

## **2020 Chief FOIA Officer Report for The Federal Labor Relations Authority**

The Federal Labor Relations Authority (“FLRA” or “agency”) Chief Freedom of Information Act (“FOIA”) Officer Report describes activities that show how the agency has implemented the guiding principle underlying the FOIA aimed at the presumption of openness. Consistent with executive-branch guidance, the FLRA is committed to accountability and transparency. As part of the aim of achieving openness, the Office of Information and Privacy (“OIP”), Department of Justice (“DOJ”) issued guidelines for the 2020 Chief FOIA Officer Reports, requiring agencies to report on their FOIA activities. This report addresses the questions raised in the most recent guidance.

### **Time Frame for Report**

The reporting period for this report is from March 2019 to March 2020.

*Name and Title of Agency Chief FOIA Officer:*

- The Agency – the FLRA.
- The Chief FOIA Officer – Solicitor Noah Peters.

### **Section I: Steps Taken to Apply the Presumption of Openness**

The guiding principle underlying DOJ’s FOIA Guidelines is 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. Is your agency’s Chief FOIA Officer at or above this level?**

Yes.

- 2. Please provide the name and title of your agency’s Chief FOIA Officer.**

Noah Peters, Solicitor of the FLRA.

#### *B. FOIA Training*

- 3. 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, since our 2019 Report, agency personnel with FOIA responsibilities attended a FOIA training provided by the FLRA.

- 4. If yes, please provide a brief description of the type of training attended and the topics covered.**

The agency held an internal FOIA training session for personnel with FOIA responsibilities on December 17, 2019. This training included information on records subject to FOIA, searching for responsive records, FOIA exemptions, FOIA response times, responses to requesters, fees that may be charged for requests, and the appeal process available to requesters.

- 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.**

During the reporting period, approximately 83% of the agency's FOIA professionals and staff attended at least one 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.**

N/A.

#### *C. 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? 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.**

No.

#### *D. Other Initiatives*

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

In this past year, the Chief FOIA Officer and his direct subordinates briefed agency leadership about the overall performance of the FOIA program.

- 9. 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.**

The agency periodically reviews its FOIA website to determine if there are additional materials beyond those covered by FOIA requests that are appropriate for posting. This past year, the agency continued to work with its partners at FOIAonline to determine ways to improve the public's ability to electronically access information, freeing up resources to allow the partner agencies to more efficiently handle other requests. Agency FOIA officers also periodically communicate with the agency's IT unit and other key agency personnel to determine if it is appropriate to post additional materials on the agency's FOIA website.

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

DOJ's FOIA Guidelines emphasize 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.

- 1. For Fiscal Year 2019, 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 2019 Annual FOIA Report.**

The FLRA maintained an average of 19.64 days to adjudicate the requests it received for expedited processing.

- 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.**

The agency has hired additional staff who will be responsible for responding to FOIA requests. The FLRA has further set up a system of reminding FOIA staff assigned requests for expedited processing to respond to them within 10 calendar days rather than first addressing them in response to the underlying FOIA requests.

- 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.**

As a member agency using FOIAonline, agency FOIA professionals are in periodic contact throughout the year with the FOIAonline administrators looking for ways to streamline FOIA processing and to make it more efficient. Additionally, key members of the agency's FOIA staff periodically review incoming requests made throughout the country to ensure matters are properly processed and to work against incurring backlogs.

- 4. 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).**

Although the agency does provide the additional notification, the agency is unaware of any requesters seeking assistance from the agency's FOIA Public Liaison.

- 5. Please Optional -- Please describe:**

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

As noted in the agency's 2019 Chief FOIA Officer Report, as a national coordinator for the agency's FOIAonline case-tracking system, the office of the Chief FOIA Officer has access to each agency FOIA processing unit's requests and processing information about these requests. FOIAonline and the office of the Chief FOIA Officer regularly monitor the system to help ensure that all FOIA requests are handled in a uniform and timely manner. In addition, the agency's FOIA professionals work with its FOIAonline partners across the government to continually improve the case-tracking system.

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

The Department of Justice has long focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

- 1. Provide examples of any 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.**

The agency routinely updates its website with the most recent FLRA, ALJ, and FSIP decisions and Office of the Solicitor briefs. This is a link to the agency's electronic reading room:

<http://www.flra.gov/elibrary>.

During the first quarter of FY 2020, the FLRA further added a page to its website that contains requests to the FLRA for policy statements, as well as the FLRA's decisions concerning those requests. A link to the page is available in the electronic reading room page and here:

<https://www.flra.gov/resources-training/resources/policy-statements>

The Chief FOIA Officer and his staff respond to over 80% of the agency's FOIA requests and regularly review agency-wide FOIA responses. When the Chief FOIA Officer and his staff recognize that records have been requested and released three or more times, they ensure that the records are proactively disclosed.

- 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?**

The agency holds periodic trainings for the public and issues press releases to disseminate significant information regarding agency. Through those communication channels the agency has obtained feedback about, among other things, the website content and presentation. The agency then decides which of the suggestions to implement.

- 3. If yes, please provide examples of such improvements.**

The agency continues to place its most recent decisions, training announcements, and news on the home page of the website. For example, the website has been updated to provide information concerning FLRA policy statements, information on key agency leadership, and upcoming agency trainings. At trainings, the agency has sought feedback about presentation materials, which the agency proactively posts to its website. This is done to provide the public easier access to key agency information.

4. **Optional -- Please describe:**

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

The Chief FOIA Officer and FOIA staff review the agency's FOIA web pages and work with key agency personnel to determine if there are additional materials beyond those covered by FOIA requests that are appropriate for posting.

Moreover, the agency maintains a variety of RSS newsfeeds that provide interested subscribers with timely notices of records as they are posted to the agency's website. The agency also periodically issues press releases to disseminate significant information regarding its decisions and records, and informs the public of where that information can be found on the agency's website.

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

A key component of FOIA administration is using technology to make information more accessible. In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

1. **Is your agency leveraging or exploring any new technology to facilitate efficiency in its FOIA administration that you have not previously reported? If so, please describe the type of technology.**

The FLRA continues to work with its FOIAonline partners across the government to continually improve its case-tracking system. The FLRA also continues to improve its website and internal electronic document management systems to make documents more readily available for responses to FOIA requests.

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?**

Yes.

3. **Did your agency successfully post all four quarterly reports for Fiscal Year 2019?**

Yes, the agency posted all of the required quarterly reports for Fiscal Year 2019 on its website at <https://www.flra.gov/elibrary>.

4. **If our 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.**

The agency timely posted all required quarterly reports for Fiscal Year 2018 on its website at <https://www.flra.gov/elibrary>. None of the Quarters are listed on FOIA.gov. The office of the Chief FOIA Officer is contacting FOIA.gov to determine why that is the case.

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.**

2018 – <https://www.flra.gov/elibrary>

2019 – Pending

6. **Optional -- Please describe:**

- **Best practices used in greater utilizing technology**
- **Any challenges your agency faces in this area**

As noted above and below, the agency continues to work with its partners at FOIAonline to streamline and improve the performance of processing FOIA requests electronically. Moreover, the electronic storage of most agency materials, and open dialogue between agency FOIA and IT staff, enables the agency to nimbly respond to FOIA requests.

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

The Department of Justice has 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.

- A. *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 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 2019?**

Yes, the average number of days was fewer than 20 working days, the average was 13.26 working days.

**3. Please provide the percentage of requests processed by your agency in Fiscal Year 2019 that were placed in your simple track.**

88%

**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. The agency does track simple requests separately.

*B. 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 2018 and Fiscal Year 2019 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 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?**

No. The agency had a backlog of 0 requests at the end of FY 2018. The agency had a backlog of 3 requests in FY 2019.

**6. If not, did your agency process more requests during Fiscal Year 2019 than it did during Fiscal Year 2018?**

Yes. The FLRA processed 84 requests in FY 2019. The FLRA processed 62 requests in FY 2018

**7. If our agency's request backlog increased during Fiscal Year 2019, 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.**

The FLRA's backlog increased in FY 2018 because the office of the Chief FOIA Officer, which processes most of the FLRA's FOIA Requests, was short-staffed for most of the year. The office is normally staffed by three attorneys. The office was staffed by one or two attorneys throughout FY 2018. Early in FY 2019, the office hired a third attorney for the office. As the office of the Chief FOIA Officer is now fully staffed, the FOIA backlog will be resolved.

**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 2019. If your agency has no request backlog, please answer with "N/A."**

3%.

#### *Backlogged Appeals*

**9. If your agency had a backlog of appeals at the close of Fiscal Year 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?**

The agency had no backlog of administrative appeals in either FY 2018 or FY 2019.

**10. If not, did your agency process more appeals during Fiscal Year 2019 than it did during Fiscal Year 2018?**

N/A.

**11. If your agency's appeal backlog increased during Fiscal Year 2019, 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.

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 2019. If your agency did not receive any appeals in Fiscal Year 2019 and/or has no appeal backlog, please answer with "N/A."**

N/A.

*C. Backlog Reduction Plans*

**13. In the 2019 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2018 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 2019?**

N/A.

**14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2019, what is your agency's plan to reduce this backlog during Fiscal Year 2020?**

N/A.

*D. Status of 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 2018 and Fiscal Year 2019 when completing this section of your Chief FOIA Officer Report.

*Oldest Requests*

**15. In Fiscal Year 2018, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2017 Annual FOIA Report?**

N/A. There were no pending requests at the end of FY 2018.

**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 2018 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.**

N/A. There were no pending requests at the end of FY 2018.

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

The FLRA attempted to respond to requests in a timely manner despite reduced staff.

*Ten Oldest Appeals*

**18. In Fiscal Year 2019, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2018 Annual FOIA Report?**

N/A. The agency had no pending appeals at the end of FY 2018.

**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 2018 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.**

N/A. The agency had no pending appeals at the end of FY 2018.

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

The agency did not have any appeals in FY 2018 or FY 2019.

*Ten Oldest Consultations*

**21. In Fiscal Year 2019, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2018 Annual FOIA Report?**

The agency did not have any pending consultations as of the end of FY 2018.

**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 2018 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.**

The agency did not have any pending consultations as of the end of FY 2018.

*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.**

The FLRA has no outstanding requests, appeals or consultations at the end of FY 2018. The office of the Chief FOIA Officer was understaffed in FY 2019. As the office is fully staffed, the overall age of our pending requests will go down.

**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.**

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 2020.**

N/A.

*F. Success Stories:*

- As in prior years, one of the major success stories for the agency continues to be the enhancements made to its website, which provides access to the most current decisions, policy statements, case processing data, program training, and information about all of the agency's activities.

- The agency takes an active role coordinating with its partners at FOIAonline, which is a cost-effective FOIA request tracking system. Due to FOIAonline's success, the number of agencies using the tracking system continues to grow, leading to additional investments and the development of enhanced system functioning.