

2022 Chief FOIA Officer Report

UNITED STATES SECTION

INTERNATIONAL BOUNDARY & WATER COMMISSION

UNITED STATES AND MEXICO (USIBWC)



Chief FOIA Officer: Rebecca A. Rizzuti, Assistant Counsel

Section 1: Steps Taken to Apply the Presumption of Openness

A. FOIA Leadership

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. See 5 U.S.C. §552 (j)(1) (2018). Is your agency's Chief FOIA Officer at or above this level?

The USIBWC does not have a structure with Assistant Secretary or Deputy Secretary-level positions. The Chief FOIA Officer is 1 of 2 attorneys for the Agency, and the Legal Division reports directly to the head of the Agency.

2. Please provide the name and title of your agency's Chief FOIA Officer.

Rebecca A. Rizzuti, Assistant Counsel for USIBWC

B. FOIA Training

3. The FOIA direct agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. §552 (a)(j)(2)(F). Please describe efforts your agency has undertaken to ensure property FOIA training is made available and used by agency personnel.

None this fiscal year. In the past, a FOIA presentation was given to Agency personnel during annual training and manager's training. The COVID pandemic has impacted the training afforded to Agency personnel.

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

No.

5. If yes, please provide a brief description of the type of training attended or conducted and the topics covered.

N/A

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

0%

7. 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.

The Agency will send at least one member of the FOIA staff for Department of Justice FOIA training when the COVID pandemic is over and it is safe to travel.

C. Outreach

8. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

No.

D. Other Initiatives

9. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff.

The Agency in the past has conducted training for non-FOIA personnel regarding non-FOIA personnel's responsibility for implementing FOIA. However, due to the COVID pandemic, this training was not implemented in 2021. The Agency plans to conduct this training virtually in 2022 as well as work to include FOIA obligations in performance plans for all employees.

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

In responding to all requests, the Agency continues to apply a presumption of openness. Most redactions made by the Agency this year to responsive documents are b (6) (to protect information that would constitute an invasion of personal privacy); b (3) redaction of information prohibited by release by other statutes; or b (5) (to protect deliberative materials or attorney-client communication). The Agency assesses whether a discretionary release is appropriate on a case-by-case basis. To ensure requesters receive information as quickly as possible, the Agency releases information on a "rolling" basis if the request results in large volumes of information being released.

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

1. For Fiscal Year 2021, 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 2021 Annual FOIA Report.

There were no requests for expedited processing.

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.

N/A

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program?

No. The FOIA office hired two assistants, but both neither lasted more than 2 months. It has now hired a new assistant and is currently training that person on FOIA program administration.

4. Standard Operating Procedures (SOPs): Having SOPs can improve the consistency and quality of an agency's FOIA process. In addition, describing an agency's standard practices

for handling FOIA requests on agency FOIA websites can help requesters better understand how their request will be handled.

a) Does your agency have SOPs that outline general processes for handling FOIA requests and appeals?

Yes.

b) If not, does your agency have plans to create FOIA SOPs?

N/A

c) If yes, how often are they reviewed/updated to account for change in law, best practices, and technology?

The SOPs have not been reviewed since they were developed in 2015. One task of the new FOIA person will be to update SOPs and Agency regulations as necessary.

d) In addition to having SOPs, does your agency post, or otherwise describe your standard processes for handling requests on your website?

No.

5. 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 the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2020 (please provide a total number or an estimate of the number).

None.

6. Does your agency frequently receive common categories of first-party requests? If so, please describe the types of requests and if your agency has explored establishing alternative means of access to these records outside of the FOIA process?

No.

7. The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within 180 days. Has your agency updated its FOIA regulations in accordance with the FOIA Improvement Act of 2016? If not, what is your agency's plan to update your regulations.

No. The Agency has hired an employee that will dedicate a large portion of her time to FOIA. The Agency will ensure that employee works on updating Agency regulations.

8. Please explain how your agency worked to mitigate the impact of the COVID-19 pandemic on FOIA processing. Examples could include, but are not limited to: altering workflows, implementing new technology, providing notices and instructions or otherwise communicating directly with requesters.

The employee(s) working on FOIA can intermittently work on FOIA from home. Communication with requesters via email is regularly conducted to update requesters on the status of their request.

9: Please describe: best practices used to ensure that your FOIA system operates efficiently and effectively:

The Agency implements a tracking system for FOIA requests that tracks progress of the request from initiation to completion. The challenges faced by the FOIA program this year were due to lack of personnel in the FOIA program compounded by the COVID pandemic requiring work-from-home for Agency personnel.

10: Has your agency reviewed its FOIA-related staffing capabilities to identify resources needed to respond to current and anticipated FOIA demands?

No. However, during 2022 all Agency divisions have been tasked to assess division workloads as part of an overarching analysis of workforce and resources allocated to each division.

Section III: Steps Taken to Increase Proactive Disclosures

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

The Agency began posting the responses to wall-related FOIA requests in its reading room on its website. While this is not the same as the requirement to publicize the information if we have three (3) requests for the same information, the Agency proactively disclosed information related to a topic that seems to be of general interest: https://ibwc.gov/Organization/FOIA_RR.html. Also in this reading room are Agency policies, brochures, and other programmatic materials that are sometimes requested.

The Agency continues to increase accessibility to critical stream level and flow data. To that end, have developed a map-based data portal that is now accessible by the general public. (<https://waterdata.ibwc.gov/>) This portal allows citizens easily view and export USIBWC river

gaging data that is commonly requested through FOIA requests. The USIBWC portal includes river data from areas that have heightened public interest, such as the Tijuana River in California, but also has data from all areas along the border where USIBWC collects stream gage data.

In addition, in 2020 the USIBWC established an official agency Twitter account (@USIBWC). During 2021, the Agency used that account extensively to post information and links to topics of public interest. Also, the Agency posts recent Agency-related press releases on its website: <https://ibwc.gov/home.html>.

2. 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. Please see Section III.1.

3. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

The USIBWC uses its website and Twitter account to make press releases, links, water data, and other information on topics of current interest available to the public. There are not challenges the Agency faces in this area.

4. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

The Agency identifies records that are requested more than three times through its FOIA program and proactively posts those frequently requested records in its FOIA reading room page. This allows the Agency to track proactive disclosures.

5. Does your agency disseminate common types of material outside of FOIA, including in online databases where the public may access them? If yes, please provide examples and, if applicable, statutory authority.

Yes. The Agency routinely posts water gage and flow data for various waterways and gaging stations along the U.S.-Mexico boundary. This includes real-time flow volume data in certain rivers, such as the Tijuana River in southern California.

6. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office? If so, describe this interaction.

Yes. The FOIA staff collaborates with its Information Technology (IT) staff to proactively disclose frequent requested records in the FOIA reading room. Only the IT staff can manage information on the Agency's website. The Agency's water accounting division posts water gage and flow data on the Agency's website independently as part of its routine business.

Section IV: Steps Taken to Greater Utilize Technology

1. Please briefly describe the types of technology your agency uses to support the FOIA program. In addition, please highlight if your agency is leveraging or exploring any new technology that you have not previously reported. If so, please describe the type of technology.

The Agency uses an electronic search for both emails and documents to respond to FOIA requests, in addition to conducting physical searches for records. The Agency uses email to communicate with requesters, and electronic platforms, such as its website and Twitter account to proactively disseminate information about the Agency.

Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

No.

2. OIP issued guidance in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

No. The Agency will incorporate this into the duties of the new FOIA assistant.

Please briefly describe any new types of technology your agency uses to support your FOIA program.

The Agency increasingly uses its new Twitter account to disseminate information publicly. It also improved a water gage in the Tijuana River in southern California such that the gage can relay real-time data to the Agency's website.,

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2020?

No.

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 2021.

The FOIA office lacked personnel during 2021 and the personnel designated to work on FOIA were required to work from home due to the COVID pandemic. During 2022, the FOIA office has hired a new person to dedicate more time to the FOIA program and manage the FOIA program.

5. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2020 Annual FOIA Report and, if available, for your agency's Fiscal Year 2020 Annual FOIA Report.

This link goes to the 2021 report on the Agency's website; however, the raw data for 2021 is still being compiled and not yet posted here: <https://www.ibwc.gov/Organization/FOIA.html>. The Agency did not post its raw data in FY 2020.

6. Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

Virtually all aspects of the FOIA program use technology – from tracking and processing requests electronically, to the searches performed for responsive material, to the use of our website to proactively post information. There are not challenges in this regard.

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

A. Simple Track

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

No.

2. If your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2021?

N/A

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2021 that were placed in your simple track.

N/A

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?

No.

B. Backlogs

BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2021, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2020?

No.

6. If not, did your agency process more requests during Fiscal Year 2021 than it did during Fiscal Year 2020?

No.

7. If your agency's request backlog increased during Fiscal Year 2021, please 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:

The primary cause of the Agency's backlog is lack of FOIA personnel and difficulty processing documents during telework. Also, there was an increase FOIA requests for large volumes of documents. Because of the lack of FOIA personnel, and the difficulties of working from home during the COVID pandemic, in combination with requests for larger volumes of records, this created a situation where the backlogs increased. We received a large number of requests for documents relevant to US-Mexico border walls. These requests typically span a large number of years and entail an extensive search of emails and electronic documents. In addition, the documents that are responsive are: large documents; require careful redacting; and may require consultation with other agencies.

8. 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 2021.

40% (Twelve out of the 30 requests received for FY 2021 were backlogged at the end of the Fiscal Year.) However total backlogged requests including those from previous fiscal years are 39, which is a 130% backlog rate of the total requests received in 2021 (30 received in 2021).

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2020, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

There were no backlogged appeals in FY2020 or 2021.

10. If not, did your agency process more appeals during Fiscal Year 2021 than it did during Fiscal Year 2020?

No.

11. If your agency's appeal backlog increased during Fiscal Year 2021, please 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:

N/A

12. 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 2020. If your agency did not receive any appeals in Fiscal Year 2020 and/or has no appeal backlog, please answer with "N/A."

N/A

C. Backlog Reduction Plans

13. In the 2020 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2019 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2020?

N/A. The Agency did not have a backlog of over 1000 requests in FY 2021.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2021, what is your agency's plan to reduce this backlog during Fiscal Year 2022?

N/A. The Agency did not have a backlog of over 1000 requests in FY 2021.

D. Status of Oldest Requests, Appeals, and Consultations.

OLDEST REQUESTS

15. In Fiscal Year 2021, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2020 Annual FOIA Report?

No.

16. 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 2021 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

We closed 1 of 10 of the oldest requests.

17. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

The Agency closely tracks the closure of its oldest pending requests and provides a weekly status report to the Agency's management.

TEN OLDEST APPEALS

19. In Fiscal Year 2021, did your agency close the ten oldest appeals that were reported pending in Section VII.C.5. of your Fiscal Year 2019 Annual FOIA report?

There were no appeals in 2021 and one appeal in 2020 that was closed in 2020.

20. 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.E of your Fiscal Year 2019 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

There were no appeals in 2021 and one appeal in 2020 that was closed in 2020.

21. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

N/A

TEN OLDEST CONSULTATIONS

22. In Fiscal Year 2021, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2020 Annual FOIA Report?

There were no consultations pending in FY 2020.

23. 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 2021 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

N/A

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

24. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2021.

There were no obstacles with the appeal and the consultations in 2021. The Agency has had challenges retaining FOIA personnel and dedicating adequate staff time to FOIA. In addition, the Agency received more requests for large volumes of documents regarding the “border wall,” creating some difficulty in responding to such voluminous requests. In addition, the COVID-pandemic requiring work from home and telework obstacles (such as connection to agency networks) and the loss of FOIA personnel detrimentally impacted the FOIA program in 2021.

25. 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.

N/A

26. 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 2021.

The USBIWC has hired an additional FOIA staff member this year who will help manage the FOIA program as a key duty of the position.

F. Success Stories

The Agency has continued its administrative procedure for processing FOIA requests, despite the challenges presented by the loss of FOIA staff and the COVID pandemic. The FOIA office continued to operate with one staff member who dedicates part of her duty hours to processing FOIA requests. In addition, the Agency has proactively posted material on its website and disseminates information with high public interests through its new Twitter account.