



U.S. DEPARTMENT OF VETERANS AFFAIRS

CHIEF FREEDOM OF INFORMATION ACT OFFICER REPORT

March 2016

OVERVIEW OF VETERANS AFFAIRS (VA)

VA operates the largest integrated health care delivery system in America. VA provides a broad range of primary care, specialized care, and related medical and social support services. VA is also the Nation's largest integrated provider of health care education and training for physician residents and other health care trainees. VA advances medical research and development in areas that most directly address the diseases and conditions that affect Veterans and eligible beneficiaries.

VA administers compensation benefits, pension benefits, fiduciary services, education benefits, vocational rehabilitation and employment services, transition services, and home loan and life insurance programs.

VA operates the largest national cemetery system honoring Veterans and eligible beneficiaries and their families with final resting places in national shrines, and with lasting tributes that commemorate their service and sacrifice to our Nation.

VA provides contingency support for the Department of Defense (DoD), Department of Homeland Security/Federal Emergency Management Agency, and other Federal Departments and Agencies during times of war or national emergency.

VA is comprised of a Central Office (VACO), which is located in Washington, DC, and field facilities throughout the nation, as well as the U.S. territories and the Philippines. VA is the second largest Federal department, with a workforce of over 327,000 employees. Programs are administered by its three major line organizations: Veterans Health Administration (VHA), Veterans Benefits Administration (VBA) and National Cemetery Administration (NCA).

Services and benefits are provided through a nationwide network of 151 Medical Centers, 300 Vet Centers, 820 Community-based Outpatient Clinics (CBOC), 135 Community Living Centers, 6 Independent Outpatient Clinics, 103 Residential Rehabilitation Centers, 139 Integrated Disability Evaluation System (IDES) sites, 131 National and 90 State or Tribal Cemeteries, 56 Regional Offices, 6 Fiduciary Hubs, 3 Pension Management Centers, 1 Insurance Center, 94 VetSuccess on Campus Offices (VSOC), 284 Out-based benefits services offices (154 military, 130 Vocational Rehabilitation & Employment), 4 Education Regional Processing Offices (RPO), and 9 Regional Loan Centers.

Overview of the VA FOIA Program

The VA FOIA Service Director has VA-wide policy responsibility for ensuring compliance with the FOIA, VA regulations, and other applicable laws. Each Administration has Administration-wide policy and operational management authority. Each Administration may supplement VA FOIA regulations with its own administrative guidance and decide whether to operate a centralized or decentralized FOIA program. VHA and VBA's FOIA operations are currently centralized for purposes of policy and programmatic oversight and decentralized for purposes of operational execution. NCA's entire FOIA program is centralized.

The VA FOIA Service, through its FOIA team of three Government Information Specialists, also process initial FOIA and Privacy Act requests to the Office of the Assistant Secretary for Information Technology, logs in to the FOIA tracking system all requests (FY2015 – over 1400 requests) received in this office and then re-directs to the staff office(s) at VACO and in the field maintaining the responsive records. More challenging is that the FOIA Service's three Government Information Specialists act as FOIA Public Liaisons which involves daily interaction with internal and external customers: the public, requesters, the Veteran community and the 20 staff offices located at VACO, the three Administrations, the OIG, field offices, and other federal agency FOIA Offices to assist in the resolution of disputes between the agency and the requester.

Chief FOIA Officer: LaVerne H. Council, 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 2015, the VHA FOIA Office provided a total of 17 training programs for FOIA Officers. 10 of the trainings offered were in the form of a nation-wide conference call with VHA FOIA Officers. Various training topics were presented and discussed including but not limited to best practices in developing a FOIA program in a VA Medical Center, FOIA fees, fee waivers, expedited processing, exemption 4, use of the VA's electronic FOIA tracking system, and FOIA resources available FOIA Officers.

The remaining 7 presentations were conducted in VHA's MyVeHU Campus, which is a live training presentation that is streamed on the Internet. The live training presentation is recorded and then made available On Demand. The live sessions conducted in fiscal year 2015 were on the following topics: 38 U.S.C. 5705 Confidentiality of Quality Assurance Records, FOIA Exemption Seven, FOIA for VAMC Senior Leadership, FOIA Appeals and Litigation, FOIA Processing Request Scenarios Part I, FOIA Processing Request Scenarios Part II, and FOIA Program Management and Customer Service.

With the addition of these 7 new presentations, VHA's MyVeHU Campus library has a total of 15 FOIA presentations available On Demand. These On Demand Agency specific FOIA presentations are immediately available to new FOIA Officers as well as to existing FOIA Officers as refresher training.

3. If no, please explain why your agency did not hold training during the reporting period, such as if training offered by other agencies was sufficient for your agency's training needs.

- N/A

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

- VHA FOIA Officers are required attend the VHA FOIA training programs. Two staff from the VHA FOIA Office attended training offered by the American Society of Access Professionals.
- Yes. In FY 2015, all four VA OALC FOIA employees attended DOJ FOIA Training or the ASAP 8th Annual National Training Conference. The VA OALC FOIA Officer

attended two DOJ FOIA courses: 1) FOIA Litigation Seminar, and 2) Advanced FOIA Seminar. All four VA OALC employees also reviewed the VA OALC FOIA Turnover Manual (10 pages), Legal Guide (9 pages), and Flowchart (5 pages).

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

- Agency overall – 60% Although 100% of VHA and RMC FOIA staff attended substantive training.

6. 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.

- Less than ten percent of those employees designated as a FOIA Officer are a full-time FOIA Officer and thus, attending "substantive FOIA training" every year is a challenge when their primary job is not FOIA processing. Most FOIA Officers do not process requests on a regular basis and thus, any training they do receive is not enhanced as they lack daily and regular exposure to processing requests of both a simple and complex nature. As the FOIA Service lacks operational management authority over the Administrations or staff offices, the FS can only recommend and encourage FOIA Officers to take "substantive FOIA training."

Outreach:

7. 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
- This question addresses outreach that is conducted outside of the individual request or appeal process. Outreach activities can include engaging with frequent requesters by holding meetings or events which include them, conducting surveys or otherwise soliciting requester feedback, or participating in any other requester initiative coordinated by your agency or by others, such as OIP.
- Example: An agency receives numerous requests from one organization seeking similar types of records. The organization does not know how the agency organizes its records or how its FOIA professionals must conduct searches. When submitting FOIA requests, the organization often submits broad requests that take a long time to process and that result in the review of a lot of records that are ultimately of no interest to the requester. The agency holds a meeting with the organization to discuss its record keeping system, search capabilities, and overall FOIA process to assist the organization in the formulation of future FOIA requests. Because of the meeting, the organization now submits more targeted

requests that result in the agency being able to provide the requester the records it is interested in more quickly.

8. If you did not conduct any outreach during the reporting period, please explain why.

Discretionary Releases:

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

- Yes

If so, please briefly describe this process.

- If a discretionary exemption is applicable, the FOIA Officer must articulate the actual harm that he or she reasonably foresees would result if the document was disclosed. The FOIA Officer must document that determination in their FOIA administrative case file.

If your agency is decentralized, please specify whether all components of your agency have such a process or system in place?

- Yes

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

- Yes

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

- Exemption 5

12. 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.

- Pre-deliberative 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 continues to make national press, has been released.
- Procurement records can be redacted with the Exemption 5 deliberative process privilege, such as for source selection information and deliberative emails amongst contracting staff. If releasing that redacted information would not harm the government, we release. We also release portions of VA attorneys' emails that are still technically part of the attorney-client privilege, but which release would cause no harm.

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

Other Initiatives:

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

- The FOIA is covered in the yearly Privacy trainings that all employees are required to take. The VHA FOIA Office presented a MyVeHU Campus session titled "FOIA for VAMC Senior Leadership". The MyVeHU Campus presentation is available On Demand. The focus of the training was to inform VHA leaders of their responsibilities pertaining to the FOIA. The VHA FOIA Office was part of a VHA Central Office workgroup which developed and distributed guidance on responding to requests for release of psychological assessment data and test information under the Privacy Act and the FOIA. This guidance was geared to clinical and administrative VHA medical center staff.
- VA FOIA Service explains the general requirements of the FOIA as part of the new employee orientation program which has a session every two weeks. The purpose of the briefing 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.

15. 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 continued bi-monthly public release of nationwide patient access data for all VA Medical Centers and Community-Based Outpatient Clinics. This release of data relates to VHA's scheduling delays, an issue that made national press. This initiative started June 2014.
<http://www.va.gov/health/access-audit.asp>
- VHA also posted to a public website data from the Strategic Analytics for Improvement and Learning Value Model (SAIL). SAIL is a system for summarizing hospital system performance within VHA and assesses 25 quality measures in areas such as death rate, complications, and patient satisfaction, as well as overall efficiency at individual VA Medical Centers (VAMCs).
http://www.va.gov/QUALITYOFCARE/measure-up/Strategic_Analytics_for_Improvement_and_Learning_SAIL.asp

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

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 2015 Annual FOIA Report.

- 20.37

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.

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

3. 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.

- Yes

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 (in which the request is unsure of where to send the requests) are received at VACO; specifically at the FOIA Service. We continue to work closely together with staff offices and the three administrations to timely re-direct requests to the office (s) having the responsive records. The FOIA Service continues to provide guidance to VACO staff offices and field FOIA Officers on where to re-direct a request.

4. 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.

- Yes

Requester Services:

5. 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.

- The VA FOIA Service located at the VA's Central office (VACO) is clearly identified on the agency's FOIA webpage and in agency regulations (38 Code of Federal Regulations § 1.554) as the office to contact if a requester is unsure of where and/or how to submit a FOIA request to the VA and/or if more than one component office may have responsive records. The VA has a decentralized (approximately 400 geographically-dispersed components) system for handling FOIA requests and this can be confusing to requesters. The FOIA Service continues to work closely with requesters on a daily basis by phone and email to assist requesters in ensuring their requests are directed to the correct office(s) and to resolve disputes between requesters and component offices.

Other Initiatives:

6. 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. 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.

- No

2. Does your agency have a distinct process or system in place to identify other records for proactive disclosure? If so, please describe your agency's process or system.

- Yes. 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. 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?

- No

If so, provide an estimate of how much time is involved for each of your FOIA professionals and your agency overall.

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

- Yes

5. If so, please briefly explain those challenges.

- Record owners who are hesitant to make records available to the FOIA Service for posting to the public at large.

6. 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/health/access-audit.asp>
(posting of pending and completed appointments data (pdf format) on a month-by-month basis going back to January 2015)
- <http://www.benefits.va.gov/reports/>
http://www.benefits.va.gov/REPORTS/detailed_claims_data.asp
(posted data is current and archived back to 2004)

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

- No

Other Initiatives:

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

- VA continues to pursue all current efforts to increase proactive disclosures.

Section IV: Steps Taken to Greater Utilize Technology

A key component of the President's **FOIA Memorandum** 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.

Making Material Posted Online More Usable:

1. Beyond posting new material, is your agency taking steps to make the posted information more useable to the public, especially to the community of individuals who regularly access your agency's website?

- Yes

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

- FOIA Logs will be posted in an Excel spreadsheet format so as to allow the public to search them.

3. 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?

- No

Use of Technology to Facilitate Processing of Requests:

4. Did your agency conduct training for FOIA staff on any new processing tools during the reporting period, such as for a new case management system, or for search, redaction, or other processing tools.

- No

5. Beyond using technology to redact documents, is your agency taking steps to use 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?

- The VA is exploring in conjunction with our electronic tracking system vendor expanded use of its case management features for use by VACO FOIA Officers.

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

- De-duplicating software that identifies duplicate information and then removes it from further analysis.

Other Initiatives:

7. Did your agency successfully post all four quarterly reports for Fiscal Year 2015?

- Yes

8. 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.

9. 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 that are utilized by your agency to communicate with requesters?

- Yes - all components with the exception of the VBA.

10. If your agency does not communicate electronically with requests 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? *See id.*

- All internal and external email communications by VBA FOIA officers must be encrypted thus preventing the use of email with requesters outside the VA network. VBA currently does not inform requesters of this limitation.

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

Simple Track:

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?

- 24.88

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

- 84.85%

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 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

- Yes

6. If not, explain why and describe the causes that contributed to your agency not being able reduce its backlog.

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.

- 3.1%

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?

- No

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:

- The transition to a central location to process requests for deceased Veteran claim files from the 56 Regional Offices and reliance on Federal Record Center (FRC) personnel to retrieve those deceased Veteran claim files held by the FRC.

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."

- 71.4%

Backlog Reduction Plans:

11. In the **2015 guidelines for Chief FOIA Officer Reports**, any agency with a backlog of over 1,000 requests in Fiscal Year 2014 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 2015.

- The FOIA Service continues to work with staff offices to remind them of their FOIA statutory duties to respond to backlogged requests or determine if the requester is still interested, and if not, to close the request.

12. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2015, what is your agency's plan to reduce this backlog during Fiscal Year 2016?

- N/A

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

13. 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

14. 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.

- Six

15. 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? None

TEN OLDEST APPEALS

16. 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

17. 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 2014 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

- Zero

TEN OLDEST CONSULTATIONS

18. 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

19. 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.

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

20. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2014.

- The VA is a large agency with a decentralized FOIA program with over 250 designated FOIA Officers 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/programs that directly and indirectly support the Veterans and their beneficiaries. 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.

21. 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

22. 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.

- The FOIA Service has available contract FOIA support to those staff offices that request assistance in reducing their backlog by providing administrative support in processing requests and/or assistance with closing requests in our electronic tracking system.

Interim Responses:

23. Does your agency have a system in place to provide interim responses to requesters when appropriate? See *OIP Guidance*, "[The Importance of Good Communication with FOIA Requesters](#)." (Mar. 1, 2010)

- Yes

24. If your agency had a backlog in Fiscal Year 2015, 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

1. Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2015?

- No

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

Success Story

The VA OALC FOIA Office went from redacting 200 pages/day per Government Information Specialist in FY 2013, to 300 pages/day in FY 2014, to 370 pages/day in FY 2015 as per a change in a job element of their position description.

The FOIA program continues to participate in the VA's Open Data initiative in which VA has placed over 640 data sets on www.data.gov