



PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

2016 Chief FOIA Officer Report

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2016 CHIEF FOIA OFFICER REPORT**

Name and Title of Agency's Chief FOIA Officer:

Sharon Bradford Franklin, Executive Director

Section I: Steps Taken to Apply the Presumption of Openness

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?

- *Such training or events can include offerings from OIP, your own agency or another agency or organization.*

Response: Yes, PCLOB's Public Liaison, Chief FOIA Officer, and FOIA Officer attended an agency-specific training created and hosted by the Department of Justice ("DOJ") Office of Information Policy ("OIP") in April 2015. Also, the FOIA Officer attended DOJ OIP's Advanced Freedom of Information Act Seminar in June 2015.

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

Response: Approximately three-out-of-four, or seventy-five percent, of PCLOB's part-time FOIA professionals and staff with FOIA responsibilities attended substantive FOIA training during this reporting period.

*3. 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.*

Response: PCLOB's FOIA professionals, like all staff, are required to attend at least 40 hours of professional development training each year. Such training includes training specifically focused on the employee's day-to-day responsibilities, including the FOIA. The Agency will require mandatory FOIA training for all FOIA professionals in the next reporting cycle and thereafter.

Discretionary Releases:

4. Does your agency have a distinct process or system in place to review records for discretionary release?

- If so, please briefly describe this process.
- If your agency is decentralized, please specify whether all components of your agency have such a process or system in place?

Response: Review of records for discretionary release occurs on a case-by-case basis. In general, the PCLOB will review a responsive record that may be subject to a FOIA exemption to determine if (a) the applicable exemption permits discretionary release and (b) whether the agency's interest that is protected by the exemption would be harmed. If the responsive record is subject to an exemption that permits discretionary release and the agency would not suffer harm, it is the agency's general policy to release that record.

5. During the reporting period, did your agency make any discretionary releases of information?

Response: The PCLOB did not make any discretionary releases of information during the reporting period. The PCLOB notes that out of the twelve FOIA requests the Board processed during Fiscal Year 2015, none included responsive records that raised the issue of discretionary release, and no exemptions were raised.

The Board's practice is to disclose as much information as possible in a manner that is consistent with protecting predecisional information, national security, physical security, systems security, personal privacy, and law enforcement interests. However, to the extent that information covered by a FOIA exemption can be released without harm to the agency, the Board's practice is to disclose that information.

6. What exemption(s) would have covered the material released as a matter of discretion? For a discussion of the exemptions that allow for discretionary releases, please see OIP's guidance on *implementing the President's and Attorney General's 2009 FOIA Memoranda*.

Response: N/A

7. Provide a narrative description, as well as some specific examples, of the types of information that your agency released as a matter of discretion during the reporting year.

Response: N/A

8. If your agency was not able to make any discretionary releases of information, please explain why. For example, you should note here if your agency did not have an opportunity to make discretionary disclosures because you provided full releases in response to all requests or the only exemptions that were applied were those that do not lend themselves to discretionary release (i.e. Exemptions 1, 3, 4, 6, 7A, 7B, 7C, 7F).

Response: In the reporting year, the PCLOB did not raise any FOIA exemptions to records responsive to processed requests. The majority of the requests received by the PCLOB did not result in records responsive to the requests and the majority of the remaining processed requests were full grants.

Other Initiatives:

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

- If any of these initiatives are online, please provide links in your description.

Response: The presumption of openness is an inherent principle of the Board's FOIA practice. In an effort to foster transparency, the Board maintains a public website that provides access to transcripts from public meetings, official Board correspondence, the Board's Semi-Annual Reports to Congress, as well as the Federal Register notices for the Board's public meetings and the resulting comments from the public. The general accessibility and availability of this information allows the public to review the documents without the necessity of filing a FOIA request. Please see <http://www.pclob.gov/library.html>.

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

Processing Procedures:

1. For Fiscal Year 2015, 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 2015 Annual FOIA Report.

- Please note here if your agency did not adjudicate any requests for expedited processing during Fiscal Year 2015.

Response: The PCLOB did not adjudicate any requests for expedited processing during Fiscal Year 2015.

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.*

Response: N/A

3. *On July 2, 2015, OIP issued **new guidance** to agencies on the proper procedures to be used in the event an agency has a reason to inquire whether a requester is still interested in the processing of his or her request. Please confirm here that to the extent your agency may have had occasion to send a "still interested" inquiry, it has done so in accordance with the new guidelines for doing so, including affording requesters thirty working days to respond.*

Response: The PCLOB has not yet had occasion to send a "still interested" inquiry; however, the Agency will implement the proper procedures to be used in the event it has a reason to inquire whether a requester is still interested in the processing of his or her request.

Requester Services:

4. *Agency FOIA Requester Service Centers and FOIA Public Liaisons serve as the face and voice of an agency. In this capacity they provide a very important service for requesters, informing them about how the FOIA process works and providing specific details on the handling of their individual requests. The FOIA also calls on agency FOIA Requester Service Centers and FOIA Public Liaisons to assist requesters in resolving disputes. Please explain here any steps your agency has taken to strengthen these services to better inform requesters about their requests and to prevent or resolve FOIA disputes.*

- *If your agency has not taken any steps recently to strengthen these services, either because there has been no need to due to low demand or because these services are already robust, please briefly explain that that here.*

Response: The agency has not taken any steps recently to strengthen these services because there has been no need to due to low demand. However, the PCLOB has a dedicated FOIA Public Liaison who is prepared to provide these services when needed.

Other Initiatives:

5. *If there are 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., please*

describe them here.

Response: The PCLOB's FOIA practice, like the agency itself, remains relatively new and small. As the Board's FOIA professionals engage with requesters, process requests, and adjudicate appeals, the agency is working to ensure that its FOIA system operates efficiently and effectively. Within the reporting period, the agency maintained an internal digital tracking system, pursuant to its system of records notice 78 Fed. Reg. 39021 (June 28, 2013), which aids in processing requests and producing future public FOIA reports. In the next reporting cycle, the agency intends to complete an internal FOIA policy and a public FOIA handbook.

Section III: Steps Taken to Increase Proactive Disclosures

Posting Material:

1. Describe your agency's process or system for identifying "frequently requested" records required to be posted online under Subsection (a)(2) of the FOIA. For example, does your agency monitor its FOIA logs or is there some other system in place to identify these records for posting?

Response: The Board's FOIA Officer is charged with monitoring the Board's FOIA requests to identify "frequently requested" records to be posted online.

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.

- Please note that this question is directed towards proactive disclosure of records that go beyond frequently requested records required to be posted under Subsection (a)(2) of the FOIA.*

Response: The Board has identified specific categories of information that are proactively placed on its website. These categories of information include transcripts from public meetings, Semi-Annual reports to Congress, relevant agency policies, Board correspondence, and the Board's public reports. The Board is dedicated to promoting transparency to the extent consistent with its obligations to protect classified information. Therefore, it proactively releases unclassified records about the operations and activities of the agency to the public without a FOIA request, and will further refine this process in the future, as necessary.

3. *When making proactive disclosures of records, are your agency's FOIA professionals involved in coding the records for Section 508 compliance or otherwise preparing them for posting? If so, provide an estimate of how much time is involved for each of your FOIA professionals and your agency overall.*

- *Please note that this question is directed at the efforts of actually posting the records online once all disclosure determinations have been made. For example, efforts to load the records in your web content platform or making the releasable documents accessible in compliance with Section 508 of the Rehabilitation Act.*

Response: The Board's public website was developed with Section 508 attributes in mind, but has not yet undergone any testing or verification for Section 508 compliance because the agency is still relatively new and has limited resources. The agency plans to review the website for Section 508 compliance in this fiscal year, though review will depend on available resources. PCLOB's FOIA professionals are not involved in Section 508 coding, which is done solely by the Office of the Chief Information Officer.

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

Response: The PCLOB has not yet encountered challenges that make it difficult to post records we otherwise would like to post. However, the Board's internal web development professionals are prepared to address future challenges that may make it difficult to post records.

5. *If so, please briefly explain those challenges.*

Response: N/A

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

Response: The Board maintains a current "library" of proactively disclosed records on its website, www.pclob.gov, which includes copies of the agencies policies, oversight reports, notices of public hearings and meetings (including transcripts), and official correspondence between the Board and other agencies, the President, and Congress.

Records proactively disclosed by the PCLOB during the past reporting year (with links):

Advisory Function Policy and Procedure, Oct. 30, 2015:
[https://www.pcllob.gov/library/PolicyAdvisory Function Policy Procedure.pdf](https://www.pcllob.gov/library/PolicyAdvisory%20Function%20Policy%20Procedure.pdf)

Advisory Function Policy and Procedure Fact Sheet:
[https://www.pcllob.gov/library/Policy-Advisory Function Policy Fact Sheet.pdf](https://www.pcllob.gov/library/Policy-Advisory%20Function%20Policy%20Fact%20Sheet.pdf)

PCLOB Strategic Plan for 2016 – 2018, July 31, 2015:
[https://www.pcllob.gov/library/StrategicPlan 2016-2018.pdf](https://www.pcllob.gov/library/StrategicPlan%202016-2018.pdf)

PCLOB FY 2016 Budget Request:
<https://www.pcllob.gov/library/CBJB16.pdf>

May 13, 2015 Public Meeting on Executive Order 12333 at the National Constitution Center (Agenda, Federal Register Notice, and Meeting Transcript):
<https://www.pcllob.gov/events/2015/may13.html>

April 8, 2015, Public Meeting (Federal Register Notice, Meeting Transcript, Executive Order 12333 Project Description, Member Statements, Video Recording):
<https://www.pcllob.gov/events/2015/april08.html>

PCLOB Letter to DHS on Cybersecurity Report, May 26, 2015:
[https://www.pcllob.gov/library/Letter-DHS Cyber 5-26-2015.pdf](https://www.pcllob.gov/library/Letter-DHS%20Cyber%205-26-2015.pdf)

Semi-Annual Report October 2014 - March 2015, July 31, 2015:
[https://www.pcllob.gov/library/Semi Annual Report-March2015.pdf](https://www.pcllob.gov/library/Semi%20Annual%20Report-March2015.pdf)

Semi-Annual Report April 2015 - September 2015, Dec. 30, 2015:
[https://www.pcllob.gov/library/Semi Annual Report-April-Sept2015.pdf](https://www.pcllob.gov/library/Semi%20Annual%20Report-April-Sept2015.pdf)

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

- *For example, this can be done through social media or with the offering of e-mail subscription services.*

Response: The PCLOB utilizes an email mailing list, media releases, and a “newsroom” page on the Board’s website,
<https://www.pcllob.gov/newsroom.html>.

Other Initiatives:

8. If there are any other steps your agency has taken to increase proactive disclosures, please describe them here.

Response: The agency has not yet needed to take steps to increase proactive disclosures. The Board's FOIA professionals are aware of the duty to proactively disclose agency records and do so by posting records on the Board's website in a timely manner.

Section IV: Steps Taken to Greater Utilize Technology

Making Material Posted Online More Usable:

1. Beyond posting new material, is your agency taking steps to make the posted information more useable to the public, especially to the community of individuals who regularly access your agency's website?

- *Steps can include soliciting feedback on the content and presentation of posted material, improving search capabilities on your agency website, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.*

Response: The PCLOB's website maintains an "info box," which is an email address that visitors to the website may use to provide feedback to the agency. The agency has not received any complaints about the usefulness of the information posted on its website. However, within the reporting period, the agency has actively taken steps to make the posted information on its website more useful to the public.

With respect to making information available through mobile applications, the PCLOB's website is not optimized for mobile viewing. However, the website can be accessed on mobile devices. The agency does not have any mobile apps, nor have we found a reason to create such apps.

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

- *If your agency is already posting material in its most useful format, please describe these efforts.*

Response: In the previous reporting year, the PCLOB improved the search function of its website by implementing a new website search engine that is powered by GSA's DigitalGov Search. Currently, the PCLOB posts materials in their most useful format by utilizing pdf format for documents and an open format called MP3 for audio recordings. Additionally, the Board's website

utilizes text, not graphics or pictures, as the content of all information on its website.

Other Initiatives:

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2015?

- Please see OIP's *guidance* for posting of quarterly reports to ensure that your agency is following all required steps (including using the correct file type and URL structure) so that your quarterly reports are properly appearing on FOIA.gov. (If your reports are posted to your website, but not appearing on FOIA.gov, please contact OIP in order to resolve the issue.)

Response: Yes, the Board successfully posted all four quarterly reports for Fiscal Year 2015.

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 2016.

Response: N/A

5. Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? See OIP Guidance, "*The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications.*" (Nov. 22, 2013) If yes, what are the different types of electronic means that are utilized by your agency to communicate with requesters?

Response: Yes, the PCLOB's FOIA professionals use e-mail to communicate with requesters when feasible. In fact, the agency encourages requesters to utilize e-mail when possible. Agency FOIA professionals also use e-mail to receive requests, disclose records, and receive and process administrative appeals. For large FOIA responses, the PCLOB has used CDs to share information.

6. If your agency does not communicate electronically with requests as a default, are there any limitations or restrictions for the use of such means? If yes, does your agency inform requesters about such limitations? See *id.*

Response: N/A

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

Simple Track:

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

Response: Yes, the PCLOB utilizes a separate track for simple requests.

2. *If so, for your agency overall in Fiscal Year 2015, was the average number of days to process simple requests twenty working days or fewer?*

Response: In Fiscal Year 2015, the average number of days to process simple requests was 20.58 working days.

3. *Please provide the percentage of requests processed by your agency in Fiscal Year 2015 that were placed in your simple track.*

Response: 100% of requests processed by the PCLOB in Fiscal Year 2015 were placed in our simple 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?*

Response: N/A

Backlogs:

BACKLOGGED REQUESTS

5. *If your agency had a backlog of requests at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?*

Response: The agency did not have a backlog of requests at the close of Fiscal Year 2015, which is a decrease of a backlog of one request at the close of Fiscal Year 2014.

6. *If not, explain why and describe the causes that contributed to your agency not being able 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.*

Response: N/A

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 2015.

- *To calculate your agency's percentage, you must divide the number of backlogged requests reported in Section XII.A. of your Fiscal Year 2015 Annual FOIA Report by the number of requests received in Fiscal Year 2015, which can be found in Section V.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.*

Response: N/A

BACKLOGGED APPEALS

8. If your agency had a backlog of appeals at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

Response: The agency did not have a backlog of appeals at the close of Fiscal Year 2015, which is a decrease of a backlog of two appeals at the close of Fiscal Year 2014.

9. If not, explain why and describe the causes that contributed to your agency not being able reduce 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.*

Response: N/A

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 2015. If your agency did not receive any appeals in Fiscal Year 2015 and/or has no appeal backlog, please answer with "N/A."

- *To calculate your agency's percentage, you must divide the number of backlogged appeals reported in Section XII.A. of your Fiscal Year 2015 Annual FOIA Report by the number of appeals received in Fiscal Year 2015, which can be found in Section V.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.*

Response: N/A

Status of Ten Oldest Requests, Appeals, and Consultations:

TEN OLDEST REQUESTS

11. In Fiscal Year 2015, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

Response: At the end of Fiscal Year 2014, the agency had one pending request. That request was processed and closed in Fiscal Year 2015. The agency did not have any pending requests at the end of Fiscal Year 2015.

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 2014 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 six of them, you should note that you closed six out of seven "oldest" requests.*

Response: N/A

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?

Response: The only pending request from Fiscal Year 2014 that was processed and closed in Fiscal Year 2015 was not withdrawn by the requester.

TEN OLDEST APPEALS

14. In Fiscal Year 2015, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

Response: At the end of Fiscal Year 2014, the agency had two pending appeals. Those appeals were processed and closed in Fiscal Year 2015. The

agency did not have any pending appeals at the end of Fiscal Year 2015.

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 2014 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.*

- *For example, if you only had seven appeals listed as part of your "ten oldest" in Section VII.C.(5) and you closed six of them, you should note that you closed six out of seven "oldest" appeals.*

Response: N/A

TEN OLDEST CONSULTATIONS

16. *In Fiscal Year 2015, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2014 Annual FOIA Report?*

Response: The agency did not receive consultations in Fiscal Years 2014 and 2015.

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 2014 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.*

- *For example, if you only had seven consultations listed as part of your "ten oldest" in Section XII.C. and you closed six of them, you should note that you closed six out of seven "oldest" consultations.*

Response: N/A

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 2014.*

Response: The agency did not face any obstacles in closing the pending requests and appeals from Fiscal Year 2014.

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.*

Response: N/A

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 2016.*

Response: N/A

Use of the FOIA's Law Enforcement Exclusions

1. *Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2015?*

Response: No, the agency did not invoke a statutory exclusion in Fiscal Year 2015.

2. *If so, please provide the total number of times exclusions were invoked.*

Response: N/A