

**2014 Chief FOIA Officer Report**  
**of the**  
**Federal Communications Commission**  
**Jonathan Sallet, Acting General Counsel and Chief FOIA Officer**  
**March 2013 – March 2014**

The Federal Communications Commission (FCC) is an independent regulatory agency. It was established by the Communications Act of 1934 and is charged with regulating interstate and international communications by radio, wire, satellite and cable. It is directed by five Commissioners nominated by the President and confirmed by the United States Senate. The President designates one of the Commissioners as Chairman, who acts as the chief executive officer of the agency. The FCC is organized by function into seven operating Bureaus and eleven Staff Offices. Implementation of the Freedom of Information Act (FOIA) is the responsibility of all FCC components, as FOIA requests are processed by the Bureau or Office that is the custodian of the records sought. The Commission's Acting General Counsel is serving as the FCC's Chief FOIA Officer.

The general reporting period for the Chief FOIA Officer Report is March 1, 2013 to February 28, 2014. The FCC conducted a review of its administration of the FOIA and analyzed the data from its FOIA Annual Report from Fiscal Year 2013 (October 1, 2012 to September 30, 2013), supplemented by data gathered for the period October 1, 2013 through February 28, 2014. Highlights of this review and analysis are:

- The backlog of initial FOIA requests was reduced from 38 to 18 during the combined period of Fiscal Year 2013 and the first quarter of Fiscal Year 2014, dropping more than 52 percent. All of the ten oldest pending FOIA requests, and all but one of the ten oldest pending FOIA appeals, were addressed during Fiscal Year 2013.
- The agency completed a group of FOIA requests involving unusually complex search and review issues. Tens of thousands of pages of documents were released to the requesters and posted on the FCC's website.
- Access to agency records continued to improve because of the proactive posting of resources for the public, including (i) information about the modernization of the schools and libraries internet program; (ii) an interactive map showing the expansion of broadband funding in rural areas; (iii) a mobile broadband performance app; (iv) input from the public on the agency's Process Reform initiative; and (v) Chairman Wheeler's eBook, "Net Effects: The Past, Present & Future Impact of Our Networks--History, Challenges and Opportunities."

## **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?***

The FCC conducted training covering FOIA administration during the reporting period.

- 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.***

The FCC's Office of General Counsel (OGC) legal staff conducted agency-wide training in administrative law covering FOIA topics that was attended by approximately 31 agency staff. A webcast of FOIA training, taped from a prior presentation by OGC staff, is available on the Commission's Intranet to all agency staff and was completed by several agency staff during the reporting period.

- 3. Did your FOIA professionals attend any FOIA training during the reporting period such as that provided by the Department of Justice?***

The FCC's OGC legal staff, the FCC's FOIA Liaison, and other agency FOIA professionals attended programs and training conducted by the Department of Justice Office of Information Policy and the USDA Graduate School.

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

About 30.8 percent.

**OIP has issued guidance that every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each 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.**

For all FOIA professionals, the FCC will continue to offer in-person core, substantive FOIA training, as well as provide more in-depth training opportunities through webcasts and government-wide sessions. Furthermore, the agency will provide additional in-person training opportunities, as resources permit. Consistent with its general training practices, the agency will document the number of FOIA professionals who attend FOIA training over the coming year.

***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.***

FOIA professionals have reached out to individual requesters concerning the agency's administration of FOIA as applicable to the individual's request. They also have consulted with DOJ's Office of Information Policy and NARA's Office of Government Information Services (OGIS) concerning general FOIA issues that arise in individual requests and appeals. Because the agency receives a relatively low number of requests, however, it has not conducted FOIA outreach and dialogue of a more widespread nature.

***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?***

Yes.

***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.***

The FCC has a formal process in place to review records for discretionary release. When records have been determined to be exempt from disclosure under one or more FOIA exemptions, FCC FOIA processing staff then review these records in accordance with the guidance issued by DOJ/OIP concerning discretionary release. This process is followed by FOIA staff in all FCC Bureaus and Offices, and at both the initial FOIA level and the appeal level.

**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?**

Exemption 5, 5 U.S.C. § 552(b)(5).

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

The Commission released information identifying persons involved, timing, subject matter, and other portions of internal emails.

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

As indicated above, the Commission has made discretionary disclosures in accordance with its formal process for reviewing discretionary releases. Consistent with the DOJ FOIA Guidance, however, the FCC is constrained in its ability to make discretionary disclosures of records that are covered by certain FOIA exemptions. Specifically, because many of the agency's decisions to withhold all or part of a record are based on FOIA Exemption 4, 5 U.S.C. § 552(b)(4), and the Trade Secrets Act, 18 U.S.C. § 1905, the Commission has little discretion to release the records. In addition, the Commission carefully balances personal privacy interests with the public interest in making determinations whether to redact personal information based on the personal privacy exemptions, 5 U.S.C. §§ 552(b)(6) and (7)(C). When records are withheld in full or in part based on Exemption 5, 5 U.S.C. § 552(b)(5), usually involving the deliberative process privilege, staff reviews them to determine whether there will be any foreseeable harm from the release of the record. Factors considered include the age of the record and the sensitivity of its content, the nature of the decision at issue, the status of the agency decision, and the personnel involved. For records withheld under the subsections of FOIA Exemption 7 other than subsection (7)(C) (personal information), staff reviews the records to ensure that the harm to law enforcement activities is not speculative or abstract.

***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.

**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 provide links in your description.**

As indicated above, FOIA staff in all FCC Bureaus and Offices follows the Commission's formal process for reviewing discretionary releases, and at both the initial FOIA level and the appeal level. In addition, the decision on discretionary review is discussed in each initial FOIA decision and appeal decision.

## **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 your management of your FOIA program 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 professionals to the new Government Information Specialist job series?***

No.

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

None.

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

We are a very small agency with very few FTEs working exclusively or even predominantly on FOIA. Notwithstanding the few FTEs that could be affected by the new Government Information Series 0306, we will work with our Human Resources Management staff to review whether any agency positions should be converted, in accordance with the March 9, 2012 OPM Memorandum for Chief Human Capital Officers and position classification 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?***

Yes. As indicated in its FY 2013 Annual Report, the agency adjudicated requests for expedited processing in an average of 4.5 days.

***If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.***

Not applicable.

- 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.***

The number of referrals and consultations involving the FCC is generally very small. The FCC follows the DOJ's guidance on consultations and referrals in the few cases it has received.

***Requester Services:***

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

Yes.

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

Yes, the FCC includes a written notification of the OGIS mediation services in every decision at the appeal level, including OGIS contact information.

- 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.***

OGC staff, under the direction of the Chief FOIA Officer, work closely with the FOIA Liaison and agency FOIA staff to monitor the status of pending initial FOIA requests and to ensure timely response thereto.

### 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.*

Agency staff reviews and selects material for proactive disclosures on an ongoing basis.

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

- ***E-Rate Modernization Suite.*** The Commission launched a new suite of information resources to provide public access to information concerning its modernization of the E-Rate program. The FCC's E-rate program is the government's program for connecting the nation's schools and libraries to broadband. E-rate is the government's largest educational technology program. The suite is available at <http://www.fcc.gov/e-rate-update>.
- ***Rural Broadband Expansion Map.*** The Commission posted the Rural Broadband Expansion interactive map showing precisely where broadband expansion to rural communities using Connect America funding will occur. The Connect America Fund is part of the FCC's initiative to bring broadband access to rural communities in order to ensure that all Americans have access to today's essential tools for communications. The map shows where funds have been authorized (because there was no challenge or challenges have resolved), and areas still subject to challenge. These decisions are based on very granular information – down to the census block level – and the map provides a quick, easy, and clear way to identify those areas. The map is updated as such issues are resolved. See the map at: <http://www.fcc.gov/blog/mapping-progress->

[connect-america-fund-s-broadband-expansion](https://www.google.com/search?q=http%3A%2F%2Fwww.fcc.gov%2Fblog%2Fmapping-progress-connect-america-fund-s-broadband-expansion&rls=com.microsoft:en-US:IE-Address&ie=UTF-8&oe=UTF-8&sourceid=ie7&rlz=117NDKB_enUS509). Additional information is available at: [https://www.google.com/search?q=http%3A%2F%2Fwww.fcc.gov%2Fblog%2Fmapping-progress-connect-america-fund-s-broadband-expansion&rls=com.microsoft:en-US:IE-Address&ie=UTF-8&oe=UTF-8&sourceid=ie7&rlz=117NDKB\\_enUS509](https://www.google.com/search?q=http%3A%2F%2Fwww.fcc.gov%2Fblog%2Fmapping-progress-connect-america-fund-s-broadband-expansion&rls=com.microsoft:en-US:IE-Address&ie=UTF-8&oe=UTF-8&sourceid=ie7&rlz=117NDKB_enUS509).

- ***Rural Call Completion Page.*** The FCC instituted a new webpage covering what is referred to as “Rural Call Completion” problems. These refer to reports by rural consumers of significant problems receiving long distance or wireless calls on their landline telephones. Among other things, the new webpage identifies the causes of rural call completion problems and provides descriptions and characteristics. The new page is available at <http://www.fcc.gov/encyclopedia/problems-long-distance-or-wireless-calling-rural-areas>.
- ***Public Input on FCC Process Reform.*** The FCC is conducting a proceeding to reform FCC processes. To that end, the Commission has sought public input on improving the efficiency of how business is conducted at the FCC. Responses received to the call for recommendations have been made publicly available and can be downloaded and read by clicking on links posted on the FCC’s Process Reform webpage at: <http://fcc.gov/page/fcc-process-reform-external-replies>.
- ***Chairman Wheeler’s eBook: NET EFFECTS: The Past, Present, and Future Impact of our Networks.*** A short, free eBook authored by FCC Chairman Wheeler, “Net Effects: The Past, Present & Future Impact of Our Networks – History, Challenges and Opportunities,” looks at the history of three network revolutions – the printing press, the railroad, and the telegraph and telephony – and how the fourth network revolution – digital communications – will be informed by those experiences. The Commission made the book available on its website at <http://www.fcc.gov/blog/net-effects-past-present-future-impact-our-networks-history-challenges-and-opportunities>.
- ***Mobile Broadband Performance App.*** An ongoing nationwide performance study of broadband service in the United States, the Measuring Broadband America program developed out of a recommendation by the National Broadband Plan to improve the availability of information for consumers about their broadband service. The Measuring Broadband America program is built on principles of openness and transparency. The FCC has made available to the general public the open source software used on both its fixed and mobile applications, the data collected, and detailed information regarding the FCC’s technical methodology for analyzing the collected data. See this information at: <http://www.fcc.gov/measuring-broadband-america>.
- ***Federal Employee Viewpoint Survey Results for 2013.*** The Federal Employee Viewpoint Survey is administered government-wide by OPM. The FCC posted the compiled results of its employees on the FCC website: [http://fjallfoss.fcc.gov/edocs\\_public/attachmatch/DOC-323739A1.pdf](http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-323739A1.pdf).
- ***AccessInfo E-mail List Announcements.*** The FCC posted on its webpage a compiled list of the email announcements of its activities promoting access to people with disabilities

made to the AccessInfo e-mail group: <http://www.fcc.gov/encyclopedia/accessinfo-email-archive>.

- **Low Power FM Radio Channel Finder API.** The Commission posted on its website the Low Power FM (LPFM) Channel Finder search tool. This tool provides potential applicants with a simple means to tentatively identify FM broadcast channels available in their communities. The search tool incorporates changes required by the Local Community Radio Act of 2010, particularly the elimination of third-adjacent channel LPFM spacing requirements (except to protect Canadian or Mexican stations or FM broadcast stations known to host a radio reading service). It is available at: <http://www.fcc.gov/developers/lpfm-api>.

### ***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 FCC has posted its FOIA Quarterly Reports on its website in open formats, see: <http://transition.fcc.gov/foia/Welcome.html#freqinfo>. In addition, as part of Chairman Wheeler's FCC Process Reform initiative, staff have recommended that generally all FOIA materials – including requests, decisions (including fee and fee waiver determinations), appeals, released documents, status information, and all reports to the Department of Justice – be made easily accessible on a consolidated website.

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

The FCC has made blog posts referencing and seeking comment on the FCC's posting on its website of public input on the FCC's process reform proceeding. See: <http://fcc.gov/blog/public-input-process-reform>. More generally, the FCC uses its blogs, and Facebook, Twitter, and Flickr accounts to inform the public of its proactive disclosures and other agency activities.

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.***

The two main challenges to posting additional records are limited web space and budget.

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

The agency generally seeks to increase proactive disclosures on its website on an ongoing basis. In addition, as part of the FCC Process Reform initiative referenced above, staff have recommended that the agency post on a consolidated web page (i) logs allowing the public to determine the status of pending FOIA requests, (ii) all FOIA decisions and released documents; and (iii) the FCC's FOIA reports to the Department of Justice.

## **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.

**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?**

Not applicable.

**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.**

Not applicable.

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

Not applicable. The FOIA Control office, however, sends an acknowledgment to each FOIA requester containing the estimated date of response. In FY 2013, the FCC responded to 75

percent of FOIA requests within the 20-day statutory deadline or the 10-day extension permitted by the statute. In addition, numerous requesters agreed to additional deadline extensions when a longer response time was warranted.

**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. The FCC has met with EPA staff to implement the online FOIA portal that had been adopted by a number of other agencies, and has added the funding of this measure to the list of priority items for future budgeting. In addition, as indicated above, staff have recommended in the FCC Process Reform report that the agency post logs allowing the public to determine the status of pending FOIA requests.

***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.***

As indicated in the 2013 Chief FOIA Officer Report, the FCC's IT team is assessing ways it can better utilize technology the agency already owns or licenses to improve record search capabilities. A shared drive has long been used to enable FCC staff to retrieve and review records gathered for FOIA responses, and the agency is starting to expand the capability of teleworkers to access a shared drive. Extending the shared drive concept to use by other Federal agencies, however, is not warranted because the FCC receives very few consultation or referral requests and because the shared drive exists behind the FCC's security firewall.

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

The agency will continue to pursue additional technological tools to increase FOIA processing efficiency as the budget resources become available. The agency plans to replace manual date stamps and cover sheets with electronic versions that can be used remotely. In addition, broader use of the agency's Expanded Management Tracking System, a workflow management database that allows the agency to more efficiently assign and track its work responses, would improve FOIA processing.

## Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing 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?*

Perfecting simple requests in FY 2013 were processed on average in 33.3 days, as indicated in the agency's FY 2013 Annual Report. Although this figure is slightly beyond the 30-day period permitted by statute considering authorized extensions of time, we note that, as indicated in the agency's FY 2013 Annual Report, the median number of days to process simple requests increased by only one day in FY 2013 to nineteen days. In addition, as noted previously, during this time period, the FCC responded to 75 percent of FOIA requests within the 20-day statutory deadline or the 10-day extension permitted by the statute. In addition, numerous requesters agreed to additional deadline extensions when a longer response time was warranted.

- 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?*

Not applicable.

**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 Year 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?***

Yes.

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

The number of backlogged appeals at the end of FY 2013 increased from last year, mostly due to the fact that one individual filed 17 appeals last year, or 61 percent of the total appeals filed. If the appeals of this individual are excluded, the agency would have 5 pending appeals at the end of FY 2013, as compared to 10 appeals that were pending at the end of FY 2012. We note that the agency resolved more than half of the appeals filed during FY 2013 by this individual (9 of the 17) in the first quarter of FY 2014.

**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.***

Not applicable.

**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 2012 Annual FOIA Report.***

The FCC was able to close nine of the ten oldest appeals that were pending as of the end of Fiscal Year 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 2012?***

Not applicable. As indicated in the FCC's FY 2013 Annual Report, "[a]fter an audit of the FCC Tracking System, [staff] found 0 were pending as of start of fiscal year [2013] because the request [listed as a pending consultation at the end of FY 2012] was a referral and not consultation." See Section XII.B. Consultations on FOIA Requests – Received, Processed, and Pending Consultations, Footnote.

- 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 2012 Annual FOIA Report.***

There was one consultation pending at the end of Fiscal Year 2012 that had been filed on November 1, 2012. It was closed during Fiscal Year 2013, and there were no pending consultations at the end of Fiscal Year 2013.

***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:***

**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?***

Yes. As indicated above, the appeal backlog increased in FY 2013, mostly due to the fact that one individual filed 17 appeals last year, or 61 percent of the total appeals filed. If the

appeals of this individual are excluded, the agency would have 5 pending appeals at the end of FY 2013, as compared to 10 appeals that were pending at the end of FY 2012. We note that the agency resolved more than half of the appeals filed during FY 2013 by this individual (9 of the 17) in the first quarter of FY 2014.

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

No.

- 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. We note that the AFRs filed by the single requester contained numerous complex procedural issues.

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

We have identified no additional causes contributing to the lack of a decrease in the appeal backlog, but we anticipate that additional technology funding would enable the Commission to process appeals more efficiently in the future.

***“Ten Oldest” Not Closed***

- e. *Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012.***

As indicated above, all of these “ten oldest” initial FOIA requests pending from Fiscal Year 2012 were resolved during Fiscal Year 2013, and only one of the “ten oldest” appeals remains pending. The remaining appeal, of a partial FOIA response, is being held pending the agency’s issuance of the follow-up response and its receipt of any subsequent appeal or withdrawal filed by the requester.

- 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.***

Not applicable.

***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.***

We expect the sole remaining pending appeal from the Fiscal Year 2012 “ten oldest” list to be resolved soon.

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.***

Not applicable.

***Interim Responses:***

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.

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

Yes, agency staff assess whether an interim response is appropriate on a case by case basis.

7. ***If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.***

None.

**Use of the FOIA 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 2013?**

No.

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

Not applicable.

**Spotlight on Success**

**Out of all the activities undertaken by your agency since March 2013 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas. As noted above, these agency success stories will be highlighted during Sunshine Week by OIP. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.**

- The backlog of initial FOIA requests was reduced from 38 to 18 during the combined period of Fiscal Year 2013 and the first quarter of Fiscal Year 2014, dropping more than 52 percent.
- The agency addressed all of the ten oldest pending FOIA requests during Fiscal Year 2013, as well as nine of the ten oldest pending FOIA appeals.
- The backlog reduction resulted from a concerted effort among FOIA staff.
  - FOIA Control staff, responsible for assigning FOIA requests and compiling FOIA reports, and FOIA legal staff, communicated upcoming deadlines and backlog figures on a regular basis to staff of the Bureau and Offices who as records custodians were responsible for responding to FOIA requests.
  - FOIA control office and legal staff proactively examined pending requests on a case by case basis and identified requests that may need additional support, or that raised issues that had been dealt with previously. These staff then worked closely with staff in the Bureaus and Offices to move the request forward.
  - Staff in Bureaus and Offices were also given advice and support upon request for FOIA requests that were backlogged or stalled.