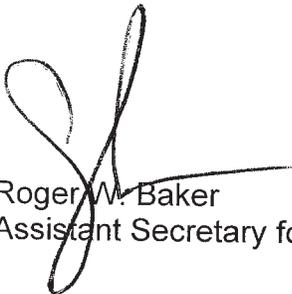


TO: Bertina Adams
Bertina.Adams@usdoj.gov
U.S. Department of Justice

SUBJECT: 2013 Chief Freedom of Information Act (FOIA) Officer Report

Per 5 U.S.C. 552, as amended by the OPEN Government Act of 2007, enclosed you will find the U.S. Department of Veterans Affairs (VA) 2013 Chief FOIA Officer Report.

This report will be posted on VA's FOIA webpage upon receipt of your notification to post the report. If there are any questions, please contact Mr. James Horan of the FOIA Service at (202) 632-7453.



Roger W. Baker
Assistant Secretary for Information and Technology

Approved Disapproved

Date: **FEB 08 2013**

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

Name and Title of Agency FOIA Officer: Roger Baker, Chief FOIA Officer, 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.

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

Yes, individual FOIA offices hold their own training sessions. The VA FOIA Service has also developed its own training modules that are awaiting approval. When these are approved, they will be made available to all VA components as needed.

We have also developed a number of Standard Operating Procedure documents for different positions within the FOIA Service, including FOIA Service Director and FOIA Analyst. This is in addition to revising and updating the VA's official FOIA Handbook.

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

Yes, FOIA Officers and contractors attend FOIA trainings provided by the Department of Justice (DOJ) as well as conferences held by professional FOIA organizations, such as ASAP.

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.

2. Did your agency make any discretionary releases of otherwise exempt information?

Yes, VA has made discretionary releases. It is VA policy to allow FOIA offices to make discretionary releases of records or information that would otherwise be

exempt from disclosure under the FOIA when it is in accordance with current law and government policy.

We are also in the process of updating the FOIA Service website so that navigation is more intuitive and ultimately more substantive. Intended additions include appropriately redacted logs of all received FOIA requests posted quarterly and the recently updated FOIA Requester Guide.

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

See below Question 4.

4. 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 2, which protects records, "related solely to the internal personnel rules and practices of an agency," and 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.

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

The VA FOIA program is decentralized, which means each agency and office is responsible for continuously improving transparency initiatives. Some noteworthy initiatives can be found in the Office of Operations, Security, and Preparedness (OSP), Office of Small and Disadvantaged Business Utilization (OSDBU), and Office of the Inspector General (OIG).

We are also in the process of updating the FOIA Service website so that navigation is more intuitive and ultimately more substantive. Intended additions include appropriately redacted logs of all received FOIA requests posted quarterly and the recently updated FOIA Requester Guide

Information relating to OSP's 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.

Furthermore, OSDBU underwent a major overhaul of their website, in which they added extensive materials explaining to their customers their procedures and policies. This clarification helped customers by making information more readily available.

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?

VA FOIA Service is located within the Chief Information Officer's (CIO) office. IT support is generally good and responsive. The software vendor for the VA's FOIA tracking system has a support hotline to assist users with any questions for technical difficulties they may have while processing FOIA requests and the eFOIA system has had minimal downtime. In conjunction with the hotline, a VACO employee is designated as a tracking system administrator, allowing for business day one-on-one support.

2. Do your FOIA professionals work with your agency's Open Government Team?

The VA FOIA Service has had intermittent interaction with the Open Government Team over the last year.

3. Has your agency assessed whether adequate staffing is being devoted to FOIA administration?

Yes, individual FOIA offices have assessed their staffing needs and made adjustments as necessary. Some offices have made attempts to obtain contractor support for FOIA request processing while others have added additional full-time support.

The CIO also receives weekly reports detailing the status of backlogs for each Administration and Headquarters components. The reports are also reviewed by the IT management team monthly. This information can be used to assess those offices which are expecting backlogs so that resources, including staffing, can be reallocated accordingly.

4. Describe any other the 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, streamlining consultations, eliminating redundancy, etc.

The VA FOIA Service has developed templates for corresponding with that can be used to speed up the responsiveness to the customer.

In addition, the FOIA Service is currently assessing the viability of a FOIA Steering Committee, which would be specifically for the discussion of pain points in the FOIA process as well as dissemination of best practices and education. To this same end, the FOIA Service is currently developing training materials for personnel who may be assigned FOIA duties as an ancillary function and are, therefore, less likely to be familiar with policy and procedure requirements.

Component offices have undertaken different measures to streamline their request processing procedures and communications. Corporate Data Center Operations (CDCO), Office of Information Technology (OIT), Office of Labor-Management Relations (LMR), Office of Risk Management (ORM), Office of Construction and Facilities Management (CFM), Office of Acquisitions and Logistics (OAL), Veterans Benefits Administration (VBA), Office of General Counsel (OGC), Office of the Inspector General (OIG), Office of Small and Disadvantaged Business Utilization (OSDBU), and Office of Operations, Security, and Preparedness (OSP) have established a unique electronic mailbox address for receipt of FOIA requests, affording communication with the requesters solely for FOIA purposes.

OSDBU released a newer version of VetBiz Case Management System (VCMS), which houses many of the documents that are requested through FOIA inquiries.

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 2012 to March 2013). 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. Provide examples of material that your agency has posted this past year.

As mentioned in response to question three, the FOIA Service is in the process of redesigning both its internal and external sites so that material is more accessible

to both members of the public and FOIA staff. Pending additions to the FOIA Reading Room include quarterly logs of all FOIA requests received.

The Office of General Counsel (OGC) posted OGC Precedent Opinions and VA accredited claims representatives to the website. The Office of the Inspector General (OIG) posted general administrative reports, such as the Federal Information Security Management Act (FISMA) Report and one that reviewed VA's comprehensive conference spending.

The National Cemetery Administration (NCA) was releasing instructions on conducting military burials for deceased veterans. This had been an issue identified in a FOIA request from a deceased relative's family.

2. 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.?

Yes, the VA is taking several measures to improve the content of its website. See the response in question three for specifics.

3. If so, provide examples of such improvements.

The VA is currently undergoing a redesign of both its external and internal FOIA websites. The external site will increase usability and improve end users' overall experience. It will also link to other VA websites containing frequently requested information. The Electronic Reading Room includes links both to DOJ guidance and reports as well as VA datasets on www.data.gov.

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

In order to promote openness, some examples of steps to increase proactive disclosures include: posting redacted logs of all received FOIA requests on a quarterly basis and NCA posting information regarding military burials on its website.

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:

2013 Chief FOIA Officer Report
Department of Veterans Affairs

1. Can FOIA requests be made electronically to your agency?

Yes, the public can submit FOIA requests electronically.

2. If your agency is decentralized, can FOIA requests be made electronically to *all* components of your agency?

Yes, all FOIA components have the capability to receive requests electronically.

Online tracking of FOIA requests:

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

At present a requester can track the status of his or her request electronically only by calling in and talking with a FOIA Officer. The call is toll free.

4. If so, 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.

While VA does not permit requestors direct access to its FOIA database, FOIA Officer will provide them with information indicating the latest actions on their request, including whether it is open or closed.

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

No.

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

The VA is currently examining software that could be used to track FOIA requests but has not yet implemented a particular solution.

Use of technology to facilitate processing of requests:

7. 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?

As previously discussed, the VA is currently examining potential technologies to be adapted track facilitate overall FOIA efficiency requests but has not yet implemented any one solution as of yet.

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

N/A

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 2012 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?

Yes, VA has a separate track for simple requests.

- b. If so, for your agency overall, for Fiscal Year 2012, was the average number of days to process simple requests twenty working days or fewer?

Yes, the average number of days to process a simple request was less than twenty working 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

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 2012 as compared to Fiscal Year 2011. 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 2011 and Fiscal Year 2012 should be used for this section.

- a. If your agency had a backlog of requests at the close of Fiscal Year 2012, did that backlog decrease as compared with Fiscal Year 2011?

Yes

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011?

Yes

- c. In Fiscal Year 2012, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2011?

No but VA successfully closed five of ten requests.

- d. In Fiscal Year 2012, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2011?

No but VA successfully closed three of ten appeals.

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?

N/A

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

N/A

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

N/A

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

N/A

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?

N/A

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

N/A

- c. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received?

N/A

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

N/A

4. 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. If your agency had a backlog in Fiscal Year 2012, please provide an estimate of the number of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

As of January 31, 2012, the VA FOIA Service has received 20,794 requests between March 1, 2012 and March 1, 2013. Our tracking system shows that, of these, 2,858 requestors received a substantive interim response.

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 2012?

No

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

N/A

Spotlight on Success

2013 Chief FOIA Officer Report
Department of Veterans Affairs

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 VACO FOIA Service is working closely with the Veterans Health Information Systems and Technology Architecture (VistA) Product Development (PD) team to increase timely responses for VistA products.

Previously, requests regarding VistA comprised a significant majority of the Office of Information Technology's (OIT) backlog, accounting at one point for roughly 75% of backlogged requests. This was because the VistA technology is highly specialized and certain portions or projects are often incomplete at the time of the request. It therefore often takes a specialist in these solutions to assess whether different components may be released and which are considered proprietary.

To address this, the VACO FOIA Service established a formal process and point of contact within PD to facilitate rapid responses to these highly technical requests. This has reduced the OIT backlog by roughly 50%.

It is also worth mentioning that the CIO is committed to providing open source VistA code to the public whenever possible.