

**Office of Management and Budget (OMB)**  
**Chief Freedom of Information Act (FOIA) Officer's Report**  
**(May 2010)**

This Chief FOIA Officer's Report is issued in accordance with Attorney General Eric Holder's Guidelines on FOIA issued on March 19, 2009. In compliance with the Attorney General's Guidance, OMB's Chief FOIA Officer has reviewed all aspects of OMB's FOIA administration and issues this report on the steps OMB has taken to improve FOIA operations and facilitate information disclosure.

Copies of this report, as well as information on how to make a Freedom of Information Act (FOIA) request to OMB, are available at the "FOIA" site on the OMB Home Page at <http://www.whitehouse.gov/omb/foia>.

Those wishing to submit FOIA requests to the Office of Management and Budget (OMB) should submit their request, in writing, to OMB either via e-mail (OMBFOIA@omb.eop.gov), fax (202) 395-3504, or to the following mailing address: Office of Management and Budget, New Executive Office Building, FOIA Officer, Room 9026, 725 17th Street, N.W., Washington, DC 20503.

**I. Steps Taken to Apply the Presumption of Openness**

*1. Describe below the steps your agency has taken to ensure that presumption is being applied to all decisions involving the FOIA. This section should include a discussion of the range of steps taken by your agency to apply this presumption, from publicizing the President's FOIA Memorandum and Attorney General's FOIA Guidelines and providing training on them, to implementing the presumption in response to FOIA requests and administrative appeals, with examples or statistics illustrating your agency's action in making discretionary releases of records or partial releases when full disclosure is not possible.*

In implementing the guiding principles underlying President Obama's FOIA Memorandum and the Attorney General's FOIA Guidelines, OMB has taken the following steps:

OMB's FOIA Office and its Office of the General Counsel have thoroughly reviewed the President's FOIA Memorandum and the Attorney General's FOIA Guidelines and have implemented their presumption of openness. In OMB's review of documents that are responsive to a FOIA request, OMB applies the "presumption of disclosure" by conducting a

document-by-document, line-by-line review to identify materials that, to the maximum extent practicable, are appropriate for release, including through OMB's discretionary release of materials that fall within one of the FOIA's "exemptions" from mandatory release (given the substantially deliberative nature of OMB's activities, the FOIA exemption that most often applies to OMB's records is Exemption 5, for the deliberative process privilege).

In its recent report of March 15, 2010, on the Executive Branch's FOIA activities, the National Security Archive noted (pp. 3, 13) that OMB has had a positive record of "both increases in releases and decreases in denials under the FOIA" – with a decrease of over 50% in OMB's full denials (withholdings).

As reflected in OMB's Annual FOIA report for Fiscal Year 2009, over the past year OMB has made full releases of information requested in 51 FOIA requests. Moreover, OMB made partial releases of information in response to 24 requests and only fully denied 13 requests. Stated another way, of the 88 requests for which OMB had responsive records, approximately 85% were released either in full or in part (with the majority, nearly 60%, being full releases).

We would also note that OMB was involved in litigation, *Public Citizen v. OMB*, in which a FOIA requester sought deliberative documents from OMB under FOIA. On remand from the DC Circuit's ruling, OMB determined that it was appropriate to settle the case rather than continue to litigate our Exemption 5 claim before the District Court. In so doing, OMB released additional deliberative materials to the FOIA requester, again demonstrating OMB's commitment to following the Administration's presumption of openness.

*2. Report whether your agency shows an increase in the number of requests where records have been released in full or where records have been released in part when compared with those numbers in the previous year's Annual FOIA Report.*

Over the past year, OMB has increased the number of full and partial information releases for records requested under FOIA.

As noted above, in its recent report of March 15, 2010, on the Executive Branch's FOIA activities, the National Security Archive noted (pp. 3, 13) that OMB has had a positive record of "both increases in releases and decreases in denials under the FOIA" – with a decrease of over 50% in OMB's full denials (withholdings).

As reflected in OMB's Annual FOIA report for Fiscal Year 2009, OMB provided a full release of requested records for 51 FOIA requests. OMB also provided a partial release of requested

records for an additional 24 requests. OMB fully withheld information for only 13 requests. By comparison, as reflected in OMB's Annual FOIA report for the prior fiscal year (Fiscal Year 2008), OMB provided a full release of requested records for 48 FOIA requests, provided a partial release of requested records for an additional 13 requests, and fully withheld information for 30 requests.

A comparison of this data shows that, from Fiscal Year 2008 to Fiscal Year 2009, OMB increased its full release of information from 48 requests to 51, and increased its partial release of information from 13 requests to 24. As a result of these additional releases, OMB's full withholding decreased in one year from 30 requests to 13.

## **II. Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests**

*As the Attorney General emphasized in his FOIA Guidelines, "[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." Describe here the steps your agency has taken to ensure that your system for responding to requests is effective and efficient. This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support.*

When a FOIA request is received by OMB's FOIA Office, the FOIA Officer logs in every request and assigns the request to the appropriate program office(s) within OMB to conduct a search for potentially responsive records. The FOIA Officer directly interacts with the appropriate OMB program offices and OMB's General Counsel's Office to answer questions regarding the conduct of FOIA searches within the agency. The FOIA Office informs the program offices of the statutory deadlines imposed by FOIA and follows up to ensure that searches are conducted and completed as quickly as possible. The FOIA Office also determines whether OMB needs to contact other agencies regarding the necessary consultations or referrals of information that originated from another agency. Where appropriate, the FOIA Office communicates with requesters to clarify requests.

OMB's FOIA Office is located within the agency's Management and Operations Division, which houses OMB's Information Technology Office. Working within the same Division as the IT Team provides the FOIA Office with IT resources to meet its needs. Moreover, this year OMB created

a new e-mail address ([OMBFOIA@omb.eop.gov](mailto:OMBFOIA@omb.eop.gov)) to provide FOIA requesters with an easy method for contacting the FOIA office.

In addition, as is noted under item #1 above, OMB's Office of General Counsel devotes substantial resources in careful, line-by-line reviews of potentially responsive documents following their identification. This careful line-by-line review allows OMB to identify materials that, to the maximum extent practicable, are appropriate for release, including through OMB's discretionary release of materials that fall within one of the FOIA's "exemptions" from mandatory release (given the substantially deliberative nature of OMB's activities, the FOIA exemption that most often applies to OMB's records is Exemption 5, for the deliberative process privilege). Furthermore, the line-by-line review is followed by a senior level review of any redactions made during the initial line-by-line review to ensure that OMB has properly and appropriately implemented the presumption of openness. The substantial increase in General Counsel resources through both the line-by-line review, and senior level review, demonstrate OMB's commitment to following the Administration's presumption of openness.

### **III. Steps Taken To Increase Proactive Disclosures**

*Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received. Describe here the steps your agency has taken to increase the amount of material that is available on your agency website, including providing examples of proactive disclosures that have been made since issuance of the new FOIA Guidelines.*

OMB has posted information online in response to the government-wide Open Government Directive that the OMB Director issued December 8, 2009 (OMB Memorandum M-10-06, available at [http://www.whitehouse.gov/omb/assets/memoranda\\_2010/m10-06.pdf](http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf)). This information includes data in machine-readable format regarding draft regulations, information on improper payments and economic forecast information. This information is available to the public on the OMB website (at [www.OMB.gov/open](http://www.OMB.gov/open)) as well as on the government website [www.Data.gov](http://www.Data.gov).

The information that OMB has placed on its website includes:

Data on OIRA Reviews of Draft Rules. OMB's Office of Information and Regulatory Affairs (OIRA) conducts reviews of significant draft regulations proposed by Executive Branch agencies. OMB has placed information and data concerning the draft regulations reviewed by OIRA under Executive Orders 12291 and 12866. OMB reviews significant regulations for the Executive

Branch and this data provides information by agency, length of review in days, and economic significance of the regulation. The information provided contains information of rulemaking going back to 1981.

Improper Payments Database. Improper payments occur when Federal funds go to the wrong recipient, or the recipient receives the incorrect amount of funds, or documentation is not available to support a payment, or the recipient uses the funds in an improper manner. This data set provides the dollar amounts of improper payments as reported by agencies in their Performance and Accountability Reports (PARs) and Agency Financial Reports (AFRs).

History of Economics Forecasts. This data provides economics forecasts going back to 1976. This data was collected by the Office of Management and Budget from all Federal Budgets submitted since FY 1976. During transition years, it includes economic forecasts from both incoming and outgoing Administration budgets.

Moreover, the data on another OMB website, [www.USAspending.gov](http://www.USAspending.gov), is being expanded and enhanced. USAspending.gov was originally developed to meet the specific requirements of the Federal Funding Accountability and Transparency Act of 2006 (FFATA), co-sponsored by then-Senator Obama and Senator Coburn. The information on this website displays data, provided by other Executive Branch agencies, pertaining to contracts, assistance awards, purchase cards recipients and programs. The data shown on USAspending.gov reflects obligations (amounts awarded for federally sponsored projects during a given budget period), but not outlays or expenditures (actual monetary disbursements made against each project). Beginning in 2010, USAspending will be launching on a new platform with greater capacity and enhancements, such as interactive maps to visualize spending by state, interactive charts to show spending trends from year to year and cross-agency spending comparisons. These efforts reflect OMB's commitment to openness and also serve to proactively release agency information in advance of requests under FOIA.

#### **IV. Steps Taken To Greater Utilize Technology**

*A key component of the President's 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. For this section of the Chief FOIA Officer Report, please answer the following questions:*

1.) *Does your agency currently receive requests electronically.*

Yes. As noted above, OMB has established a new e-mail address ([OMBFOIA@omb.eop.gov](mailto:OMBFOIA@omb.eop.gov)) to receive requests electronically.

2.) *If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically.*

N/A

3.) *Does your agency track requests electronically.*

Yes.

4.) *If not, what are the current impediments to your agency utilizing a system to track requests electronically.*

N/A

5.) *Does your agency use technology to process requests.*

Yes.

6.) *If not, what are the current impediments to your agency utilizing technology to process requests.*

N/A

7.) *Does your agency utilize technology to prepare you agency Annual FOIA Report.*

Yes.

8.) *If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report.*

N/A

**V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests**

*1. If you have a backlog, report here whether your backlog is decreasing. That reduction should be measured both in terms of the numbers of backlogged requests and administrative appeals that remain pending at the end of the fiscal year, and in terms of the age of those requests and appeals.*

As noted in OMB's annual FOIA report for Fiscal Year 2009, OMB had a backlog at the end of the fiscal year of one overdue FOIA request (which was five days overdue at the end of the fiscal year). Of the 16 FOIA requests that were pending at OMB at the end of Fiscal Year 2009, they had been pending for a median period of 15 days and an average period of 17 days. OMB did not have any overdue FOIA appeals at the end of Fiscal Year 2009.

*2. If there has not been a reduction in the backlog describe why that has occurred and what steps your agency is taking to bring about a reduction.*

Please see the answer to #V.1, above.

*3. Describe the steps your agency is taking to improve timeliness in responding to requests and to administrative appeals.*

Please see the answer to #V.1, above. In addition, OMB's FOIA Office and the Office of the General Counsel work proactively with other OMB offices to improve the processing of all FOIA requests and appeals. OMB is exploring ways, including through increased reliance on information technology, of further decreasing OMB's response times.