

2015 Department of Veterans Affairs (VA) Chief Freedom of Information Act (FOIA) Officer  
Report

Chief FOIA Officer: Stephen Warren, Department of Veterans Affairs

Section I: Steps Taken to Apply the Presumption of Openness

***FOIA Training:***

1. Did your agency conduct FOIA training during the reporting period for FOIA professionals?

- Yes.

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

- During the course of fiscal year 2014, the Veterans Health Administration (VHA) FOIA Office provided a total of 15 training programs for FOIA Officers throughout the agency – not just limited to VHA. 7 of the trainings offered were in the form of a nation-wide conference call with VHA FOIA Officers in which various training topics were presented and discussed.
- The remaining 8 presentations were conducted in VHA's MyVEHUCampus, which is a live training presentation that is streamed on the Internet. The presentations then are available On Demand following the presentations. Because the sessions are available On Demand, the goal of the training program was to create a robust training program where new FOIA Officers could immediately receive Agency-specific training immediately when entering their position, as well as providing a core group of trainings that could be used as refresher training for existing FOIA personnel. The live sessions conducted were on the following topics: FOIA Processing Requirements Part I, FOIA Processing Requirements Part II, Processing Requests for Administrative Investigation Boards and Uniform Offense Reports, FOIAXpress FOIA Tracking System User Training, FOIA Exemption Three, FOIA Exemption Four, FOIA Exemption Five and FOIA Exemption Six.

3. Did your FOIA professionals attend any FOIA training or conference during the reporting period such as that provided by the Department of Justice?

- VACO FOIA Officers, interns and contract personnel took advantage of the DOJ sponsored training that was held last July.
- All VHA FOIA Officers were mandated to attend the VHA FOIA training programs. Attendance was tracked for accountability purposes. Three staff from the VHA FOIA Office (VACO) attended training offered by the American Society of Access Professionals.

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

- 60 percent

5. In the [2014 Chief FOIA Officer Report Guidelines](#), OIP asked agencies to provide a plan for ensuring that core, substantive FOIA training is offered to all agency FOIA professionals at least once each year. Please provide the status of your agency's implementation of this plan.

- The development of the VHA FOIA Training sessions through On Demand has greatly increased the opportunities for all VA FOIA Officers to attend training from the convenience of their office or laptop.

Include any successes or challenges your agency has seen in implementing your plan.

- High turnover of FOIA Officers both in the field and at VA's Central Office continues to be a challenge in building a corps of experienced and trained FOIA professionals.

***Outreach:***

6. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA?

- Yes. A presentation by the VA FOIA Service to annual meeting of the National Federation of Federal Employees. Representatives of three Administrations (VHA, Veterans Benefits and National Cemetery) along with Central Office program offices continue to work with our Office of Policy and Planning to identify, acquire and disseminate data sets of interests to the general public, academia/scientific and the requester community.
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7. If you did not conduct any outreach during the reporting period, please describe why?

- N/A

***Discretionary Releases:***

8. Does your agency have a distinct process or system in place to review records for discretionary release?

- Yes. Each FOIA Officer is authorized to make discretionary releases and any questions they may have are directed to their Administration FOIA staff or the VACO FOIA.

9. During the reporting period, did your agency make any discretionary releases of information?

- Yes

10. What exemption(s) would have covered the material released as a matter of discretion?

- Exemption 5

11. Provide a narrative description, as well as some specific examples, of the types of information that your agency released as a matter of discretion during the reporting year.

- Predeliberative materials such as email correspondence and other communications involving issues for which there was a high public interest. For example, correspondence relating to VHA's scheduling delays, an issue that made national press, has been released.
- A malpractice tort claim claimant requested a copy of a taped interview of her during OGC's investigation of her claim. OGC determined that in this instance that the claimant's Privacy right to have a copy of her testimony outweighed OGC's work product interest in preserving the type of questioning and the statement of claimant's rights during the interview. OGC granted the tort claimant's request for a copy of her testimony.

12. If your agency was not able to make any discretionary releases of information, please explain why.

- N/A

***Other Initiatives:***

13. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA?

- VA FOIA Service has formal training on the Freedom of Information Act as part of the new employee orientation program which has a session every two weeks. The purpose of the training is to provide a brief overview of the FOIA with an emphasis on the employee's role as custodian of certain records including the furnishing of those records to the FOIA Officer in response to a FOIA request.

14. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

- The VA FOIA Office participates in the Open Data Working Group at VA by assisting the group to identify data that can be released without a FOIA request. The Open Data Working Group has been praised by OMB for their leadership in providing data that may be of interest to the public while ensuring that privacy protections are in place to prevent the loss of PII.

If any of these initiatives are online, please provide links in your description.

- <http://catalog.data.gov/dataset?q=organization:va-gov+OR+organization:vba-va-gov+OR+organization:nca-va-gov+OR+organization:vha-va-gov>

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

### *Personnel:*

1. In the [2014 Chief FOIA Officer Report Guidelines](#), OIP asked agencies about the status of converting all eligible FOIA professionals to the new Government Information Series. If your agency reported that its staff was eligible for conversion but had not yet converted all professionals to the new series, what is the current proportion of personnel that have been converted?

- 56 percent of full time FOIA Officers have been converted. The majority of FOIA Officers in VA have FOIA as a collateral duty and therefore are classified according to their primary duties (e.g., a Program Analyst whose primary duty is budget analysis) and would not be considered for the 306 series conversion.

2. If your agency has not converted all of its eligible employees yet, what is your plan to ensure that all FOIA professionals' position descriptions are converted?

- The VACO FOIA Service will continue to work with HR to continue the process to convert one more position within the FOIA Service and encourage supervisors in other VACO staff offices to work with their individual HR to review current FOIA Officers positions for conversion.
- The VHA FOIA Office will take proactive measures, through direction of senior executive staff, to ensure that VHA FOIA personnel are converted to the new Government Information Series.

### *Processing Procedures:*

3. For Fiscal Year 2014, 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 2014 Annual FOIA Report.

- 10.86

4. 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.

- Remind FOIA Officers of the statutory requirement to adjudicate requests for expedited processing is ten calendar days.

5. If your agency has a decentralized FOIA process, has your agency taken steps to make the routing of misdirected requests within your agency more efficient? If so, please describe those steps.

- The majority of requests (in which the request is unsure of where to send the requests) are received at VA Central Office; either at the FOIA Service, or at the FOIA Offices of the three Administrations. We work closely together to identify and correct re-direct request to the office (s) having the responsive records. These four offices also provide guidance to field FOIA Officers on where to re-direct a request.

6. If your agency is already handling the routing of misdirected requests in an efficient manner, please note that here and describe your process for these requests.

- The majority of requests received at the FOIA Service are not for records under the purview of this office so we are very familiar with the process of identifying the correct office(s) and re-directing in a timely manner and informing the requester of this re-direction by providing them the name and contact information of the FOIA Officer who will respond to their request.

***Requester Services:***

7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at the National Archives and Records Administration?

- OGC informs requesters of the services available through OGIS as part of their response to appeals.

8. When assessing fees, does your agency provide a breakdown of how FOIA fees were calculated and assessed to the FOIA requester? For example, does your agency explain the amount of fees attributable to search, review, and duplication?

- Yes

9. If estimated fees estimates are particularly high, does your agency provide an explanation for the estimate to the requester?

- Yes and agency regulations affords the requester the opportunity to discuss and narrow the scope of the request to reduce the estimated fee.

***Other Initiatives:***

10. 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.

- N/A

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

***Posting Material:***

1. 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

2. Does your process or system involve any collaboration with agency staff outside the FOIA office? If so, describe this interaction.

- The FOIA service works collaboratively and informally with the Administration FOIA Officers and VACO FOIA Officers, along with web page designers to identify and post such records.

3. Describe your agency's process or system for identifying "frequently requested" records that should be posted online.

- The VOIA FOIA Service periodically requests the Administrations and VACO FOIA Offices to identify frequently requested records for posting. They also inform the FOIA Service as they identify such records for posting on the FOIA webpage.

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

[http://www.va.gov/about\\_va/va\\_notices.asp](http://www.va.gov/about_va/va_notices.asp)

<http://foia-vista.osehra.org/>

***Other Initiatives:***

5. If there are any other steps your agency has taken to increase proactive disclosures, please describe them here.

- N/A

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

##### ***Online Tracking of FOIA Requests and Appeals:***

1. Can a member of the public track the status of his or her request or appeal electronically?

- Not directly. However, a requestor is provided a number that can be used to identify a request and any FOIA Officer in VA can access the requestor's file to indicate the status of the request and who is working it.

2. If yes, how is this tracking feature provided to the public? For example, is it being done through the regular posting of status logs, an online portal, or through another medium?

- N/A

3. If your agency does provide online tracking, please describe the information that is provided to the requester through this feature. For example, some online tracking features may tell the requester whether the request is "open" or "closed," while others will provide further details throughout the course of the processing, such as "search commenced" or "documents currently in review."

4. If your agency does provide online tracking for requesters, does this feature also provide an estimated date of completion?

- N/A

5. If your agency does not provide online tracking of requests or appeals, is your agency taking steps to establish this capability? If not, please explain why?

- At present, we do not provide online tracking of requests and appeals, but this option is under review and consideration by the FOIA Service, the three Administrations FOIA Offices, OGC and OIT.

##### ***Making Material Posted Online More Useful:***

6. 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?

- Not specifically with respect to FOIA records although the agency's webpage has been and continues to be revised overall so as to be more customer and user friendly.

- The Open Data Working Group has been identifying data themes and data sets of interest to the Veteran community and others and including them on nationwide federal websites such as Data.gov and Spending.Gov.

7. If yes, please provide examples of such improvements.

- N/A

If your agency is already posting material in its most useful format, please describe these efforts.

- N/A

8. Have your agency's FOIA professionals interacted with other agency staff (such as technology specialists or public affairs or communications professionals) in order to identify if there are any new ways to post agency information online?

- FOIA professionals participate in the open government initiatives highlighted above. The Working Group includes the FOIA Service, program managers, and the Office of General Counsel's information law attorneys.

9. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe those efforts.

- <http://www.va.gov/health/access-audit.asp> (patient access data)
- <http://explore.va.gov/outreach-materials> (benefits information)

10. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?

- Yes.

11. If so, please briefly explain what those challenges are.

- Records owners who are hesitant to make the records available to the FOIA Service for posting.

***Use of Technology to Facilitate Processing of Requests:***

12. 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? If yes, describe the technological improvements being made.

- This is under review by the FOIA Service, the three Administrations FOIA Offices, OGC and OIT.

13. Are there additional tools that could be utilized by your agency to create further efficiencies?

- De-duplicating software

***Other Initiatives:***

14. Did your agency successfully post all four quarterly reports for Fiscal Year 2014?

- No

15. 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 2015.

- They were posted to the VA website and notified through the review process of this report that they were not captured at the FOIA.gov for this reporting period website due to technical difficulties and we continue to work with OIP to resolve.
- See [http://www.oprm.va.gov/foia/foia\\_reports.aspx](http://www.oprm.va.gov/foia/foia_reports.aspx)

16. Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? If yes, what are the different types of electronic means utilized by your agency to communicate with requesters?

- Yes. Electronic mail and telephone calls only

17. 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

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

*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 2014, was the average number of days to process simple requests twenty working days or fewer?

- 15.03

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2014 that were placed in your simple track.

- 59.45%

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?

- N/A

***Backlogs:***

**BACKLOGGED REQUESTS**

5. If your agency had a backlog of requests at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013?

- Yes

6. 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 2014.

- 4.6%

**BACKLOGGED APPEALS**

7. If your agency had a backlog of appeals at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013?

- No
- If not, explain why and describe the causes that contributed to your agency not being able to reduce backlog. When doing so, please also indicate if any of the following were contributing factors:
  - An increase in the number of incoming appeals
  - Loss of staff

8. 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 2014.

- 89.6%

***Backlog Reduction Plans:***

9. In the 2014 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2013 was asked to provide a plan for achieving backlog reduction in the year ahead. Did you agency implement a backlog reduction plan last year? No

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 2014?

10. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2014, what is your agency's plan to reduce this backlog during Fiscal Year 2015?

*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 2013 and Fiscal Year 2014 when completing this section of your Chief FOIA Officer Report.

**TEN OLDEST REQUESTS**

11. In Fiscal Year 2014, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

- Yes

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 2013 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed six of them, you should note that you closed six out of seven "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 request was withdrawn, did you provide any interim responses prior to the withdrawal?

- N/A

#### TEN OLDEST APPEALS

14. In Fiscal Year 2014, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

- No

15. 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 2013 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

- 0

For example, if you only had seven appeals listed as part of your "ten oldest" in Section VII.C.(5) and you closed six of them, you should note that you closed six out of seven "oldest" appeals.

- Zero closed out of ten oldest

#### TEN OLDEST CONSULTATIONS

16. In Fiscal Year 2014, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

- There were none in FY 13.

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 2013 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

#### ***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 2013.

- The VA is a large agency with a decentralized FOIA program with over 200 designated FOIA Officer of which less than ten percent are full-time FOIA Officers. As such, processing of FOIA requests has to be balanced along with the completion of primary job duties. Although FOIA appeals are handled on a centralized basis by one section of OGC, loss of staff and the need to work with FOIA Officers across the country who are not dedicated full-time FOIA Officers results in delays in the access to the complete administrative case file.

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 2015.

- Two contractor personnel have recently been assigned to OGC to assist in the processing of FOIA appeals.

***Interim Responses:***

21. Does your agency have a system in place to provide interim responses to requesters when appropriate?

- Yes

22. If your agency had a backlog in Fiscal Year 2014, please provide an estimate of the number or 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.

- 20%

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

Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2014?

- No

**Success Story**

- Development by VHA of their online and on demand FOIA Training sessions
- In the late spring of 2014, VA was engulfed in a nationwide controversy concerning wait times for Veterans at VA Medical Centers. The media was particularly interested in information concerning tort malpractice claims filed against the VA for wrongful death because of delay in treatment. While all requests were similar in nature, they diverged from being a request for data in all tort malpractice claims filed with OGC from 2001 to 2014 (over 18,000 claims) to asking for data for certain regions or particular VA Medical Centers at varying times. OGC developed a spreadsheet on DVD disk cover all claims

(over 18,000) filed. The disk was set up so the requester could target and print out selected information by type of claim, location, or time period he desired.

- Recognition from the Office of Management and Budget for our work supporting the Open Data Policy. OMB wrote that VA has excelled with success in populating your Enterprise Data Inventory (EDI) and outstanding public engagement and transparent 2-way feedback.