person meetings, we have not been able to hold our normal brown bag training sessions for components as we have in previous years.

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

>   **Response**: Yes.

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

   Response: Due to impacts of the COVID-19 pandemic, attending FOIA training has been difficult this year. However, we have encouraged all employees with FOIA related duties to access the DoJ OIP website to review current FOIA guidance and take available virtual training. We have also conducted some in house training for FOIA employees. The Chief, IRRG attended the Chief FOIA Officer teleconference in October 2020.

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

   Response: 100% Due to restrictions placed on gatherings during the pandemic, we have not been able to provide or attend the "regular" training sessions normally held. However, as stated above, all FOIA professionals and staff with FOIA responsibilities have spent time reviewing internal and DoJ web based training manuals, regulations, and Best Practices.

7. 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.

   Response: N/A

C. Outreach

8. 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.

   Response: Yes, ODNI's Chief, IRRG//FOIA Public Liaison engaged with requesters and explained ODNI processes to enable the requesters to tailor their requests for more narrowed and accurate searches. This results in a lower number of non-responsive documents being located in the initial search, and increases processing efficiency, e.g., reduces time spent making a determination on responsiveness of the documents located in the search.

   This year, the Chief, IRRG/FOIA Public Liaison spent a large amount of time responding to both telephone and email inquiries regarding case status. Explaining that the process was still working and that case officers were still processing cases as quickly and efficiently as they could appeared to alleviate the angst that requesters were feeling.

D. Other Initiatives

9. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff.

      Response: As stated in B.3. above, all new ODNI personnel (staff and contractors) are briefed on their responsibilities under the FOIA as part of their Entrance on Duty. Pamphlets that provide information on the FOIA and the exemptions are provided to each employee during EOD. In addition, FOIA information sessions are provided to components with other mission-related duties upon request. These sessions often include briefing slides and handouts, determined by the needs of the component.

10. 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.

      Response: Although the FOIA Improvement Act of 2016 provides for posting responsive documents when requested, or expected to be requested, multiple times, IRRG posts all FOIA releases after they have been provided to the first requester. Our FOIA professionals review all responsive information potentially subject to a FOIA exemption to determine if the information can be released notwithstanding the applicable exemption. We do so in an effort to release as much information as possible, consistent with our obligation to protect classified information and intelligence sources and methods.

      The Civil Liberties, Privacy and Transparency office; the Intelligence Community Inspector General; and several ODNI components, such as the National Counterterrorism Center and the National Security and Counterintelligence Center, all post reports to the DNI.gov website to better inform the public on the workings of the ODNI.

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

1. For Fiscal Year 2020, 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 2020 Annual FOIA Report.

      Response: < 1 day.

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.

Response: N/A.

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

Response: Yes. The Annual Report Data was reviewed and increased emphasis was placed on processing the oldest cases from each category; initial, consults, and appeals. The IRRG reviewed its web pages (both internal and external), existing policies, procedures, and practices, and updated them to be more effective and efficient. Also, an Internal Audit of our workflow processes was conducted to ensure identified processes were being completed appropriately.

4. Standard Operating Procedures (SOPs): Having SOPs can improve the consistency and quality of an agency's FOIA process. In addition, describing an agency's standard practices for handling FOIA requests on agency FOIA websites can help requesters better understand how their request will be handled.

a) Does your agency have SOPs that outline general processes for handling FOIA requests and appeals?

* Yes, for internal use; not currently posted to our web site.

b) If not, does your agency have plans to create FOIA SOPs? N/A

c) If yes, how often are they reviewed/updated to account for changes in law, best practices, and technology?

* They are considered working documents and are updated as changes occur.

d) In addition to having SOPs, does your agency post or otherwise describe your standard processes for handling requests on your website?

* ODNI has a FOIA Handbook posted to assist requesters.

5. 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).

Response: An estimated 20 times.

6. Does your agency frequently receive common categories of first-party requests? If so, please describe the types of requests and if your agency has explored establishing alternative means of access to these records outside of the FOIA process?

Response: ODNI receives approximately 225-250 first party requests annually. The vast majority of these requests are for copies of clearance reports that reveal a person's level and status of clearance. These records reside on a classified system, therefore, we are not able to allow outside access other than through filing a request via FOIA/PA or going directly to your security office.

7. The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within 180 days. Has your agency updated its FOIA regulations in accordance with the FOIA Improvement Act of 2016? If not, what is your agency's plan to update your regulations?

Response: Our Agency FOIA Regulation has not been updated. At one point it had been reviewed and updated in draft version; however, that version was not finalized and posted. We are now in the process of updating that version and will have it posted upon completion of our review.

8. Please explain how your agency worked to mitigate the impact of the COVID-19 pandemic on FOIA processing. Examples could include, but are not limited to: altering workflows, implementing new technology, providing notices and instructions or otherwise communicating directly with requesters.

Response: We altered our work flow to focus on the most critical processes. All requests were logged in and letters of acknowledgement were sent out as quickly as possible. The acknowledgement letter provided verbiage to explain that processing time would likely be impacted due to COVID. The focus then became getting the first party requesters their responses within the mandated timeframe; this allowed cleared personnel the ability to have their security clearance paperwork as a resource should they need to acquire new or additional employment. This was followed by responding to any requests for information that had previously been worked.

9. Optional -- Please describe:

- Best practices used to ensure that your FOIA system operates efficiently and effectively and;
- Any challenges your agency faces in this area.

Response: An audit is conducted of our workflow to ensure all processing steps are working efficiently and all risks have been mitigated.

All newly received requests are searched against prior releases to eliminate redundancy.

The IRRG also provides assistance to components regarding appropriate search terms to use and databases or systems to search.

We work with requesters to clarify requests and/or to narrow the scope of a request so that it can be processed correctly and more quickly.

Working in a classified environment presents a challenge during periods such as the COVID-19 pandemic, when we are unable to access our systems and networks from home. However, this is the nature of the beast.

Section III: Steps Taken to Increase Proactive Disclosures

1. Provide examples of 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.

Response: ODNI proactively discloses a variety of documents. This is ongoing and includes ODNI reports and publications, press releases, speeches, interviews, congressional testimony, policy documents, and other information about intelligence community activities. These documents are available on the ODNI website at https://www.dni.gov, and the website intel.gov at https://www.intelligence.gov. ODNI proactively discloses/posts documents upon their release.

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?

Response: Yes.

3. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

Response: Improvements include sub-categorizing ODNI reports, policies, and other documents of interest to allow for ease of retrieval and use; enhancing the ability to conduct keyword searches of our website; and posting documents in pdf searchable format when possible.

4. Optional -- Please describe:

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

Response: The ODNI IRRG works closely with the ODNI Public Affairs Office and the Civil Liberties, Privacy and Transparency Office in order to encourage proactive disclosure of items of public

interest. ODNI components also help identify records for proactive disclosures. Many of the categories of records posted to intel.gov are informed by public interest on a particular subject matter. Further the IC Historians' Panel identifies material for declassification review, such as records related to the Vietnam War Tet Offensive and other historical events of public interest.

Section IV: Steps Taken to Greater Utilize Technology

1. Please briefly describe the types of technology your agency uses to support your FOIA program. In addition, please highlight if your agency is leveraging or exploring any new technology that you have not previously reported. If so, please describe the type of technology.

Response: ODNI leverages technology to facilitate overall FOIA efficiency. For example, we are able to receive and respond to consults and referrals from other government agencies on classified and unclassified networks. In addition, ODNI utilizes information-sharing platforms to expedite processing of documents within and outside of the Agency. We are learning about other ways we can leverage technology to facility efficiency in conducting electronic searches and processing records.

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?

Response: Yes.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2020?

Response: Yes. Additional information below.

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.

Response: ODNI posted the reports on the DNI.gov website; however, due to an apparent change in the URL they are not linked to the FOIA.gov site. ODNI is working with DOJ, Office of Information Policy to ensure that they appear on FOIA.gov

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.

Response: Once posted, the ODNI data will be available on https://www.dni.gov.

6. Optional -- Please describe:

- The best practices used in greater utilizing technology and;
- Any challenges your agency faces in this area.

Response: For ODNI, it is imperative that the technology we use is compatible with all IC elements' systems. We must also be able to communicate with non-IC agencies to facilitate efficient referrals, consultations, and coordination.

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

A. Simple Track

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

Response: 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 2020?

Response: Yes

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2020 that were placed in your simple track.

Response: 47%

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?

Response: N/A.

B. Backlogs

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 2020?

Response: No.

6. If not, did your agency process more requests during Fiscal Year 2020 than it did during Fiscal Year 2019?

      Response: No.

7. If your agency's request backlog increased during Fiscal Year 2020, 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.

      Response: In Fiscal Year 2020, in addition to staffing and resource limitations that were directly caused by the COVID-19 pandemic, ODNI experienced an increase in the number of incoming requests and an increase in the complexity of the requests. An increasing number of requesters are submitting requests for "anything related to…" and requests for specific keywords to be searched.

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 2020. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) *divided by* (requests received from Section V.A) x 100. If your agency has no request backlog, please answer with "N/A."

      Response: 132.06 % of requests make up the request backlog.

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2020 , according to Section XII.A of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

      Response: Yes

10. If not, according to section VI.A of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2020 than it did during Fiscal Year 2019?

      Response: N/A

11. If your agency's appeal backlog increased during Fiscal Year 2020, 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.

    Response: 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 2020. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) *divided by* (appeals received from Section VI.A) x 100. If your agency did not receive any appeals in Fiscal Year 2020 and/or has no appeal backlog, please answer with "N/A."

    Response: 16% of appeals make up the appeals backlog.

C. Backlog Reduction Plans

13. In the 2020 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2019 was asked to provide a plan for achieving backlog reduction in the year ahead. Did you 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 2020?

    Response: N/A.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2020, what is your agency's plan to reduce this backlog during Fiscal Year 2021?

    Response: N/A.

D. Status of Oldest Requests, Appeals, and Consultations

OLDEST REQUESTS

15. In Fiscal Year 2020, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2019 Annual FOIA Report?

    Response: 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 2019 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

> **Response**: 4

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

> **Response**: The IRRG conducted an audit of the backlogged requests and identified requests that could be processed without consultation with other agencies. We also contacted requesters who have been in the processing queue in excess of 2 years to verify their continued interest in the request.

TEN OLDEST APPEALS

18. In Fiscal Year 2020, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2019 Annual FOIA Report?

> **Response**: 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 2019 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

> **Response:** 9

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

> **Response**: We contacted requesters to verify their continued interest in pursuing the administrative appeal. We also assigned one employee exclusively to the appeal queue.

TEN OLDEST CONSULTATIONS

21. In Fiscal Year 2020, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2019 Annual FOIA Report?

> **Response:** No

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 2019 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

Response: 9

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.

Response: In Fiscal Year 2020, ODNI experienced an increase in number and complexity of incoming requests, appeals, and consultations. These factors created obstacles to ODNI's ability to close its ten oldest requests, appeals and consultations from Fiscal Year 2019.

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.

Response: 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 2021.

Response: We have realigned team members for more efficient processing and clarity of responsibilities, and are working more closely with components to keep search and review taskings on track to meet deadlines. We have already closed 2 of our 4 oldest appeals, 9 of our oldest consults, and 4 of our oldest initial requests from the Fiscal Year 2020 report during Fiscal Year 2021.

F. Success Stories

Out of all the activities undertaken by your agency since March 2020 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.

- Although most statistics in FOIA are covered in **FY** reports, there is one statistic that I would like to report for **Calendar Year 2020** for ODNI. In spite of the COVID-19 pandemic, the reduction to our staff, and the increase in litigation cases being filed, ODNI was able, for the first time in 10 years, to close more cases than were opened in the calendar year.