

**Executive Office of the President**  
**Office of the U.S. Trade Representative**



**CHIEF FREEDOM OF INFORMATION ACT OFFICER**  
**ANNUAL REPORT**  
**March 2013-March 2014**

## **Introduction**

The Office of the United States Trade Representative (USTR) is responsible for developing and coordinating United States international trade policy and negotiating initiatives, commodity and direct investment policy, and conducting trade and investment negotiations with other countries. The head of USTR is the U.S. Trade Representative, a Cabinet member who serves as the President's principal trade advisor, negotiator and spokesperson on trade issues. USTR has its headquarters in Washington, DC and has overseas offices in Beijing, China, Brussels, Belgium, and Geneva, Switzerland. The Geneva Office represents the United States at the World Trade Organization (WTO).

USTR consults with other government agencies on trade policy matters through the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC). These groups, administered and chaired by USTR and composed of more than 20 Federal agencies and offices, make up the sub-cabinet level mechanism for developing and coordinating U.S. Government positions on international trade and trade-related investment issues.

The USTR FOIA Office consists of a Chief FOIA Officer, a FOIA Program Manager/Attorney, and one FOIA Program Analyst who also acts as the FOIA Public Liaison. FOIA requests submitted to USTR vary in size and complexity from very narrow requests for a single or a few documents to very voluminous and complex requests that require broad searches and review of thousands of documents. Many of USTR's documents contain sensitive national security information and are classified pursuant to executive orders. The review of responsive records often requires coordination with other Federal agencies, foreign governments, and commercial entities, whose information may be contained in USTR records, before USTR can make a release determination. Accordingly, USTR processes FOIA requests incrementally, often by making interim responses to requesters with portions of responsive records rather than waiting until all records are processed.

Due to the agency's global presence, unique international mission, and the high level of coordination with third parties, USTR faces great challenges in achieving full compliance with the time limits of the FOIA. USTR does, however, remain fully committed to achieving the fullest possible compliance with a strong focus on maintaining open dialogues with requesters and leveraging technology to improve internal processes.

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

### **FOIA Training:**

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

**Answer: Yes**

2. If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.

**Answer: The FOIA Office delivered mostly informal FOIA training during this reporting period while continuing to develop a formal training course to be rolled out within Fiscal Year 2014. USTR provided informal, one-on-one training to most of the employees involved in responding to a FOIA request this reporting period. In most cases, the FOIA Program Manager (PM) and/or the FOIA analyst met with employees to discuss strategies for responding to specific requests and leveraged these meetings as opportunities to provide refresher training to employees. The FOIA PM covered a variety of topics during these discussions including:**

- **Explanations of USTR's basic obligations under the FOIA and our enhanced responsibility for making discretionary releases under the 2009 White House Executive Order and DOJ FOIA Memorandum;**
- **Reviews of how to conduct thorough and efficient electronic records searches, and from whom to seek assistance within USTR's Information Technology (IT) Office;**
- **Clarifications on the FOIA exemptions generally applicable to USTR information and when they do and do not apply including an emphasis on the (b)(5) "foreseeable harm" standard agencies are required to apply.**

**These informal training sessions have been very effective tools for educating and reminding USTR staff about the importance of their FOIA obligations. The informal setting has allowed for robust discussion and explanation that would not likely be achieved in a larger training session. Further, employees have shown greater interest in learning the technical aspects of the FOIA, because they are applying them to specific cases involving their own documents.**

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

**Answer: Yes, both USTR's FOIA PM and FOIA Analyst attended FOIA training this reporting period. For example, FOIA staff attended the DOJ OIP FOIA Fee Summit held on August 8, 2013. In addition, FOIA staff attended an Executive**

**Office of the President (EOP) demonstration of *FOIA Online* as a step in the possible procurement of this technology solution. FOIA staff also attended advanced training on Clearwell, the document review software USTR uses to process complex FOIA requests.**

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

**Answer: 100% (2 people)**

5. OIP has issued guidance that every agency should make core, substantive FOIA training available to all their FOIA professions at least once each year. Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professional attended substantive FOIA training in the past year.

**Answer: USTR is in compliance with this OIP guidance and has a training plan for this fiscal year as well. Our office has identified a number of OIP training events which we plan to attend, including the scheduled FOIA Fee Summit and FOIA Requester Roundtables.**

#### **Outreach:**

6. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement.

**Answer: USTR has dedicated Open Government Steering Committee who engage with organizations with an interest in transparency issues and Open Government principals.**

**The Open Government Steering Committee consists of Senior Executive Service employees from key offices within the Agency. This group is charged with setting open government policy and direction while meeting legal and intergovernmental deliberation requirements. The group also works to secure resources in support of USTR's plan and associated projects. Core membership includes the Office of Administration; Office of the General Counsel; Office of Public and Media Affairs; Office of Trade Policy and Economics; Office of Intergovernmental Affairs and Public Engagement; Office of Small Business, Market Access and Industrial Competitiveness; Office of Congressional Affairs; Office of Southeast Asia and the Pacific; and the Office of Intellectual Property and Innovation.**

**The Open Government Steering Committee reports to the Chief of Staff and Deputy USTR's. The Committee is supported by two teams:**

- **Open Government Media Team: Staff from the Office of Public and Media Affairs and the Office of Intergovernmental Affairs and Public Liaison. This team is responsible for direct interaction with the public and key stakeholders.**
- **Open Government Data Team: Staff from the Office of Administration and the Office of Trade Policy and Economics. This team is responsible for posting data, monitoring plan progress, and coordinating revisions to the plan.**

**Discretionary Disclosures:**

7. Does your agency have a formal process 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 at your agency have a process in place for making discretionary releases.

**Answer: Yes, given the small size of both USTR and our FOIA Office, USTR continued its practice of conducting “Holder reviews” of all FOIA responses to ensure the agency is properly applying the presumption of openness standard when processing documents for release.**

8. During the reporting period did your agency make any discretionary releases of otherwise exempt information?

**Answer: Yes.**

9. What exemptions would have covered the information that was released as a matter of discretionary?

**Answer: USTR made discretionary releases of information that would have been exempt from disclosure under (b)(5) during this reporting period.**

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

**Answer: Three examples of information exempt under (b)(5) that USTR discretionarily released after conducting the requisite harm analysis include:**

- **Deliberative email related to the entry of Canada into the negotiations of the proposed Trans Pacific Partnership (TPP) trade agreement.**
- **Deliberative memoranda related to the negotiation and ratification of a bilateral investment treaty between the United States and Egypt.**
- **Deliberative information contained in a chart listing Workers’ Rights Cases under the Generalized System of Preferences (GSP) Program.**

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

**Answer: Not applicable**

12. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014.

**Answer: No, we encountered significant technical difficulties when we attempted to post our FOIA quarterly reports. We understand that other EOP components had similar issues due to the unique structure of the EOP website. We worked extensively with OIP in collaboration with our IT Office to resolve these issues early in the reporting year. We will continue to work with EOP and OIP to find a solution.**

13. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please provide links in your description.

**Answer: Other initiatives USTR has undertaken to ensure that the agency is applying a presumption of openness include: inviting requestors to USTR for briefings on the material covered by their FOIA search and contacting other offices within the Executive Office of the President (EOP) that may have received the same request to determine whether USTR is releasing as much information as possible.**

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

### **Personnel:**

1. Has your agency converted all of its FOIA professions to the new Government Information Specialist job series?

**Answer: No.**

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

**Answer: Our one FOIA professional has not been converted to this job series.**

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

**Answer: The FOIA PM consulted with the USTR Human Resources (HR) Office and HR is reviewing the matter to determine whether it is appropriate to convert USTR's FOIA professional to the new job series.**

#### **Processing Procedures:**

4. For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing: If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

**Answer: Yes.**

5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.

**Answer: The FOIA Office is reviewing ways to add efficiency to the referral/consultation process between USTR and the Department of State (DOS), the agency from where a majority of USTR referrals and consultations originate. The FOIA PM raised this issue with the DOS FOIA Office approximately 6 months ago. We now plan to review the referrals and consultations we have received from DOS over the last year to determine whether we can isolate categories of information that can be handled according to a set of standard procedures to speed up processing.**

#### **Requester Services:**

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

**Answer: Yes.**

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

**Answer: No. USTR will immediately begin notifying requesters of the services offered by OGIS.**

8. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc.

**Answer: The FOIA Office sought and received a part time law student intern during the reporting period to assist with closing out backlogged cases. The Office is continuing to review staffing needs and hoping to add a paralegal to the FOIA staff to enhance the Agency's ability to process complex requests more quickly. The Office is also working to modernize and update the material on USTR's FOIA Library.**

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

#### **Posting Material:**

1. Do your FOIA professionals have a system in place to identify records for proactive disclosures?

**Answer: Yes.**

2. If so, describe the system that is in place.

**Answer: The FOIA Office works with the Office of Public Affairs, Intergovernmental Affairs and Public Engagement Office and other Offices to identify records for proactive disclosure.**

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

**Answer: The Office of Public and Media Affairs manages [USTR.gov](https://ustr.gov), an interactive website that allows USTR to create and maintain an open dialogue with the public on trade policy. The [USTR.gov](https://ustr.gov) website features all [press releases](#), [fact sheets](#), [reports](#) and [speeches](#) sent to press and made available to all members of the public. The website also includes an [official blog](#), which features content written by [Ambassador Michael Froman](#) and other USTR officials, as well as content cross posted from other government agencies. In addition, the website features a "[Press Office Week Ahead](#)" to inform members of the public of USTR's upcoming events. USTR also continued to post relevant information on two of its highest profile**



**trade negotiations: the Transatlantic Trade and Investment Partnership (T-TIP) and the Trans Pacific Partnership (TPP). These initiatives are also frequent topic of FOIA requests. Finally, the Office of Intergovernmental Affairs and Public Affairs sends out bi-weekly newsletters on key events, to which members of the public can [subscribe](#).**

**Making Posted Material More Useful:**

4. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of posted material, improving search capabilities on the site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.?

**Answer: Yes.**

5. If so, provide examples of such improvements.

**Answer: The USTR.gov website also provides means to contact every Office within the agency, and allows members of the public to submit comments on ongoing negotiations and web content. Those interested in commenting on ongoing negotiations, as well as providing feedback on the website, can send emails to [comment@ustr.eop.gov](mailto:comment@ustr.eop.gov), which is monitored daily.**

**The USTR.gov website is also available on mobile and tablet devices, so that the content can be reviewed across mediums. In 2013, of the 2,046,888 visits to the USTR.gov website, 89.72% were accessed using desktop computers, 6.74% were accessed via mobile devices, and 3.55% were accessed via tablets.**

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

**Answer: In conjunction with increased domestic outreach, the USTR.gov website contains features that illustrate the impact of trade on communities around the country. By communicating proactively with the public and responding in a timely and thorough manner to inquiries, USTR is committed to upholding the high standards for transparency set by President Obama.**

**USTR uses social media as a key medium to publicize and highlight our agency's information for public disclosure. USTR uses the following social media tools: Twitter, Facebook, YouTube, Vimeo, and Flickr to make information more accessible and useful to the public. In addition to USTR's official Twitter handle,**

**@USTRTradeRep, which has 28.3K followers, this year USTR added two additional Twitter handles for increased engagement with members of the public. In March, Ambassador Michael Froman launched his official account @MikeFroman, and the Public Affairs Office launched @USTRspox, the account of the USTR spokesperson, Trevor Kincaid. USTR tracks the metrics of engagement on social media using analytics including the number of mentions in tweets, retweets of our official content, and the use of key hashtags. The USTR handles also engage in periodic “TwitterChats” to engage with the public and participate in digital conversations.**

**USTR also tracks the metrics that indicate the level of public interest (e.g., number visits, posts, “fans”) in the information on the website. In 2013, there were 138 blog posts; 2,046,888 visits to the website; and 4,612,168 page views at the website. Both website visits and page views increased by hundreds of thousands from 2012.**

7. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post: If so, please briefly explain what those challenges are.

**Answer: USTR’s main challenge in posting material is staffing resources. Improving USTR’s FOIA Library is a key initiative the FOIA Office will undertake during the next reporting period.**

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

**Answer: The FOIA Office plans to meet with each functional office to assess opportunities for increasing proactive disclosures.**

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

### **Online tracking of FOIA requests:**

1. Can a FOIA requester track the status of his/her request electronically?

**Answer: No.**

2. If yes, how is the tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?

**Answer: Not applicable**

3. Describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is “open” or “closed” while others will provide further details to the requester throughout

the course of the processing, such as “search commenced” or “documents currently in review.” List the specific types of information that are available through your agency’s tracking system.

**Answer: Not applicable**

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

**Answer: Not applicable**

5. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability? If not, please explain why.

**Answer: As of the end of FY2013, the EOP was actively considering purchasing the FOIA Online tool.**

#### **Use of technology to facilitate processing of requests:**

6. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

**Answer: Yes.**

7. If so, describe the technological improvements being made.

**Answer: USTR uses Clearwell to process its complex FOIA requests. We are continuing to gain facility with this platform.**

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

**Answer: Yes, the FOIA Office would benefit from the procurement of software to automate the preparation of the Annual FOIA Report. In addition, tools to allow the FOIA Office to post the Quarterly Reports with ease would enhance efficiency.**

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

### Simple Track Requests:

1. Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests-Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

- a. Does your agency utilize a separate track for simple requests? **Yes.**
- b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple request twenty working days or fewer?

**Yes, the average number of days to process requests was 19.**

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

### Backlogs and "Ten Oldest" Requests, Appeals and Consultations:

2. Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. Section VII.E entitled "Pending Request – Ten Oldest Pending Requests," Section VI.C. (5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.

#### Backlogs

- a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012? **No, the backlog increased from 20 in 2012 to 35 in 2013.**

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012? **No, USTR had no appeal backlog in 2012 and one appeal in the backlog in 2013.**

Ten Oldest Requests

- c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012? **No.**
- d. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your “ten oldest” in Section VII.E. and you closed two of them, you should note that you closed two out of seven “oldest” requests.

**USTR closed six out of its ten oldest requests in FY 2013.**

Ten Oldest Appeals

- e. In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012? **Not applicable.**
- f. If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C.(5) of your Fiscal Year 2012 Annual FOIA Report. **Not applicable.**

Ten Oldest Consultations

- g. In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012? **No.**
- h. If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report. **Number closed in FY 2013: 5 Number Pending in FY 2012: 8**

**Reasons for any Backlogs:**

3. If you answered “no” to any of the questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:

### Request and/or Appeal Backlog

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals? **Yes. Incoming requests nearly doubled in FY 2013.**
- b. Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff? **No.**
- c. Was the lack of a reduction in the request and/or appeal backlog caused by an increase in the complexity of the requests received? **Yes.**
- d. What other causes, if any contributed to the lack of a decrease in the request and/or appeal backlog? **A majority of USTR staff who need to respond to requests spend a majority of their time traveling for trade negotiations so they are not available to search for records.**

### Ten oldest Not Closed

- e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012. **Some of the obstacles USTR faced in trying to close the ten oldest requests included: requesters who were unwilling to narrow their overly broad requests; the age of the records requested; the unavailability of USTR staff to review proposed redactions; the complex nature of the records; and the fact that the FOIA Office has only two staffers.**
- f. If your agency was unable to close any of its ten oldest requests or appeals because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending. **Not applicable.**

### **Plans for closing of Ten Oldest Pending Requests, Appeals and Consultations and Reducing Backlogs:**

4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2014. **The FOIA Office anticipates that it will be able to close the remaining oldest requests and consultations this fiscal year with the assistance of summer law student interns and the likely hiring of a FOIA paralegal.**

5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency's plan for achieving backlog reduction in the year ahead. **Not applicable.**

**Interim Responses:**

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

**Answer: Yes.**

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

**Answer: The FOIA Office providing interim responses in more than fifty percent of backlogged cases.**

**Use of FOIAs Law Enforcement "Exclusions"**

1. Did your agency invoke a statutory exclusion during Fiscal Year 2013?

**Answer: No**

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

**Answer: Not applicable**

**Spotlight on Success**

In February 2013, USTR received a FOIA request from a catalogue-style magazine company represented by a private attorney which sought USTR's newsletter mailing list containing over 10,000 names and email addresses of people who receive periodic news and information from USTR about how the Agency is conducting its trade negotiation and enforcement mission. USTR quickly conducted a thorough search for records and redacted names and personal portions of email addresses under FOIA exemption (b)(6) to provide over 300 pages of information about the types of organizations and number of individuals which receive the USTR newsletter. The company appealed our response in June of 2013 stating the public had no right to privacy in their names and email addresses. USTR extensively researched this novel issue as it relates to membership lists and took the extra step of seeking assistance from DOJ OIP

attorneys to determine its obligations to protect the privacy of its newsletter subscribers while also meeting its obligation of transparency under the FOIA. USTR re-reviewed over 300 pages of records to remove redactions and provided additional information on the email addresses that were not directly linked to individuals while affirming its earlier decision regarding personal email addresses.

The requester then engaged OGIS to review USTR's appeal response. USTR had no prior experience working with OGIS to resolve FOIA disputes but proactively worked with the requester and OGIS to provide further justifications regarding our decision to continue to withhold what we determined to be sensitive information. Due in large part to our diligent research and explanation of this complex area of the law where privacy and transparency intersect, we successfully resolved this dispute.

The FOIA Office is proud of the work we did to proactively respond to this request by providing information about how we accomplish our mission while also protecting the vital privacy interests of those members of the public who choose to engage with us closely on that very mission. We also advanced the sophistication of how we respond to requesters by collaborating for the first time with OGIS. We hope to continue to maximize the satisfaction and understanding of our FOIA requesters by cooperating with OGIS on future controversial requests.



