

## **2023 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 2023 Chief FOIA Officer Reports, requiring agencies to report on their FOIA activities. This report addresses the questions raised in the most recent guidance.

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

The guiding principle underlying the Attorney General’s FOIA Guidelines is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

#### **A. FOIA Leadership**

- 1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at the Assistant Secretary or equivalent level. See 5 U.S.C. § 552(j)(1) (2018). Is your agency’s Chief FOIA Officer at this level?**

Yes.

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

Rebecca J. Osborne, the Acting Solicitor of the FLRA is the FLRA’s Acting Chief FOIA Officer.

- 3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?**

The Chief FOIA Officer’s staff regularly communicate with FLRA Presidential and administrative leadership about FOIA-related issues.

#### **B. Presumption of Openness**

- 4. The Attorney General’s 2022 FOIA Guidelines provides that “agencies should confirm in response letters to FOIA requesters that they have considered the**

foreseeable harm standard when reviewing records and applying FOIA exemptions.”  
Does your agency provide such confirmation in its response letters?

No, but the FLRA will do so in 2023.

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interested protected by a FOIA exemption. This is commonly referred to as a Glomar response. With respect to these responses, please answer the below questions:

a. In addition to tracking the asserted exemption, does your agency specifically track whether a request involved a Glomar response?

Yes.

b. If yes, please provide:

i. the number of times your agency issued a full or partial Glomar response (separate full and partial if possible);

Zero.

ii. the number of times a Glomar response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).

Zero.

c. If your agency does not track the use of Glomar responses, what would your agency need to do to track in the future? If possible, please describe the resources and time involved.

N/A.

6. 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. 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: Ensuring Fair and Effective FOIA Administration

The Attorney General’s FOIA Guidelines provide that “[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of FOIA obligations by the entire agency workforce.” The Guidelines reinforce longstanding guidance to “work with FOIA requesters in a spirit of cooperation.” The Attorney General also “urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency’s FOIA administration” as part of ensuring fair and effective FOIA administration.

### **A. FOIA Training**

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

The office of the Chief FOIA Officer responds to the vast majority of FOIA requests received by the agency. That office relies on the Department of Justice’s Guide to the Freedom of Information Act. The office provides FOIA advice to FLRA professionals throughout the year. In December 2022, the FLRA asked all FOIA professionals to complete a FOIA training provided by the Department of Justice at the following link: <https://www.justice.gov/oip/training/elearning/federal-employees/story.html>.

- 2. 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.

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

In December 2022, the FLRA asked all FOIA professionals to complete a FOIA training provided by the Department of Justice at the following link: <https://www.justice.gov/oip/training/elearning/federal-employees/story.html>. 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.

- 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.**

During the reporting period, approximately 80% of the agency's FOIA professionals and staff attended at least one substantive training.

5. **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.

6. **Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and if senior leaders at your agency received a briefing on your agency’s FOIA resources, obligations and expectations during the FOIA process?**

All FLRA employees receive annual records management training. The office of the Chief FOIA Officer periodically discusses FOIA issues with FLRA leadership throughout the year.

## **B. Outreach**

7. **Did your FOIA professionals engage in any outreach or dialogue, outside of the standard request process, 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.

8. **As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue, and, if applicable, any specific examples.**

Yes.

9. **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 Fiscal Year 2022 (please provide a total number or an estimate of the number).

One.

### C. Other Initiatives

**10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.**

Yes. The office of the Chief FOIA Officer expects to be fully staffed in 2023. Moreover, the FLRA anticipates changing FOIA providers in 2023. No other changes are anticipated at this time.

**11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.**

The FLRA currently receives between 100 and 200 requests a year. The office of the Chief FOIA Officer responds to over 90% of the agency's FOIA requests and regularly reviews agency-wide FOIA responses and is able to make assessments based on the requests that it receives and processes.

**12. Optional -- If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.**

In this past year, the office of the Chief FOIA Officer briefed agency leadership about the overall performance of the FOIA program.

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

The Attorney General's FOIA Guidelines emphasize that "proactive disclosure of information is . . . fundamental to the faithful application of the FOIA." The Guidelines direct agencies to post "records online quickly and systematically in advance of any public request" and reiterate that agencies should post records "in the most useful, searchable, and open formats possible."

**1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.**

The office of the Chief FOIA Officer responds to over 90% of the agency's FOIA requests and regularly reviews agency-wide FOIA responses. When the office of the Chief FOIA Officer observes that a record has been requested and released three or more times, they ensure that the records are proactively disclosed.

- 2. 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>

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 FLRA is also now issuing quarterly digests of FLRA Authority decisions, which are available at this link:

<https://www.flra.gov/decisions/quarterly-digest-authority-decisions>

- 3. 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 FLRA 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.

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

The FLRA's core mission is to adjudicate labor-management disputes in the federal sector through the issuance of decisions and training that must be human readable and understandable. The agency continues to place its most recent decisions, training announcements, and news on the home page of the website. For example, the FLRA announced and updated information concerning key agency leadership, decisions, and quarterly digests of FLRA Authority decisions. The FLRA has also posted a mobile-friendly copy of its statute on line.

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

Yes, the Chief FOIA Officer's staff communicate with FLRA leadership and the FLRA's Offices of Legislative Affairs & Program Planning and Information Technology about proactive disclosures.

**6. 6. Optional -- Please describe the best practices used to improve proactive disclosures and 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 available to the public and to gain efficiency in FOIA processing. The Attorney General's FOIA Guidelines emphasize the importance of making FOIA websites easily navigable and complying with the FOIA.gov interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

**1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?**

Through its membership in FOIAonline, the FLRA in 2022 ensured that its FOIA-related technological capabilities complied with DOJ standards. In FY 2023, the FLRA will have to choose a new FOIA vendor.

- 2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program.**

In 2022, the FLRA began searching for an alternative to its current FOIA system. The FLRA anticipates transitioning to a new FOIA system in 2023.

- 3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.**

The FLRA's IT office conducts searches for FOIA documents on FLRA computer systems.

- 4. 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.

- 5. Did all four of your agency's quarterly reports for Fiscal Year 2022 appear on FOIA.gov?**

Three of the agency's required quarterly reports for Fiscal Year 2022 have been posted on FOIA.gov. The fourth will be posted shortly.

- 6. 5. 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 2023.**

The FLRA anticipates having a fully staffed office of the Chief FOIA officer in FY2023.

- 7. 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 2021 Annual FOIA Report and, if available, for your agency's Fiscal Year 2022 Annual FOIA Report.**

2021 – <https://www.flra.gov/elibrary>

2022 – <https://www.flra.gov/elibrary>



8. **8. In February 2019, DOJ and OMB issued joint Guidance establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?**

Yes.

9. **9. Optional -- Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.**

As noted above and below, the FLRA has worked with its partners at FOIAonline to streamline and improve the performance of processing FOIA requests electronically. The FLRA will replace FOIAonline's services in FY 2023.

**Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness  
in Response to Requests and Reduce Backlogs**

The Attorney General's FOIA Guidelines instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

**A. Remove Barriers to Access**

1. **Has your agency established alternative means of access to first-party requested records outside of the FOIA process?**

Yes, individuals may submit a Privacy Act Request.

2. **If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.**

Instructions for submitting Privacy Act Requests are available both in the FLRA's regulations, see <https://go.usa.gov/xt2xA>, and on its website, see "Instructions for Submitting a Privacy Act Request" at <https://go.usa.gov/xt2xF>.

**B. Timeliness**

- 3. For Fiscal Year 2022, 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 2022 Annual FOIA Report.**

The FLRA maintained an average of 26.21 days to adjudicate the requests it received for expedited processing.

- 4. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2022 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.**

During most of FY 2022 the FLRA received an unusually high number of requests that required searches through many documents. Moreover, through most of 2022, the office of the Chief FOIA Officer was less than fully staffed. As noted above, the Chief FOIA Officer's office should be fully staffed in the next few months.

- 5. Does your agency utilize a separate track for simple requests?**

Yes.

- 6. 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 2022?**

Yes; 19.59 days.

- 7. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?**

N/A

- 8. Please provide the percentage of requests processed by your agency in Fiscal Year 2022 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100.**

73.5%.

9. **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.

### C. Backlogs

#### BACKLOGGED REQUESTS

10. **If your agency had a backlog of requests at the close of Fiscal Year 2022, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?**

No.

11. **If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2022 than it did during Fiscal Year 2021?**

Yes.

12. **If your agency's request backlog increased during Fiscal Year 2022, 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.**
- **Impact of COVID-19 and workplace and safety precautions.**
- **Any other reasons – please briefly describe or provide examples when possible.**

During FY2022 the FLRA received an unusually high number of requests that required searches and review of many documents. Many requests sought many years of employee emails related to certain subjects. Reviewing potentially relevant documents

and ensuring that documents produced do not contain protected information takes much time.

Moreover, through most of 2022, the office of the Chief FOIA Officer was less than fully staffed. As noted above, the Chief FOIA Officer's office should be fully staffed in the next few months.

- 13. 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 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A."**

20%

#### **BACKLOGGED APPEALS**

- 14. If your agency had a backlog of appeals at the close of Fiscal Year 2022, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?**

The FLRA did not have a backlog of administrative appeals at the close of FY 2022.

- 15. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2022 than it did during Fiscal Year 2021?**

N/A.

- 16. If your agency's appeal backlog increased during Fiscal Year 2022, 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.
- Impact of COVID-19 and workplace and safety precautions.
- Any other reasons – please briefly describe or provide examples when possible.

N/A.

17. 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 2022. If your agency did not receive any appeals in Fiscal Year 2022 and/or has no appeal backlog, please answer with "N/A."

N/A.

### C. Backlog Reduction Plans

18. In the 2022 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2021 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your 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 2022?

N/A.

19. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2022, please explain your agency's plan to reduce this backlog during Fiscal Year 2023.

N/A.

### E. Reducing the Age of Requests, Appeals, and Consultations

#### TEN OLDEST REQUESTS

20. In Fiscal Year 2022, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2021 Annual FOIA Report?

Yes.

21. 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 2021 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

N/A.

22. 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.

## TEN OLDEST APPEALS

**23. In Fiscal Year 2022, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2021 Annual FOIA Report?**

N/A. The agency had no pending appeals at the end of FY 2021.

**24. 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 VI.C.(5) of your Fiscal Year 2021 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.**

N/A.

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

The FLRA attempted to respond to appeals in a timely manner.

## TEN OLDEST CONSULTATIONS

**26. In Fiscal Year 2022, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2021 Annual FOIA Report?**

The agency did not have any pending consultations as of the end of FY 2021.

**27. 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 2021 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.**

N/A.

## ADDITIONAL INFORMATION ON TEN OLDEST

**28. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2023.**

N/A.

## F. Additional Information about FOIA Processing

**29. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency's overall FOIA request processing and backlog. If possible, please indicate the number and nature of requests subject to litigation, common causes leading to litigation, and any other information to illustrate the impact of litigation on your overall FOIA administration.**  
No.

**30. How many requests during Fiscal Year 2022 involved unusual circumstances as defined by the FOIA? (This information is available in your agency's FY22 raw data).**

Zero.