



PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

2015 Chief FOIA Officer Report

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2015 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, FOIA Officer, and Records Management Officer attended the Department of Justice's (DoJ) OIP's FOIA Report Training in October 2014, and the FOIA Officer attended DoJ OIP's two-day *The Freedom of Information Act for Attorneys and Access Professionals* training in December 2014. The FOIA Officer also plans to attend the DoJ OIP's *Advanced Freedom of Information Act Seminar* in April 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 of PCLOB's part-time FOIA professionals and staff with FOIA responsibilities attended substantive FOIA training during this reporting period.

3. *In the 2014 Chief FOIA Officer Report Guidelines, OIP asked agencies to provide a plan for ensuring that core, substantive FOIA training is offered to all agency FOIA professionals at least once each year. Please provide the status of your agency's implementation of this plan.*

- *Include any successes or challenges your agency has seen in implementing your plan.*

Response: This is PCLOB's first Chief FOIA Officer Report. 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 and the Privacy Act.

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 seven FOIA requests the Board received during the reporting period, only two included responsive records that raised the issue of discretionary release. Because agency interests subject to protection under the relevant FOIA exemptions would have been harmed by discretionary release of the responsive information, the documents were withheld or the information was redacted, accordingly.

The Board's practice is to disclose as much information as possible in a manner that is consistent with protecting deliberative process, 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 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.

Response: Due to the nature of the requests received by the Board and the nature of the information responsive to those requests, the Board could not make any discretionary releases of information during the reporting period.

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 2014, 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 2014 Annual FOIA Report.

- Please note here if your agency did not adjudicate any requests for expedited processing during Fiscal Year 2014.

Response: The PCLOB did not adjudicate any requests for expedited processing during Fiscal Year 2014.

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

Requester Services:

3. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at the National Archives and Records Administration? See OIP Guidance, "*Notifying Requesters of the Mediation Services Offered by OGIS.*" (July 9, 2010)

Response: The PCLOB has not yet notified requesters of the mediation services offered by the Office of Government Information Services at the National Archives and Records Administration. However, moving forward, it will be agency practice to notify requesters of these services in the agency's final response at the administrative appeal phase, while continuing to notify the requester of their right to seek judicial review.

4. When assessing fees, does your agency provide a breakdown of how FOIA fees were calculated and assessed to the FOIA requester? For example, does your agency explain the amount of fees attributable to search, review, and duplication? 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)

Response: The PCLOB has not yet assessed fees because no request received has hit the threshold to assess fees under our FOIA regulation. However, it is agency practice to frequently and clearly communicate with the requester, and we will provide a written breakdown of how fees would be calculated and assessed in the event that it becomes necessary.

5. If estimated fees estimates are particularly high, does your agency provide an explanation for the estimate to the requester? See *id.*

Response: While the PCLOB has not yet assessed fees, it is agency practice to provide an explanation for the fee estimate to the requester.

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 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, is relatively new. 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 created an internal digital tracking system, pursuant to its system of records notice 78 Fed. Reg. 39021 (June 28, 2013), which will aid in processing requests and producing future public FOIA reports.

Section III: Steps Taken to Increase Proactive Disclosures

Posting Material:

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

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, and the Board's public reports. The Board is dedicated to transparency and proactively releases 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.

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

Response: PCLOB FOIA professionals collaborate with agency staff outside of the FOIA office, including the Chief Information Security Officer, the Records Management Officer, the Executive Director, and the Board. The Chief Information Security Officer processes search requests for digital records. The Records Management Officer consults with the FOIA professionals to determine if agency records may be disclosed under the FOIA. The Executive Director and the Board conduct their own searches for responsive records and make determinations about what information may be disclosed under the FOIA.

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

Response: While the agency does not have a formal process for identifying "frequently requested" records that should be posted online, the Board's FOIA professionals are aware of this duty to disclose. The FOIA professionals keep track of what records are disclosed and if/when they become a frequently requested record, those records will be posted on the Board's website.

4. 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):

FY 14 Plan in the Event of a Lapse in Appropriations:

[http://www.pclob.gov/library/Plan in the Event of Lapse of Appropriations-FY2014.pdf](http://www.pclob.gov/library/Plan%20in%20the%20Event%20of%20Lapse%20of%20Appropriations-FY2014.pdf)

Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act:

<http://www.pclob.gov/library/702-Report.pdf>

July 2, 2014 Public Meeting Transcript:

[http://www.pclob.gov/library/20140702-Public Meeting Transcript.pdf](http://www.pclob.gov/library/20140702-Public%20Meeting%20Transcript.pdf)

March 19, 2014 Public Meeting Transcript:

<http://www.pclob.gov/library/20140319-Transcript.pdf>

PCLOB Letter to DHS on Cybersecurity Report, March 21, 2014:

[http://www.pclob.gov/library/Letter-DHS Cyber 3-21-2014.pdf](http://www.pclob.gov/library/Letter-DHS%20Cyber%203-21-2014.pdf)

Semi-Annual Report April 2014 - September 2014, December 22,

2014: [http://www.pclob.gov/library/Semi Annual Report-Sept2014.pdf](http://www.pclob.gov/library/Semi%20Annual%20Report-Sept2014.pdf)

Semi-Annual Report September 2013 - March 2014, July 23, 2014:

[http://www.pclob.gov/library/Semi Annual Report-Jul2014.pdf](http://www.pclob.gov/library/Semi%20Annual%20Report-Jul2014.pdf)

Federal Register Notice for Public Meeting on July 23, 2014:
[http://www.pclob.gov/library/FederalRegister-PCLOB-2014-04-Sunshine Act Meeting.pdf](http://www.pclob.gov/library/FederalRegister-PCLOB-2014-04-Sunshine%20Act%20Meeting.pdf)

Federal Register Notice for Public Meeting on July 2, 2014:
[http://www.pclob.gov/library/FederalRegister-PCLOB-2014-03-Sunshine Act Hearing.pdf](http://www.pclob.gov/library/FederalRegister-PCLOB-2014-03-Sunshine%20Act%20Hearing.pdf)

Federal Register Notice for Public Hearing on March 19, 2014:
[http://www.pclob.gov/library/FederalRegister-PCLOB-2014-02-Sunshine Act Hearing.pdf](http://www.pclob.gov/library/FederalRegister-PCLOB-2014-02-Sunshine%20Act%20Hearing.pdf)

Other Initiatives:

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

Response: N/A

Section IV: Steps Taken to Greater Utilize Technology

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?

- *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: Within the reporting period, the PCLOB has 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.

3. *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 because we are still a relatively new agency. However, as the agency expands over time, the Board's internal web development professionals are prepared to address future challenges that may make it difficult to post records.

4. *If so, please briefly explain what those challenges are.*

Response: N/A

Other Initiatives:

5. *Did your agency successfully post all four quarterly reports for Fiscal Year 2014?*

- *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: Because the PCLOB just filed its first annual FOIA report for activities undertaken in Fiscal Year 2014, the Board was not required to file quarterly FOIA reports for Fiscal Year 2014. Moving forward, the PCLOB will post all four quarterly reports for Fiscal Year 2015.

6. *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 2015.*

Response: Because the PCLOB just filed its first annual FOIA report for activities undertaken in Fiscal Year 2014, the Board was not required to file quarterly FOIA reports for Fiscal Year 2014. Moving forward, the PCLOB will post all four quarterly reports for Fiscal Year 2015.

7. *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 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.

8. *If your agency does not communicate electronically with requesters 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 2014, was the average number of days to process simple requests twenty working days or fewer?*

Response: Yes, the average number of days to process simple requests was twenty working days or fewer, with the exception of one request that was pending at the end of Fiscal Year 2014 and processed in Fiscal Year 2015.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2014 that were placed in your simple track.

Response: 60% of requests processed by the PCLOB in Fiscal Year 2014 were placed in the 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:

5. If your agency had a backlog of requests at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013?

- 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

Response: Because Fiscal Year 2014 was the PCLOB's first year to file an Annual FOIA Report, the PCLOB did not have any reported backlog of requests at the end of Fiscal Year 2013. The PCLOB had one pending request at the end of Fiscal Year 2014 that was processed in early Fiscal Year 2015.

6. 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 2014. If your agency did not receive any requests in Fiscal Year 2014 and/or has no request backlog, please answer with "N/A."

- To calculate your agency's percentage, you must divide the number of backlogged requests reported in Section XII.A. of your Fiscal Year 2014 Annual FOIA Report by the number of requests received in Fiscal Year 2014, 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: 14.28% (1/7) of requests received in Fiscal Year 2014 were backlogged at the end of Fiscal Year 2014. The request was processed in early Fiscal Year 2015.

7. *If your agency had a backlog of appeals at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013?*

- *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 appeal*
 - *A loss of staff*
 - *An increase in the complexity of the appeals received*

Response: Because Fiscal Year 2014 was the PCLOB's first year to file an Annual FOIA Report, the PCLOB did not have any reported backlog of appeals at the end of Fiscal Year 2013. The PCLOB had two pending appeals at the end of Fiscal Year 2014 that were processed in early Fiscal Year 2015.

8. *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 2014. If your agency did not receive any appeals in Fiscal Year 2014 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 2014 Annual FOIA Report by the number of appeals received in Fiscal Year 2014, which can be found in Section VI.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.*

Response: 50% (2/4) of the appeals received in Fiscal Year 2014 were backlogged at the end of Fiscal Year 2014. However, those appeals were processed 3 days into Fiscal Year 2015.

Backlog Reduction Plans:

9. *In Fiscal Year 2014, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2013 Annual FOIA Report?*

Response: Because Fiscal Year 2014 was the PCLOB's first year to file an Annual FOIA Report, the PCLOB did not have any reported requests pending at the end of Fiscal Year 2013.

10. 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 2013 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

11. 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: N/A

12. In Fiscal Year 2014, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

Response: Because Fiscal Year 2014 was the PCLOB's first year to file an Annual FOIA Report, the PCLOB did not have any reported appeals pending at the end of Fiscal Year 2013.

13. 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 2013 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

14. In Fiscal Year 2014, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

Response: The PCLOB did not have consultations pending at the end of Fiscal Year 2013.

15. 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 2013 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

16. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2013.

Response: N/A

17. 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

18. 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 2015.

Response: The PCLOB does not have any pending requests or appeals at this time.

Use of the FOIA's Law Enforcement Exclusions

Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2014?

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

Response: The PCLOB did not invoke FOIA's law enforcement exclusions, 5 U.S.C. § 552(c)(1), (2), (3) during Fiscal Year 2014.