

Foreign Agricultural Service

Input for the USDA Chief FOIA Officer's Report

January 2012

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.

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

FAS response: No. We are considering doing so during the next reporting period, although the volume of FOIA requests sent to FAS remains relatively small. This year, training was on demand and one to one as needed in conjunction with requests for documents, stressing the need to apply the presumption of openness in addition to considerations regarding exemptions and potential privacy issues.

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

FAS response: Yes. The agency FOIA Officer attended a number of sessions provided by the Department of Justice (DOJ), open invitation demonstrations and seminars related to automated records management and FOIA request processing, sponsored by Government Computer Week and various contractors, and similar "webinars," "webcasts," or "whitepapers." USDA and "in-house" contractor training was also received on "foiaXpress," the preferred automated FOIA application selected by USDA for all USDA agencies; also participated in other "USDA FOIA Community" (interagency) training, coordinating meetings, other sessions, and teleconferences.

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.

3. Did your agency make any discretionary releases of otherwise exempt information? FAS response: Yes.

4. What exemptions would have covered the information that was released as a matter of discretion? FAS response: Exemptions b(4) ("trade secrets") and b(5) ("deliberative discussions")

5. Describe your agency's process to review records to determine whether discretionary releases are possible.

FAS response: In every case all documents are reviewed on a line by line, word by word basis, and discretionary disclosure is applied unless an otherwise potentially applicable exemption is deemed to be an absolute requirement. In cases involving "proprietary" trade information, submitters are consulted and encouraged to endorse FAS release of all information to the greatest extent possible, usually resulting only very limited reservations, if any. After the most careful analysis, if within an FAS program area it is still determined that a portion of a document or documents should be withheld, whether in full or in part, redactions are kept to an absolute minimum, and withholding of entire pages is discouraged. Further, all letters of transmittal for responses that include any withholding or redaction whatsoever require signature at the Deputy Administrator level or higher, and include the standard appeal procedure notification language (as do full disclosure transmittals which may be signed at lower levels.) The Office of the General Counsel is usually also advised regarding any requests not granted in full in the event an appeal might result without their prior consultation or concurrence.

6. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

FAS response: Informal discussions on the periphery of activities directly involved in handling FOIA requests stress the idea that what we are doing is business on behalf of the public, with the presumption that there should be transparency regarding our activities in the public interest to the greatest extent possible.

In Section V.B.(1) of your agency's Annual FOIA Report, entitled "Disposition of FOIA Requests – All Processed Requests" the first two columns list the "Number of Full Grants" and the "Number of Partial Grants/Partial Denials." Compare your agency's 2011 Annual FOIA Report with last year's Annual FOIA Report, and answer the following questions:

7. Did your agency have an increase in the number of responses where records were released in full? FAS response: Yes

8. Did your agency have an increase in the number of responses where records were released in part? FAS response: No

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."

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.

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.

1. Do FOIA professionals within your agency have sufficient IT support? FAS response: Yes
2. Is there regular interaction between agency FOIA professionals and the Chief FOIA Officer? FAS response: Yes
3. Do your FOIA professionals work with your agency's Open Government Team? FAS response: Yes
4. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to FOIA administration.

FAS response: The FAS FOIA Officer works with his Supervisor, the Director of the FAS Office of Public Affairs & Executive Correspondence, with a dedicated point of contact in the Office of the FAS Administrator, and with the Office of the USDA Chief FOIA Officer to ensure that we are devoting adequate staffing to ensure the best possible handling of all FOIA matters involving FAS.

5. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.

FAS response: The FAS "FOIA Team" maintains a policy of open communications, on an intra-agency and interagency basis, and especially with the leadership of the "USDA FOIA COMMUNITY," that is, the Office of the USDA Chief FOIA Officer, as well as with FOIA offices in other agencies beyond USDA.

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 2011 to March 2012). 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.

1. Has your agency added new material to your website since last year? FAS response: We add new material to our website on a daily basis.
2. Provide examples of the records, datasets, videos, etc., that have been posted this past year.

FAS response: Over 60,000 documents are available online. Each FAS program has thousands of pages of documents, ranging from educational material to data that report program activity. Other materials include press releases, program notices, regulations, production and trade figures and related data bases. The ease of access to FAS materials online may in part be a factor in a general trend of fewer FOIA requests being sent to FAS over the past few years.

3. Describe the system your agency uses to routinely identify records that are appropriate for posting.

FAS response: FAS updates old material and posts new material as soon as available and as much as is appropriate and practicable/

4. Beyond posting new material, is your agency taking steps to make the 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 the posted material, improving search capabilities, providing explanatory material, etc.?

FAS response: A "Customer Survey" opportunity is often presented as an option for visitors to the FAS website. Users may simply decline, but all responses are highly valued and considered as possible options to help us deliver the best possible website for FAS, and the most effective access to information looked for by our website visitors.

5. Describe any other steps taken to increase proactive disclosures at your agency.

FAS response: FAS is continuing to include Social media links on our website, including Twitter, Facebook, the USDA Blog, flickr, and YouTube/

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. In 2010 and 2011, agencies reported widespread use of technology in handling FOIA requests. For 2012, the questions have been further refined and now also address different, more innovative aspects of technology use.

Electronic receipt of FOIA requests:

1. Can FOIA requests be made electronically to your agency? FAS response: Yes
2. If your agency processes requests on a decentralized basis, do all components of your agency receive requests electronically? FAS response: Yes

Online tracking of FOIA requests:

3. Can a FOIA requester track the status of his/her request electronically? FAS response: No.
4. If not, is your agency taking steps to establish this capability? FAS response: We are currently working with the rest of USDA to implement the FOIAXpress application. We will

probably be able to incorporate an online interactive interface for requestors as the system is brought fully online and additional features are activated or developed.

Use of technology to facilitate processing of requests:

5. 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?

FAS response: Again, we are working with USDA on FOIAXpress implementation which may be able to facilitate such further efficiencies.

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

FAS response: FOIAXpress is the key technical improvement being implemented, with coordination centered in the office of the USDA Chief FOIA Officer.

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 and appeals. For the figures required in this Section, please use those contained in the specified sections of your agency's 2011 Annual FOIA Report.

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. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.

a. Does your agency utilize a separate track for simple requests? FAS response: Yes

b. If so, for your agency overall, for Fiscal Year 2011, was the average number of days to process simple requests twenty working days or fewer? FAS response: Yes

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? FAS response: Not Applicable

2. Sections XII.D.(2) and XII.E.(2) of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report – Backlogged Requests/Appeals," show the numbers of any backlog of pending requests or pending appeals from Fiscal Year 2011 as compared to Fiscal Year 2010. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition,

Section VII.E, entitled “Pending Requests – Ten Oldest Pending Requests,” and Section VI.C.(5), entitled “Ten Oldest Pending Administrative Appeals,” from both Fiscal Year 2010 and Fiscal Year 2011 should be used for this section.

- a. If your agency had a backlog of requests at the close of Fiscal Year 2011, did that backlog decrease as compared with Fiscal Year 2010? FAS response: Not Applicable (no backlog either year)
- b. If your agency had a backlog of administrative appeals in Fiscal Year 2011, did that backlog decrease as compared to Fiscal Year 2010? FAS response: Not Applicable (no appeals pending)
- c. In Fiscal Year 2011, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2010? FAS response: Yes; however, there were only 4 pending at the end of the previous year.
- d. In Fiscal Year 2011, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2010? Not Applicable (no appeals pending)

3. If you answered “no” to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation:

Request Backlog:

- a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests? FAS response: Not Applicable (no backlog either year)
- b. Was the lack of a reduction in the request backlog caused by a loss of staff? FAS response: Not Applicable (no backlog either year)
- c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received? FAS response: Not Applicable (no backlog either year)
- d. What other causes, if any, contributed to the lack of a decrease in the request backlog. FAS response: Not Applicable (no backlog either year)

Administrative Appeal Backlog:

- a. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals? FAS response: Not Applicable (no backlog either year)
- b. Was the lack of a reduction in the appeal backlog caused by a loss of staff? FAS response: Not Applicable (no backlog either year)
- c. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received? FAS response: Not Applicable (no backlog either year)
- d. What other causes, if any, contributed to the lack of a decrease in the appeal backlog? FAS response: Not Applicable (no backlog either year)

All agencies should strive to both reduce any existing backlogs or requests and appeals and to improve their timeliness in responding to requests and appeals. Describe the steps your agency

is taking to make improvements in those areas. In doing so, answer the questions below and then include any other steps being taken to reduce backlogs and to improve timeliness.

1. Does your agency routinely set goals and monitor the progress of your FOIA caseload? FAS response: Yes
2. Has your agency increased its FOIA staffing? FAS response: No.
3. Has your agency made IT improvements to increase timeliness? FAS response: Not directly, other than cooperation with the Office of the USDA Chief FOIA Officer to implement FOIAXpress.
4. If your agency receives consultations from other agencies, has your agency taken steps to improve the efficiency of the handling of such consultations, such as utilizing IT to share the documents, or establishing guidelines or agreements with other agencies on the handling of particular information to speed up or eliminate the need for consultations? FAS response: Yes

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 answer the following questions:

1. Did your agency invoke a statutory exclusion during Fiscal Year 2011? FAS response: No
2. If so, what is the total number of times exclusions were invoked? FAS response: Not applicable.

Spotlight on Success

Out of all the activities undertaken by your agency since March 2011 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.

FAS response: FAS continues to meet all FOIA related obligations in a highly effective, highly expeditious, and highly efficient manner. With a new point of contact recently reestablished in the office of the FAS Administrator, and the continuing supervision of previous FAS FOIA Officer, now the Director of FAS Public Affairs & Executive Correspondence, multiple lines of communication within FAS and with other agencies and offices, within USDA and elsewhere, have been enhanced. More and more expertise and awareness about FOIA matters is being shared with the end result that even though our numbers dedicated strictly to FOIA may be few, the "FAS FOIA TEAM" is becoming more and more open and inclusive. We are also working as a fully included member, participant, and contributor to ensure the overall success of the "USDA FOIA COMMUNITY" especially in our efforts to effectively implement FOIAXpress, and reap the resulting benefits to the greatest extent possible.