

# **2017 Chief FOIA Officer Report of the Federal Communications Commission**

## **Brendan Carr, Acting General Counsel and Chief FOIA Officer**

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 General Counsel is the FCC's Chief FOIA Officer. The general reporting period for the Chief FOIA Officer (CFO) Report is March 2016 to March 2017. The FCC conducted a review of its administration of the FOIA and analyzed the data from its FOIA Annual Report from Fiscal Year 2016 (October 1, 2015, to September 30, 2016), supplemented by data gathered for the period through March 2017. Highlights of this review and analysis are:

- During the reporting period, the Commission substantially reduced its backlog of initial FOIA requests. Specifically, the Commission had only nine requests backlogged at the end of FY 2016, as compared to 25 requests at the end of FY 2015. This represents a 64 percent reduction in backlogged requests.
- In December, the Commission updated its FOIA rules to implement the requirements of the FOIA Improvement Act of 2016. These rule changes conformed the Commission's FOIA regulations to existing practices and streamlined the implementation of the Commission's FOIA program.
- Commission staff processed 29 FOIA appeals in FY 2016. This is more than triple the number of FOIA appeals that were processed in FY 2015.

## Section I: Steps Taken to Apply the Presumption of Openness

### A. FOIA Training

**1. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any FOIA training or conference during the reporting period such as that provided by the Department of Justice?**

Yes. As explained in more detail in the response to Question 2 below, the agency's FOIA professionals and other staff attended training offered by the Department's Office of Information Policy, as well as training offered by the FCC.

**2. If yes, please provide a brief description of the type of training attended and the topics covered.**

The training attended by FCC FOIA staff includes, but is not limited to:

- Joint FCC/Department of Justice FOIA Training (*Tentatively Scheduled*, February 21-22, 2017) – This joint training program covers FOIA procedural requirements, an overview of FOIA exemptions (with a focus on those exemptions most relied on by Commission staff), the use of proactive disclosures, fees and fee waivers, and administrative appeals and dispute resolution.
- Department of Justice Advanced FOIA Seminar (January 26, 2017) - This full-day program provides lectures and discussions on advanced topics in FOIA administration, including an update of current policy developments impacting FOIA administration, an overview of recent FOIA court decisions, and advanced procedural and exemption considerations.
- Department of Justice FOIA Litigation Seminar (October 24, 2016) - This full-day program provides lectures and discussions on advanced topics in FOIA administration, including an update of current policy developments impacting FOIA administration, an overview of recent FOIA court decisions, and advanced procedural and exemption considerations.
- Department of Justice Annual FOIA Report Refresher Training (October 11, 2016) – This 2.5 hour course provides a thorough review of the requirements for compiling and submitting the agency's Annual FOIA Report.
- Department of Justice FOIA Amendments Training (August 8, 2016) – This two hour course reviews changes to FOIA processing in light of the FOIA Improvement Act of 2016.
- FCC FOIA Improvement Act Meeting (July 20, 2016) – This high-level meeting discusses changes made to the FOIA in the FOIA Improvement Act of 2016, along with how those changes will impact FCC FOIA operations.
- Department of Justice Best Practices from the Requester's Perspective (April 25, 2016) – This panel discussion provides insight into agency practices that are beneficial to FOIA requesters.

**3. Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.**

We anticipate that at least 80 percent of the FCC's FOIA professionals and staff with FOIA responsibilities will have attended at least one FOIA training during this reporting period. The Commission's major annual FOIA training is scheduled for late February, after this report is submitted but prior to the close of the reporting period.

**4. OIP has [directed agencies](#) to “take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year.” If your response to the**

**previous question is that less than 80% of your FOIA professionals attended training, please explain your agency's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.**

Not applicable.

***B. Outreach***

***C. Other Initiatives***

**5. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA?**

The FCC's online training portal includes a FOIA Training for Federal Employees module. This module takes less than an hour to complete and is directed at employees who are not FOIA professionals, but who may need to provide records in response to a FOIA request or are otherwise interested in the FOIA process.

**6. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.**

The Chief FOIA Officer directed management in the FCC's bureaus and offices to devote resources to determining if releases are appropriate for records that otherwise would be protected from release under the FOIA exemptions in accordance with the foreseeable harm standard. Additionally, FCC FOIA staff in all bureaus and offices have been provided with a FOIA response template that includes language to use that acknowledges the agency's responsibility to apply the foreseeable harm standard, and the result of that determination. The template also includes discussion of the harm that would result if an otherwise withheld record were released. Agency FOIA staff also review exempt documents to determine whether partial disclosures may be made.

**Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests**

***A. Processing Procedures***

**1. For Fiscal Year 2016, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2016 Annual FOIA Report.**

8.69 days

**2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.**

Not applicable.

**3. Please provide an estimate of how many requests your agency processed in Fiscal Year 2016 that were from commercial use requesters. If your agency is decentralized, please identify any components within your agency that received a majority of their requests from commercial use requesters.**

The Commission processed approximately 180 requests from commercial use requesters.

## ***B. Requester Services***

**4. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of how often requesters sought assistance from your agency's FOIA Public Liaison.**

Since the agency began informing requesters of the availability of the FOIA Public Liaison's services, fewer than 10 requesters have contacted the FOIA Public Liaison.

**5. The FOIA Improvement Act of 2016 requires agencies to make their reference material or guide for requesting records or information from the agency electronically available to the public. Please provide a link to your agency's FOIA reference guide.**

<http://transition.fcc.gov/foia/foiahandbook.pdf>

## ***C. Other Initiatives***

**6. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as improving search processes, eliminating redundancy, etc., please describe them here.**

During the reporting period, the Commission made the first update to its FOIA rules in nearly a decade. In addition to making changes required by the FOIA Improvement Act of 2016, the Commission took the opportunity to amend the rules to conform to existing FOIA practice and streamline FOIA procedures. These amendments further directed requesters to FOIAonline, the Commission's online FOIA portal, eliminating inefficient and outdated filing methods. The rules update also eliminated certain redundant and unnecessary labeling/filing requirements. Separate from the rules update, the agency also introduced a single point of contact e-mail address for the FOIA Public Liaison. Additionally, the Commission updated its FOIA System of Records Notice, reflecting the transition to the FOIAonline portal, and allowing the Commission to more effectively take advantage of the Office of Government Information Service's mediation program.

### **Section III: Steps Taken to Increase Proactive Disclosures**

#### ***A. Posting Material***

**1. Describe your agency's process or system for identifying "frequently requested" records that should be posted online.**

The agency processes relatively few FOIA requests for similar records each year and similar requests are processed using the same staff. Given this, it is often readily apparent to the staff that the same record has been frequently requested. More formally, the Commission uses metadata tagging in FOIAonline, its online FOIA portal, to track the subject matter of requested records. If it is suspected that a certain record has been requested multiple times, FOIA staff will search for the metadata tag in question, pull the records, confirm they have been requested three or more times, and post them to the Commission's FOIA reading room.

**2. Does your agency have a distinct process or system in place to identify other records for proactive disclosure? If so, please describe your agency's process or system.**

Yes. It is the Commission's policy to post on its website any of its information that is of general interest to the public so long as there are no national security, law enforcement, legal, or privacy issues that

prohibit its publication. Pursuant to this policy, agency staff in the individual bureaus and offices, in consultation with information technology staff, review and select material for proactive disclosures on an ongoing basis. Although this process is an informal one, it has led to numerous disclosures on its website, some of which are listed below.

**3. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?**

No.

**4. If so, briefly explain those challenges and how your agency is working to overcome them.**

Not applicable.

**5. Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.**

*Hurricane Matthew.* The Commission made available a new webpage providing daily status reports regarding the impact of Hurricane Matthew on communications systems. The site also served as a single point of access for notices related to the hurricane, as well as tips for communicating during an emergency, available at: <https://www.fcc.gov/matthew>.

*Merger Transactions.* The Commission created two merger review webpages for new pending transactions during the reporting period. Each contains a graphic showing the timeline, status, and history of the pending transaction. The new pages also provide consolidated access to relevant publicly available documents, available at: <https://www.fcc.gov/transaction/nexstar-media-general>, <https://www.fcc.gov/transaction/verizon-xo>.

*Mapping Update.* The Commission modernized its geospatial mapping site to improve the usability and performance of the system while also making it easier for the public to access data. Key features of the update included enhanced display, improved filter and search capabilities, greater reliability, streamlined publishing, and flexible inputs. Discussion of the update is available at <https://www.fcc.gov/news-events/blog/2016/07/12/modernizing-fccs-geospatial-maps>, and the map page itself can be found at <https://www.fcc.gov/reports-research/maps/>.

*Stopping Unwanted Calls.* The Commission published numerous webpages to assist consumers in preventing unwanted calls and faxes. The pages provided a single source where consumers could get information on the rules regarding unwanted calls, texts, and faxes; sign up for the Do Not Call list; file a complaint; and find tips for avoid unwanted communications, available at <https://www.fcc.gov/stop-unwanted-calls> and <https://www.fcc.gov/unwanted-calls>.

**6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe these efforts.**

Yes. The FCC participates in numerous social media and e-mail subscription services through which, among other things, it publicizes proactive disclosures for public awareness. These include Facebook, Twitter, Instagram, YouTube, and many others. For instance, the FCC maintains over fifty-five RSS feeds, by which users can receive automatic updates covering the FCC Blog, actions by individual bureaus and offices, and numerous types of FCC documents and databases. Users can also receive this information by email subscription.

***B. Other Initiatives***

**7. If there are any other steps your agency has taken to improve proactive disclosures, please describe them here. For example, has your agency engaged requesters in determining how and what to post? Has your agency used web analytics to inform your proactive disclosures?**

It is the FCC's policy to post on its website any of its information that is of general interest to the public so long as there are no national security, law enforcement, legal, or privacy issues that prohibit its publication. The inventory of website content disclosed pursuant to this policy also is posted online at <https://www.fcc.gov/general/website-inventory-priorities-and-schedules>.

#### **Section IV: Steps Taken to Greater Utilize Technology**

##### ***A. Making Material Posted Online More Useful***

**1. 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?**

Yes.

**2. If yes, please provide examples of such improvements.**

The FCC's policy on open data is showcased in a webpage providing further links, including: 1) FCC Open Data, enabling public innovation by publishing data underlying FCC regulatory proceedings with a focus on improving quality, openness, accessibility and utility; 2) FCC Developers Page, promoting the innovative application of FCC data by connecting developers with the tools they need to unlock government data; 3) FCC Digital Strategy, the agency's participating in federal cross-agency initiatives to increase data usability and consumption; 4) FCC Data and Information Officers, a roster of FCC staff members dedicated to providing data and information; and 5) FCC blog posts on open government. The webpage may be accessed at <https://www.fcc.gov/general/open-government-fcc>.

##### ***B. Other Initiatives***

**3. Did your agency successfully post all four quarterly reports for Fiscal Year 2016?**

Yes.

**4. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2017.**

Not applicable.

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

##### ***A. Simple Track***

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.

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

Yes.

**2. If so, for your agency overall in Fiscal Year 2016, was the average number of days to process simple requests twenty working days or fewer?**

No, the mean processing time for simple requests was 22.57 working days. However, the median time to process a simple track request was 16 working days, with over 80 percent of simple track requests being processed in under 20 working days.

**3. Please provide the percentage of requests processed by your agency in Fiscal Year 2016 that were placed in your simple track.**

93 percent. 828 requests were placed in the simple track, 1 request was placed in the complex track, and 55 requests were placed in the expedited track.

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

Not applicable.

***B. Backlogs***

**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. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2015 and Fiscal Year 2016 when completing this section of your Chief FOIA Officer Report.**

**BACKLOGGED REQUESTS**

**5. If your agency had a backlog of requests at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015? If not, explain why and describe the causes that contributed to your agency not being able reduce its backlog.**

Yes. The number of initial FOIA requests reported as backlogged at the close of FY 2016 was 9, a decrease from 25 as reported for FY 2015. The backlog number decreased even as the number of initial requests received increased by 6.5 percent, to 836, thereby increasing the work demands placed on FOIA processing staff.

**6. If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:**

- **An increase in the number of incoming requests.**
- **A loss of staff.**
- **An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.**
- **Any other reasons – please briefly describe or provide examples when possible.**

Not applicable.

**7. If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests *received* by your agency in Fiscal Year 2016.**

1.1 percent, i.e., 9 out of 836 total initial FOIAs received in FY 2016 were backlogged.

#### **BACKLOGGED APPEALS**

**8. If your agency had a backlog of appeals at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015? If not, explain why and describe the causes that contributed to your agency not being able reduce backlog.**

No. The number of backlogged appeals reported at the end of FY 2016 was 12, an increase from 9 reported at the end of FY 2015. For an explanation of this increase, please see the Commission's response to Question 9.

**9. If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:**

- **An increase in the number of incoming appeals.**
- **A loss of staff.**
- **An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.**
- **Any other reasons – please briefly describe or provide examples when possible.**

The Commission received nearly double the number of appeals in FY 2016 as in FY 2015. In FY 2015, the Commission received 16 appeals. In FY 2016, the Commission received 31 appeals, an increase of 94 percent. In response, the Commission's FOIA staff more than doubled its processing of FOIA appeals, with 29 appeals processed in FY 2016 versus 9 processed in FY 2015, an increase of 222 percent. We note that, unlike other agencies, substantive action on FCC FOIA appeals is taken by Commission vote and has not been delegated to staff. The other factors listed above were not significant contributing factors.

**10. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2016. If your agency did not receive any appeals in Fiscal Year 2016 and/or has no appeal backlog, please answer with "N/A."**

38.7 percent, i.e., 12 out of 31 appeals received in FY 2016 were backlogged.

#### ***C. Status of Ten Oldest Requests, Appeals, and Consultations***

**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 2015 and Fiscal Year 2016 when completing this section of your Chief FOIA Officer Report.**

## TEN OLDEST REQUESTS

**11. In Fiscal Year 2016, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2015 Annual FOIA Report?**

Yes.

**12. 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 2015 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.**

Not applicable.

**13. Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?**

Two of the ten oldest requests reported as pending at the end of FY 2015 were closed during FY 2016 because they were withdrawn by the requester. No interim response was provided.

## TEN OLDEST APPEALS

**14. In Fiscal Year 2016, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2015 Annual FOIA Report?**

No.

**15. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2015 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.**

During FY 2016, the agency closed nine of its ten oldest appeals that were reported as pending at the end of FY 2015.

## TEN OLDEST CONSULTATIONS

**16. In Fiscal Year 2016, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2015 Annual FOIA Report?**

There were no pending consultations reported in the FY 2015 Annual Report.

**17. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2015 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.**

Not applicable.

### *E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans*

**18. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2015.**

As noted above, the Commission was able to close its ten oldest requests from FY 2015, and the Commission had no pending consultations at the end of FY 2015. The Commission was unable to close

one appeal that was pending at the end of FY 2015. The Commission has attempted to work with the appealing party to resolve their request without issuing a formal decision on the appeal. During FY 2016, negotiations and mediation before the Office of Government Information Services (OGIS) were ongoing, necessitating that the appeal remain open. OGIS only recently issued its final statement regarding the mediation.

**19. If your agency was unable to close any of its ten oldest requests 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.

**20. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2017.**

As mediation efforts in the pending appeal have concluded, the Commission will now move to render a decision on the appeal.

#### ***F. Success Stories***

***OPTIONAL:*** Out of all the activities undertaken by your agency since March 2016 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 key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

Please see summary highlights in the Introduction on page 1.