

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



CHIEF FREEDOM OF INFORMATION ACT OFFICER
ANNUAL REPORT

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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 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?

Answer: Yes, both the USTR 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.

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.

Answer: 100% (2 people)

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.**

Answer: USTR is in full compliance with this OIP guidance.

Discretionary Releases:

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

Answer: USTR staff conducts line-by-line reviews of all records responsive to FOIA requests to ensure discretionary releases are made when possible. USTR staff are trained and reminded to apply the presumption of openness standard when processing records for release.

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

Answer: Yes.

6. What exemption(s) would have covered the material released as a matter of discretion?

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

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.

Answer: In response to the State Department's referral of records to USTR in connection with the litigation over former Secretary Clinton's electronic communications, USTR agreed to the release of more than a hundred pages of internal email discussing USTR strategy on several trade initiatives, including the Korean and Columbian Free Trade Agreements that were exempt under (b)(5).

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).

Answer: Not applicable.

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.

Answer: On October 27, 2015, USTR issued *Guidelines for Consultation and Engagement* intended to help keep the public, Congress, and stakeholders engaged and informed.

These Guidelines are available on the USTR Website:

<https://ustr.gov/sites/default/files/USTR%20Guidelines%20for%20Consultation%20and%20Engagement.pdf>

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.

Answer: Twelve days. This is a major improvement over fiscal year 2014, during which the average number was 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 will endeavor to respond to all requests for expedited processing within ten calendar days or less by immediately assessing the request and using the appropriate template language to draft a timely response.

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.**

Answer: USTR confirms that it has properly implemented OIP's "still interested" guidance.

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.

Answer: USTR has a strong, effective system in place to advise FOIA requesters about the FOIA process and the status of their requests. Therefore, while USTR always tries to improve its program, at this time USTR does not need to take steps to strengthen requester communication and dispute resolution services.

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.

Answer: USTR has taken several steps to improve its FOIA program. For example, USTR has improved efficiency by increasing the use of interim document releases for cases with complex search parameters and/or high volumes of responsive records. This practice also ensures that the requester receives releasable material as it becomes available. USTR also has improved search processes by sharing with requesters information about how USTR records are maintained and archived and how bulk electronic searches are conducted. Sharing this information often leads to productive discussions with requesters and more narrowly defined search parameters. To decrease redundancy, USTR often shares already processed document releases that are similar in nature to an open request.

Section III: Steps Taken to Increase Proactive Disclosures

Both the **President's** and **Attorney General's** FOIA memoranda focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

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.

Answer: USTR monitors its FOIA logs to identify “frequently requested” records.

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.

Answer: Yes. The Office of Public and Media Affairs continually updates USTR’s 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 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.

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.

Answer: No, USTR FOIA professionals do not participate in the coding or other preparation of records for posting online. This work is conducted by USTR Information Technology staff.

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

Answer: Yes.

5. If so, please briefly explain those challenges.

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.

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

Answer: The web links in the answer to question 2 above show the information USTR proactively posted during this reporting period. The most highly anticipated information USTR proactively posted this year was the full text of the Trans-Pacific Partnership (TPP).

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

Answer: Yes. To highlight the conclusion of the negotiations of the TPP agreement on October 5, 2015, USTR launched a redesigned TPP homepage at www.ustr.gov/tpp. Through this new homepage, USTR has enhanced its ability to communicate information according to modern web design and usability standards, bringing our outreach efforts on the web up to date with comparable non-governmental websites. It contains numerous features that make it easy for users to get quick summaries of TPP issue areas, as well as pathways to dive deeper into each area with detailed fact sheets. The homepage was subsequently updated with access to the full TPP text on November 5, 2015.

Other Initiatives:

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

Answer: USTR frequently uses social media like Twitter, Facebook, and YouTube as a key medium to publicize information and to engage the public in discussion and awareness of free trade agreement issues. In addition, USTR has launched accounts on the blogging platform Medium for USTR and Ambassador Froman, through which USTR published the full Trans-Pacific Partnership text in a user-friendly and readable format.

USTR's usage of Medium follows a growing trend by other White House offices to publicize important issues using the latest and most visible social media platforms. The TPP text joins other major publications such as the President's 2016 Fiscal Year Budget, the Iran Deal, and the U.S. Digital Service Design Standards Manual that all have been published on Medium over the past year.

Section IV: Steps Taken to Greater Utilize Technology

A key component of the President's **FOIA Memorandum** was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

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?

Answer: Yes.

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

Answer: USTR has updated its website to significantly improve the readability and usability of the information, and to embrace more modern design paradigms to match expectations of Internet users. The Trans-Pacific Partnership homepage (www.ustr.gov/tpp) represents a major effort in this area, and it serves to publicize a wealth of information on the TPP in easily-consumable formats both on the website itself and deeply interconnected with highly popular social media platforms such as Twitter and Medium.

Use of Technology to Facilitate Processing of Requests:

*Not required, but agencies may answer the questions for this section from the **high-volume guidelines** if they have information they would like to include.*

Other Initiatives:

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

Answer: No.

4. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2016.

Answer: USTR has never been able to properly post quarterly reports to the USTR website. This also is a problem for other components of the Executive

Office of the President (EOP). 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.

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?

Answer: 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 all FOIA responses over email unless the requester asks for documents in another format such as a CD or on paper.

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.*

Answer: Not applicable.

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

The President's **FOIA Memorandum** and the Attorney General's **2009 FOIA Guidelines** have emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations.

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2015 Annual FOIA Report and, when applicable, your agency's 2014 Annual FOIA Report.

Simple Track: 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 in Fiscal Year 2015, was the average number of days to process simple requests twenty working days or fewer?

Answer: No, USTR's average number of days to process simple requests was 25 days.

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

Answer: USTR placed 26.9% of processed requests into its 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?

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 2014 and Fiscal Year 2015 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 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

Answer: Yes.

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.**

Answer: Not applicable.

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.

Answer: USTR's backlog equals 14.7% of the total number of requests USTR received in Fiscal Year 2015.

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?

Answer: USTR's appeals backlog remained at 0 for Fiscal Year 2015.

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.**

Answer: Not applicable.

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."

Answer: Not applicable.

Backlog Reduction Plans:

*Not required, but agencies may answer the questions for this section from the **high-volume guidelines** if they have information they would like to include.*

Status of Ten Oldest Requests, Appeals, and Consultations: Section VII.E, entitled "Pending Requests – 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 2014 and Fiscal Year 2015 when completing this section of your Chief FOIA Officer Report.

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?

Answer: No.

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.

Answer: USTR closed five of its ten oldest requests.

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?

Answer: None of the five requests closed had been withdrawn.

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?

Answer: Not applicable.

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.

Answer: Not applicable.

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?

Answer: No.

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.

Answer: USTR closed four of the six requests that were pending at the end of Fiscal Year 2014.

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.

Answer: The primary obstacles USTR faced include: lack of sufficient staffing resources; an increase in the number and complexity of requests received; the unavailability of USTR staff to consult on potentially responsive documents due to travel schedules; and requesters who were unwilling to narrow their overly broad requests.

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.

Answer: Not applicable.

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.

Answer: The FOIA Office will work 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.

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?

Answer: No.

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

Answer: Not applicable.