

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

Name and Title of Agency Chief FOIA Officer: Stephen Warren, Department of Veterans Affairs

Section I: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.

FOIA Training:

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

Yes; VA FOIA Officers participate in monthly FOIA training teleconferences. Additionally, ad hoc FOIA guidance is provided on an almost daily basis to FOIA Officers at headquarters and throughout the field ranging from technical questions on the tracking system to the legal sufficiency of redacting certain information, granting or denying fee waivers and expediting processing.

2. If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.

6 FOIA Town Halls for Agency FOIA Officers

12 Monthly Conference Calls for VHA FOIA Officers Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?

3. Did your FOIA professional attend any FOIA training, such as that provided by the Department of Justice?

Yes; VA FOIA Officers attended DOJ FOIA Training and ASAP's 6th Annual National Training Conference.

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

41% of its FOIA officers attended FOIA training

5. OIP has issued guidance that every agency should make core, substantive FOIA training available to all their FOIA professionals at least once a year. Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year.

The VA FOIA Service is currently developing an internal training document to be distributed to all VA FOIA Officers in FY 14. Additionally, the VA FOIA Service provides monthly teleconferences to provide training to all FOIA Officers within the VA. The Veterans Health Administration (VHA) previously provided on-site training for over 150 FOIA officers located at VA Medical Centers throughout the country but budget constraints have prevented this weeklong on-site training from taking place during this reporting period. Alternatives are being explored to replace the on-site training sessions.

Outreach:

6. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement.

No. However, VA FOIA along with FOIA representatives of the three VA Administrations (VHA, Veterans Benefits (VBA) and National Cemetery Administrations (NCA)), in addition to other program offices within VA is working with the VA Office of Policy and Planning (OPP) to identify, acquire and disseminate data sets of information being requested, previously requested or anticipated requests for data sets by the medical research and other academic/scientific research community along with the FOIA requester community.

Discretionary Disclosures:

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

7. Does your agency have a formal process in place to review records for discretionary release? If so, please briefly describe this process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases.

Yes; VA FOIA Officers review requested records for release that could be withheld under Exemption 5. This review is done by the appropriate FOIA Officer responding to the request and in consultation with their respective

Administration or Department level FOIA Service. The VA FOIA Service also assists FOIA Officers in reviewing records for release.

The Office of Inspector General (OIG) endeavors to release information in accordance with all applicable law, including the FOIA, the Privacy Act and specific VA confidentiality statutes and regulations. A significant amount of work performed by OIG investigators, health inspectors and auditors involves sensitive records and subjects. The sensitive nature of the work notwithstanding, the OIG routinely publishes reports on its public website that inform the Administration, members of Congress and the general public of important issues affecting Veterans, the Department of Veterans Affairs and its employees. Although disclosure of information through these reports may not fall within the operable definition of "discretionary release," members of the Releases of Information staff carefully weigh the privacy interests of others and the importance of apprising stakeholders in deciding the type of information that will be published for public review.

8. During the reporting period did your agency make any discretionary releases of otherwise exempt information?

Yes.

9. What exemptions would have covered the information that was released as a matter of discretion?

(b)(5)

10. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion?

VA FOIA offices release information on a discretionary basis if the requested Information falls under Exemption 5, which covers inter-agency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the agency. Examples include: issue briefs, emails, draft reports, interagency information, and project schedules/timelines.

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

As the VA has a decentralized FOIA program, some offices because of the records requested are not able to discretionarily release records. An example would be the Office of General Counsel in which requests for attorney work products documents and attorney client privileged documents generated as part of processing tort claims against the VA. Such documents are exempt under Exemption 5 and since some of the tort claim denials lead to Federal Court litigation, the release of such documents would be prejudicial to the Department and the United States.

Other Initiatives:

12. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014.

Yes; VA FOIA's tracking program, FOIAXpress allows for the generation of all quarterly required reports and the VA has posted this information both to the Department of Justice and its own websites.

13. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please links in your description.

The VA FOIA program is decentralized, which means the three administrations and program offices are independently responsible for continuously improving transparency initiatives under the guidance and encouragement of the VA FOIA Service. Examples include:

Federal Benefits for Veterans, Dependents and Survivors is online and available through various apps.

VA Adaptive Sports: online grant applications and other information at http://www.va.gov/adaptivesports/va_grant_program.asp

VA and Ancestry.com Partner to Index Historic Burial Records - The Department of Veterans Affairs has partnered with the internet-based genealogy research firm Ancestry.com to bring burial records from historic national cemetery ledgers into the digital age. The effort will make the collection—predominantly of Civil War interments—accessible to researchers and Ancestry.com subscribers undertaking historical and genealogical research.

Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place 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." It is essential that agencies effectively manage their FOIA program.

Describe here the steps your agency has taken to ensure that its system for responding to requests is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

Personnel:

During Sunshine Week 2012 OPM announced the creation of a new job series entitled the Government Information Series, to address the work performed by FOIA and Privacy Act professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

1. Has your agency converted all of its FOIA personnel to the new Government Information Specialist job series?

No

2. If not, what proportion of personnel has been converted to the new job series?

15%

3. If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted??

Our concern is that the initial classification of these eligible positions by HR has resulted in position downgrades without a change in duties and responsibilities. VA is continuing to work with HR on properly classifying its fulltime FOIA Officers as directed by OPM's March 9, 2012, Memorandum for Chief Human Capital Officers and Flysheet.

Processing Procedures:

4. For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

No. On average it takes 37.96 days to process expedited requests.

Reinforcement to FOIA Officers that requests for expedited processing must be adjudicated within ten calendar days. Closer monitoring by managers with FOIA oversight.

5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or

referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.

No. The number of consultations and referrals is insignificant and no special handling is needed.

Requester Services:

6. Do you use e-mail or other electronic means to communicate with requesters when feasible?

Yes; VA FOIA utilizes technology as efficiently as possible to communicate and release information to the requester.

7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?

Yes; VA FOIA provides this information for all partial and full-denial of records to requesters.

8. Describe 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.

The VA FOIA Service has develop a battery of internal metrics from the number and type of backlog requests, to types of requests being processed and more, to determine where the pressure points are in preventing timely responses to requests. We are currently working closely with the vendor that maintains our tracking system to fine tune our management reporting so as to make them more useful to management and FOIA Officers agency wide.

Section 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 both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2013 to March 2014). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

Posting Material:

1. Do your FOIA professionals have a system in place to identify records for proactive disclosures?

Yes

2. If so, describe the system that is in place.

It is an informal system at the present time, but developments are underway (as of this writing) to develop guidelines and provide examples of material that can or has been proactively disclosed. Recent FOIA requests for records relating to highly publicized incidents in the news has prompted senior VA officials to formalize an approach to identifying such records and proactively posting them.

3. Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.

http://www.va.gov/about_va/va_notices.asp (Congressional Quarterly and monthly data breach reports required under Public Law 109-461).

http://www.va.gov/about_va/va_notices.asp (Conference Events and Costs)

Making Posted Material More Useful:

4. 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, such as soliciting feedback on the content and presentation of posted material, improving search capabilities on the site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.?

Yes.

5. If so, provide examples of such improvements.

The VA FOIA is currently reviewing its eFOIA library site and public facing website to provide a more user friendly and index or search engine to more easily locate and review records posted online. OGC Precedent Opinions and VA Accredited Claims Representatives are posted online. The OGC regularly confers with the OGC Records Officer to determine if the new information should be posted.

We are continuing the process of updating the FOIA Service website so that navigation is more intuitive and ultimately more substantive. The VA's FOIA webpage just recently came under the responsibility of the Office of the Assistant Secretary for Public and Intergovernmental Affairs (OPIA), Office of Digital Media

for technical support. This change has resulted in removing one layer of bureaucracy in updating the website and also providing a dedicated New Media Specialist to the VA's FOIA Service. In addition, the FOIA webpage has been upgraded/redesigned so as to be less confusing (removal or redundant links) and consistent with the agency's overall web appearance.

Information related to the Office of Operations, Security and Preparedness regulations, policies, and procedures are placed in the public domain and may be found through search engines, such as Google and Yahoo.

OIG routinely publishes reports on its website informing the general public of major issues involving the Department of Veterans Affairs and its officials. Got Facebook? If so, we welcome you to "like" our VA page: www.facebook.com/veteransaffairs. There, employees and Veterans alike can find information to help make their lives and jobs just a little bit easier.

VA also has an account on Google+ at www.google.com/+DeptVetAffairs. Or, if Twitter is more your speed, then follow VA on Twitter: <https://twitter.com/DeptVetAffairs/>.

Seeking that perfect VA photo or graphic for use in a presentation? Then look no further than the VA Flickr page: <http://www.flickr.com/photos/VeteransAffairs>; there you can view photos from the VACO Office of Public Affairs, as well as VA offices and medical centers nationwide.

All 152 VA Medical Centers are on Facebook, and many on Twitter, so the public can connect with VA on the platforms the public uses, including YouTube and Flickr.

Intended additions include appropriately redacted logs of all received FOIA requests posted quarterly and the recently updated FOIA Requester Guide.

6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized?

VA's Health Services Research & Development Service line has been producing an annual series of videos that feature funded investigators and clinicians discussing their work. New videos, recently posted to the VA HSR&D website and VHA's YouTube channel, include investigators from VA research teams across the country talking about topics such as mantra repetition for PTSD; improving treatment for chronic heart failure; working with Veterans' informal caregivers; bipolar disorder, and more. To view these new videos—and other videos from past series—visit the VA HSR&D website at:

<http://www.hsrd.research.va.gov/news/video>.

Videos from the most recent series have also been uploaded to VHA's YouTube channel:

<http://www.youtube.com/user/VeteransHealthAdmin>.

7. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.

Yes, but the recent change in which a New Media Technologist within the OPIA is dedicated to supporting the FOIA webpage is an improvement. This provides the VA FOIA Service a dedicated POC to upload material to its external site(s).

8. Describe any other steps taken to increase proactive disclosures at your agency. Provide examples of material that your agency has posted this past year.

In addition to proactively reviewing its eFOIA library and website, the VA FOIA Service is in the process of developing a data call for records to be proactively released. The VA OGC FOIA Officer regularly confers with the VA OGC Records Officer to determine if new OGC information should be posted.

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. Over the past several years agencies have reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2014, as we have done over the past years, the questions have been further refined and now also address different, more innovative aspects of technology use.

Online tracking of FOIA requests:

1. Can a FOIA requester track the status of his/her request electronically?

No; VA FOIA is exploring the possibility of adding a public access link with AINS, the vendor provider of the VA FOIA tracking system FOIAXpress to the FOIA external website.

2. If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?

N/A

3. Describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.

N/A

4. In particular, does your agency tracking system provide the requester with an estimated date of completion for his/her request?

N/A

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

Yes; VA FOIA is exploring the possibility of adding a public access link with AINS, the vendor provider of the VA FOIA tracking system FOIAXpress to the FOIA external website.

Use of technology to facilitate processing of requests:

6. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

Yes.

7. If so, describe the technological improvements being made.

The Office of Small and Disadvantaged Business Utilization is developing its Enterprise Management System, with a scheduled delivery for June 2014. This will provide OSDDBU with advanced technology to facilitate overall records management which will contribute to efficient and timely response for FOIA inquiries.

The OSDDBU VEMS solution will use Scribe Insight to integrate across multiple databases and implement WCF web services to access VEMS data documents with appropriate permissions for business logic, public sharing, and integration with third-party web services or software components. VEMS will also leverage Microsoft Dynamics CRM, SharePoint, and other DOD 5015.2 compliant software solutions to manage and provide robust search capabilities. VEMS will also integrate Power Search and Attachment Extractor to provide a stronger search engine capability.

The OIG FOIA staff has gained access to certain SharePoint sites in order to expedite the search for responsive documents.

8. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program?

Yes. De-duplication software.

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

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section 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. For the figures required in this Section, please use those contained in the specified sections of your agency's 2013 Annual FOIA Report and, when applicable, your agency's 2012 Annual FOIA Report.

Simple Track Requests:

1. 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.

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

Yes.

- b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?

Yes. 10.7 days

- c. If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?

N/A

Backlogs and "Ten Oldest" Requests, Appeals and Consultations:

2. 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. 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 Years 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.

Backlogs

- a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012?

No.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?

No.

Ten Oldest Requests

- c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?

Yes.

- d. 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 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. And you closed two of them; you should note that you closed two out of seven "oldest" requests.

Ten Oldest Appeals

- e. In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?

No.

- f. If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C. (5) Of your Fiscal Year 2013 Annual FOIA Report.

The VA was unable to close its 10 oldest appeals, and is reporting the same ten appeals it did in 2012.

Ten Oldest Consultations

- g. In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2013?

N/A.

- h. If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. Of your Fiscal Year 2013 Annual FOIA Report.

N/A

Reasons for Any Backlogs:

3. If you answered “no” to any of the questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:

The VA is a large decentralized agency and the FOIA Officers in the field perform FOIA as a collateral duty so they must balance diverse demands on their time. There is frequent turnover of FOIA Officers in the field resulting in a learning curve to surmount by the replacement resulting in processing delays.

Request and/or Appeal Backlog

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals?

No

- b. Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff?

Yes (for appeals only)

- c. Was the lack of a reduction in the request and/or appeal backlog caused by an increase in the complexity of the requests received?

Yes

- d. What other causes, if any, contributed to the lack of a decrease in the request and/or appeal backlog?

High turnover of FOIA Officers; particularly in the field. Delays by management in designating new/replacement FOIA Officers.

“Ten oldest” Not Closed

- e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2013.

The Loss of three attorney advisors (and no replacements to date) in OGC has greatly impacted the timely resolution of appeals.

- f. If your agency was unable to close any of its ten oldest requests or appeals 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

Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:

Given the importance of these milestones, it is critical that Chief FOIA Officers assess the causes for not achieving success and create plans to address them.

4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2014.

VA FOIA will continue to work with the requesters and record holders to ensure that a resolution is swiftly achieved. One administration is pursuing the addition of four full time employee positions to assist in their FOIA processing.

5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency’s plan for achieving backlog reduction in the year ahead.

N/A.

Interim Responses:

6. OIP has issued guidance encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information.

As of January 16, 2013, the VA FOIA Service has received 19,795 requests between March 1, 2013 and December 31, 2013. Our tracking system shows that, of these, 2,858 Requestors received a substantive interim response.

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

Yes; VA FOIA provides interim responses when the requested records are voluminous or complex.

Use of FOIA's Law Enforcement "Exclusions"

In order to increase transparency regarding the use of the FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to "treat the records as not subject to the requirements of [the FOIA]," 5 U.S.C. § 552(c) (1), (2), (3), please answers the following questions:

1. Did your agency invoke a statutory exclusion during Fiscal Year 2013?

No

2. If so, what is the total number of times exclusions were invoked?

N/A

Spotlight on Success

Out of all the activities undertaken by your agency since March 2012 to increase transparency and improve FOIA administration, describe here one success story that you would like to highlight as emblematic of your agency's efforts.

The Office of the Secretary for the VA has reduced the number of days a request is backlogged from an average of 313 days to 32 days.

The National Cemetery Administration, recognizing the importance of FOIA, re-organized the position from a collateral duty to a full time position.

The Office of Procurement Policy reduced its processing backlog from about sixty (60) days to ten (10) since last year's report. They went from redacting 200 pages per day per FOIA Specialist to 300 pages per day.

The Office of Small and Disadvantaged Business Utilization utilizes an RSS feed to notify business and citizens of news and information related to VA small and Veteran business programs.