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

<u>2016 Chief FOIA Officer Report</u>

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

**This report covers the period beginning with March 17, 2015 through March 15, 2016 and outlines the steps the ODNI has taken to "improve FOIA operations and facilitate information disclosure."  As reflected in the Principles of Intelligence Transparency for the IC, 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 FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any FOIA training or conference during the reporting period such as that provided by the Department of Justice?** 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.  Within the ODNI we briefed approximately 128 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 a combined total of 185 personnel in two separate IC FOIA Days.  We discussed FOIA commitments in the Second U.S. National Action Plan, redaction protection profile; equity briefings from five agencies; and panel discussions on standardizing/expediting procedures for IC consultations, high volume requestors and trends in FOIA requests.

2. **Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.** Approximately 100% of the ODNI's FOIA professionals attended substantive training during this reporting period.  In addition,  ODNI has developed in-house FOIA slides, which have been posted on its internal website.  The slides are used by its public access professionals for training purposes.  In addition, ODNI provides in-house training to its FOIA processionals.  High level training is made available to the workforce.  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 to leverage existing training.  ODNI implemented a plan from last year and provided brown bag training regularly for non-FOIA professionals who are routinely tasked with conducting FOIA search and review.

3. **OIP has directed agencies to "take steps to ensure that all of their FOIA professionals attend substantive 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 nest reporting year. N/A

*Discretionary Releases:*

4. **Does your agency have a distinct process or system in place to review records for discretionary release? If so, please briefly describe this process. If your agency is decentralized, please specify whether all components of your agency have such a process or system in place?** Yes. Any documents containing information that may be suitable for discretionary release require a secondary review to determine if there is a foreseeable harm in the release of that information, if not the information is released as a matter of discretion**.** In addition, routinely reviews material for proactive, discretionary release as part of its transparency initiative and posts information both on the ODNI website (www.dni.gov) as well as the IC on the Record website (www.icontherecord.tumblr.com). The ODNI P&S Information Management Branch works closely with ODNI Public Affairs Office (PAO) and Civil Liberties and Privacy Office (CLPO) and other stakeholders to ensure the broadest level of transparency possible.

5. **During the reporting period did your agency make any discretionary releases of otherwise exempt information?** Yes

6. **What exemptions would have covered the information that was released as a matter of discretion?** (b)(5)

7. **Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.** Draft documents and policy discussions are two examples of the types of information that have been released as a matter of discretion.

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

*Other Initiatives*

9. **If there are any other initiatives undertaken by our agency to ensure that the presumption of openness is being applied please describe them here. Consistent with the Principles of Intelligence Transparency for the IC, 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.

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

The Attorney General's **2009 FOIA Guidelines** emphasized that "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." It is essential that agencies effectively manage their FOIA program.  Please answer the following questions to describe the steps your agency has taken to ensure that your management of your FOIA program is effective and efficient.  You should also include any additional information that describes your agency's efforts in this area.

*Processing Procedures:*

1. **For Fiscal year 2015, 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 2016 Annual FOIA Report.**  16.38.

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**. Requests for expedited processing are screened upon receipt to make a prompt adjudication of the request. If expedited processing is granted, the case is then flagged our audit trail to track progress.

3. **On July 2, 2015, OIP issued new guidance to agencies on the proper procedures to be used in the event an agency has a reason to inquire whether a requester is still interested in the processing of his or her request. Please confirm here that to the extent your agency may have had occasion to send a "still interested" inquiry, it has done so in accordance with the new guidelines for doing so, including affording requesters thirty working days to respond**.  ODNI did send "still interested" inquiries during this reporting period.  Those inquiries were in compliance with the new guidelines.

*Requester Services*

4. **Agency FOIA Requester Service Centers and FOIA Public Liaisons serve as the face and voice of an agency. In this capacity they provide a very important service for requesters, informing them about how the FOIA process works and providing specific details on the handling of their individual requests. The FOIA also calls on agency FOIA Requester Service Centers and FOIA Public Liaisons to assist requesters in resolving disputes. Please explain here any steps your agency has taken to strengthen these services to better inform requesters about their requests and to prevent or resolve FOIA disputes.**  Our office contacts requestors, either by phone or email, to negotiate the scope of their requests when necessary, or resolve any possible issues.  We also maintain a FOIA hotline number for requesters to use to check the status of their request.

*Other Initiatives*

5. **If there are 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., please describe them here.** ODNI FOIA conducts self-assessments on a regular basis through weekly meetings to review processes, efficiencies and effectiveness.


### Section III:  Steps Taken to Increase Proactive Disclosures


**Both the [President's](#) and [Attorney General's](#) FOIA memoranda focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.**

**Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.**


*Posting Material:*

1. **Describe your agency's process or system for identifying "frequently requested" records required to be posted online under Subsection (a)(2) of the FOIA. For example, does your agency monitor its FOIA logs or is there some other system in place to identify these records for posting.**
   At the beginning of the fiscal year, ODNI posted records any time more than one request for the records was received within a two week period.  As a participant in the FOIA For All Pilot, ODNI began posting all documents released through FOIA to its public website in August 2015.

2. **Does your agency have a distinct process or system in place to identify records for proactive disclosure? If so, please describe your agency's process or system.** Yes.  Consistent with the Principles of Intelligence Transparency for the IC, all ODNI components, working with both PAO and IMD, help identify records for proactive disclosures and often review the records prior to disclosure.

3. **When making proactive disclosures of records, are your agency's FOIA professionals involved in coding the records for Section 508 compliance or otherwise preparing them for posting? If**

**so, provide an estimate of how much time is involved for each of your FOIA professionals and your agency overall.** No. This is handled by ODNI PAO.

4. **Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?** No

5. **If so, please briefly explain those challenges.** N/A

6. **Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.** Since August 2015, in cooperation with the Pilot Program, ODNI has posted all FOIA responses, and will continue to do so, despite the Pilot Program coming to an end in January 2016. 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. These releases can be found at both icontherecord.tumblr.com and www.dni.gov.

7. **Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe those efforts.**
**For example, this can be done through social media or with the offering of e-mail subscription services.** Yes. ODNI PAO uses social media as well as more traditional press releases to publicize important proactive disclosures. This was done twice during the reporting period as part of the release of materials captured during the attack on Abbottabad May 2, 2011. In addition, ODNI officials periodically engage with civil society to discuss posted materials and other transparency matters.

*Other Initiatives:*

8. **If there are any other steps your agency has taken to increase proactive disclosures, please describe them here.** ODNI has published an implementation plan for the Principles of Intelligence Transparency for the IC that sets forth a range of specific initiatives for enhancing transparency in a coordinated, consistent, and credible manner. ODNI has also published transparency commitments as part of the third national action plan for open government. ODNI is leading and coordinating the IC"s execution of those initiatives and commitments.

**Section IV:  Steps Taken to Greater Utilize Technology**

**A key component of the President's <u>FOIA Memorandum</u> was the direction to "use modern technology to inform citizens about what is known and done by their Government."  In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.**

**Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information.  You should also include any additional information that describes your agency's efforts in this area.**

*Making Material Posted Online 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**? ODNI is currently making information available in its most useful format.

2. **If yes, please provide examples of such improvements.**  ODNI PAO has updated our FOIA page of our public website to make it more user friendly.  In addition, PAO is routinely making improvements to ICONTHERECORD.

*Other Initiatives*

3. **Did your agency successfully post all four quarterly reports for Fiscal Year 2015?**  No

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 2016.**    We have been having IT issues that we are currently working with our IT department in order to correct the issue.  We hope to have our Q4 report and our FY16Q1 report posted soon.

5. **Do your agency's FOIA professional use email or other electronic means to communicate with requesters whenever feasible?  If yes, what are the different types of electronic means are utilized by your agency to communicate with requesters?**  Yes.  ODNI FOIA professionals communicate with requesters by both email and by telephone.

6. **If your agency does not communicate electronically with requesters as a default, are there any limitations or restrictions for the use of such means?  If yes, does your agency inform requesters about such limitations?**  N/A.  ODNI does communicate electronically with requesters.

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

The President's FOIA Memorandum and the Attorney General's 2009 FOIA Guidelines have emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations.

*Simple Track*:  Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests.  For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

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

2.  **If so, for your agency overall in Fiscal Year 2015, was the average number of days to process simple requests twenty working days or fewer?** No

3.  **Please provide the percentage of requests processed by your agency in Fiscal Year 2015 that were placed in your simple track.**  49.8

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 few?**  N/A.

*Backlogs:* **Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2014 and Fiscal Year 2015 when completing this section of your Chief FOIA Officer Report**

   **BACKLOGGED REQUESTS**

5.  **If your agency had a backlog of requests at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?** No.

6.  **If not, explain why and describe the causes that contributed to your agency not being able reduce its backlog. When doing so, please also indicate if any of the following were contributing factors**: Our office has undergone major turnover in personnel, ranging from our FOIA Branch Chief to nearly our entire FOIA team, which greatly affected our ability to reduce our backlog from the previous year**.** We received the same number of requests in FY 2015 as we did in FY 2014, with the levels of the complexity of the requests increasing.

**7. 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 2015.** 68.9%

**BACKLOGGED APPEALS**

8.  **If your agency had a backlog of appeals at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?** Yes

9.  **If not, explain why and describe the causes that contributed to your agency not being able reduce backlog. When doing so, please also indicate if any of the following were contributing factors.** N/A

10.  **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 2015. If your agency did not receive any appeals in Fiscal Year 2015 and/or has no appeal backlog, please answer with "N/A.** 129.4%

*Status of Ten Oldest Requests, Appeals, and Consultations:* **Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2014 and Fiscal Year 2015 when completing this section of your Chief FOIA Officer Report.**

**TEN OLDEST REQUESTS**

11.  **In Fiscal Year 2015, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2014 Annual FOIA Report?** No.

12.  **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 2014 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.** ODNI closed nine of the ten oldest requests.

13.  **Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester.  If any were closed because the requester was withdrawn, did you provide any interim responses prior to the withdrawal?** None

**TEN OLDEST APPEALS**

14.  **In Fiscal Year 2015, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2014 Annual FOIA Report?**  No.

15.  **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 2014 Annual FOIA Report. If you**

**had less than ten total oldest requests to close, please indicate that**. ODNI closed five of the ten oldest appeals.

**TEN OLDEST CONSULTATIONS**

16. **In Fiscal Year 2015, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2014 Annual FOIA Report?**  Yes

17. **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 2014 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.**  N/A.

*Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans:*

18. **Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2014.**  ODNI continues to face an increase in requests received each year, ODNI continues to receive requests of increased complexity, coupled with frequent turnover with our FOIA personnel.

19. **If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.**  N/A.

20. **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 2016**. ODNI now tracks the ten oldest pending requests for each category.  Each quarter we review the pending cases and set objectives for the next quarter.  Cases are crossed off the lists that are posted in the FOIA Branch as they are completed.

**Use of the FOIA's Law Enforcement Exclusions**

1. **Did your agency invoke a statutory exclusion, 5 U.S.C. Section 552(c)(1),(2), (3), during Fiscal Year 2015?** No.

2. **If so, please provide the total number of times exclusions were invoked.**