

**Executive Office of the President
Office of the United States Trade Representative**



**CHIEF FREEDOM OF INFORMATION ACT OFFICER
ANNUAL REPORT
Chief FOIA Officer Timothy Reif
March 2014 - March 2015**

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 before 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 narrow requests for a single or a few documents to 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 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 FOIA professionals attend any FOIA training or conference during the reporting period such as that provided by the Department of Justice (DOJ)?

Answer: Yes, both USTR's FOIA Program Manager and FOIA Analyst attended FOIA training sponsored by DOJ-OIP during this reporting period, including the FOIA Best Practices series of workshops (May and July sessions).

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

Answer: 100% (2 people)

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 professions at least once each year. Provide the status of your agency's implementation of this plan.

Answer: USTR is in full compliance with this OIP guidance and has a training plan for fiscal year 2015. We plan to complete FOIA training by attending the various OIP workshops, roundtables, and other events offered throughout 2015.

Outreach:

4. 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 a dedicated Open Government Steering Committee ("Committee") that engages with organizations interested in transparency issues and Open Government principals. The Committee, which consists of Senior Executive Service employees from key offices within USTR, is charged with setting open government policy and direction while meeting legal and intergovernmental deliberation requirements. The Committee also works to secure resources in support of USTR's plan and associated projects. Core membership includes the Offices of Administration; General Counsel; Public and Media Affairs; Trade Policy and Economics; Intergovernmental Affairs and Public Engagement; Small Business, Market Access and Industrial Competitiveness; Congressional Affairs; Southeast Asia and the Pacific; and Intellectual Property and Innovation.

The Committee reports to USTR leadership, the Chief of Staff and Deputy U.S. Trade Representatives'. The Committee is supported by the following two teams:

- **Open Government Media Team: Staff from the Offices of Public and Media Affairs and the 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 Offices of Administration and the Trade Policy and Economics. This team is responsible for posting data, monitoring plan progress, and coordinating revisions to the plan.**

Discretionary Disclosures:

5. Does your agency have a distinct 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 proper application of the presumption of openness standard when processing documents for release.

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

Answer: Yes.

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

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

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

Answer: USTR released internal email, portions of a strategic scheduling memo, portions of decision memoranda and talking points drafted for the U.S. Trade Representative that were exempt under (b)(5) after conducting the requisite harm analysis.

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

Answer: Not applicable.

10. 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 components within the Executive Office of the President (EOP) that may have received the same request to determine if 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

Processing Procedures:

1. For Fiscal Year 2014, what was the average number of days your agency reported for adjudicating requests for expedited processing:

Answer: USTR received three requests for expediting processing in Fiscal Year 2014. The average number of days USTR took to adjudicate these three requests was one hundred and seven (107) days.

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

Answer: USTR has created template correspondence to respond to requests for expedited processing based in part on suggestions from DOJ OIP. Since the beginning of Fiscal Year 2015, USTR has received one request for expedited processing and responded to this request within twelve calendar days. USTR will continue to respond swiftly to requests for expedited processing.

Requester Services:

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

Answer: Yes.

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)

Answer: Yes.

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

Answer: Yes.

6. If there are 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.

Answer: The FOIA Office sought and was assigned a part time law student intern during the reporting period to assist with backlogged cases. The Office is continuing to review staffing needs and hopes to add a paralegal to the FOIA staff to enhance USTR's ability to process complex requests more quickly. In addition, FOIA staff is working with USTR management to focus senior staff on the need to ensure all USTR staff comply with the FOIA. For example, periodic announcements will be made at senior staff meetings to alert managers to backlogged FOIA requests pending within their offices. FOIA staff 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. Does your agency have a distinct process or system in place to identify records for proactive disclosures? If so, describe your agency's process or system.

Answer: Yes. In February 2015, the Office of Public and Media Affairs launched a new, interactive website, which allows USTR to create and maintain an open dialogue with the public on the President's trade agenda. The [USTR.gov](http://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 new website also features a new blog, [TradeWinds](#), which features content written by Ambassador Michael Froman and other USTR officials, as well as content cross posted from other government agencies. To increase transparency on the trade agreements USTR currently is negotiating, the website features an issue-by-issue information center for both the [Trans-Pacific Partnership](#) and the [Transatlantic Trade and Investment Partnership](#). In addition, the website features a "[Press Office Week Ahead](#)" to inform members of the public of USTR's upcoming events.

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

Answer: Yes, see the answer to Question 1.

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

Answer: The low volume of FOIA requests (typically not more than 75 per year) allows FOIA staff to easily identify the records that are frequently requested.

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

Answer: See the answer to Question 1.

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

Answer: No other steps have been taken.

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, 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.

2. If yes, provide examples of such improvements.

Answer: In addition to posting material, the USTR.gov website also provides a way to contact every USTR office and to submit comments on negotiations and web content. Those interested in commenting on ongoing negotiations or providing feedback on the website, can send emails to comment@ustr.eop.gov, which is monitored daily.

The USTR.gov website is formatted to be accessible on web, phone and tablet devices so that the content can be reviewed across mediums. In the past year, of the 2,020,235 visits to the USTR.gov website, 82.91% were accessed via desktop computers, 12.20% were accessed via mobile devices, and 4.88% were accessed via tablets.

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 information for public disclosure. USTR uses Twitter, Facebook, YouTube, Vimeo, and Flickr to make information more accessible and useful to the public. The Office of Public and Media Affairs manages USTR's two official Twitter handles, @USTRTradeRep, which has 35.8K followers, and the official handle for Ambassador Froman, @MikeFroman, which has 4.6K followers. In addition, USTR spokesman Trevor Kincaid's handle, @USTRspox, is a tool to engage with reporters and amplify articles on Twitter. 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.

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 the last year, there were 56 blog posts; 2,020,235 visits to the website; and 4,247,660 page views at the website.

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

Answer: Yes.

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

Answer: USTR's primary challenge in posting records is staffing resources. Improving the content on USTR's FOIA Library continues to be a key initiative for the FOIA Office.

Use of Technology to Facilitate Processing of Requests:

5. 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? If so, describe the technological improvements being made.

Answer: Yes. USTR uses the software program Clearwell, which allows for sorting and de-duplication of document, to process certain complex FOIA requests. FOIA staff is continuing to gain facility with this platform.

6. 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 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.

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

Answer: No.

8. 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.

Answer: USTR has never been able to properly post quarterly reports to the USTR website. This also is a problem for other EOP components so the issue appears to be with the way the EOP website is configured. USTR IT staff worked with DOJ OIP IT staff, so far unsuccessfully, to resolve the technical issues. USTR IT staff now is working with the EOP Office of Administration and the FOIA staff plans to re-engage with DOJ OIP to craft a solution to these technical issues preventing compliance.

9. Do your FOIA professionals use email or other electronic means to communicate with requesters whenever feasible?

Answer: Yes. FOIA staff receives the majority of requests via email and communicates with requesters over email unless there is a need to speak to a requester in person. FOIA staff also provide FOIA responses over email unless the requester asks for documents in another format (such as CD or paper).

10. If your agency does not communicate electronically with requesters as a default, are there any limitations or restrictions for the use of such means?

Answer: Not applicable.

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

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

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

Answer: Yes.

2. If so, for your agency overall, for Fiscal Year 2014, was the average number of days to process simple request twenty working days or fewer?

Answer: No. The average number of days to process simple requests was 31.

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

Answer: 72%

4. 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?

Answer: Not applicable.

Backlogs: Section XII.A of your agency’s Annual FOIA Report, entitled “Backlogs of FOIA Requests and Administrative Appeals” shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2013 and Fiscal Year 2014 when completing this section of your Chief FOIA Officer Report.

Backlogged Requests

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

Answer: Yes. The backlog decreased from 28¹ requests in FY 2013 to 23 requests in FY 2014.

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.

Answer: 35%

Backlogged Appeals

7. If your agency had a backlog of administrative appeals in Fiscal Year 2014, did that backlog decrease as compared to Fiscal Year 2013?

Answer: Yes. USTR had one appeal in the backlog in FY 2013 and zero in the backlog in FY 2014.

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."

Answer: Not applicable.

Status of Ten Oldest Requests, Appeals, and Consultations: 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 2013 and Fiscal Year 2014 when completing this section of your Chief FOIA Officer Report.

Ten Oldest Requests

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

Answer: No.

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 2014 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if

¹ USTR incorrectly reported its Fiscal Year 2013 backlog as 35 requests in the 2013 Annual and CFO reports. The correct number is 28.

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.

Answer: USTR closed four of its ten oldest requests in FY 2014.

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?

Answer: None.

Ten Oldest Appeals

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

Answer: USTR closed the one outstanding appeal from FY 2013 in FY 2014.

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.

Answer: Not applicable.

Ten Oldest Consultations

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

Answer: No.

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 appeals 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.

Answer: USTR closed three of its ten oldest consultations in FY 2014.

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

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

Answer: A primary obstacle to closing old requests and consultations is that most of the FOIA requests require extensive coordination with USTR trade negotiators both to conduct searches and to review potentially responsive documents. Because the negotiators travel frequently for trade negotiations, they are often not available to search for records or to provide input on how to classify documents. Another obstacle was losing a member of the FOIA staff who was responsible for processing consultations and referrals. Other challenges include: requesters who were unwilling to narrow their overly broad requests, the age of the records requested and the need to access records from prior Presidential Administrations, and the limited staff of the FOIA Office.

17. 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.

Answer: Not applicable.

18. 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 2015.

Answer: The FOIA Office anticipates that it will be able to close the remaining oldest requests and consultations this fiscal year by dedicating additional staffing resources to eliminating the backlog and focusing core resources on closing old requests rather than concentrating on easier-to-respond to incoming requests. FOIA staff also will work with requesters to attempt to clarify and narrow backlogged requests.

Interim Responses:

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

Answer: Yes.

20. If your agency had a backlog in Fiscal Year 2014, 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 provided interim responses in more than forty percent of backlogged cases.

Use of FOIA's Law Enforcement "Exclusions"

1. Did your agency invoke a statutory exclusion during Fiscal Year 2014?

Answer: No.

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

Answer: Not applicable.