

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



2017 CHIEF FREEDOM OF INFORMATION ACT
OFFICER ANNUAL REPORT

Agencies Receiving 50-1,000 Requests in FY2015

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Introduction

The Office of the United States Trade Representative (USTR), the second largest component of the Executive Office of the President, is responsible for developing and coordinating U.S. international trade, commodity, and direct investment policy, and overseeing trade negotiations with other countries. The head of USTR is the United States Trade Representative, a Cabinet member who serves as the President's principal trade advisor, negotiator, and spokesperson on trade issues. USTR has approximately 250 employees assigned to regional and functional offices in its headquarters in Washington DC. USTR also has offices in Beijing China, Brussels Belgium, and Geneva Switzerland. The Geneva office represents the United States before the World Trade Organization.

The USTR Freedom of Information Act (FOIA) Office consists of four people - a Chief FOIA Officer, two part-time FOIA program managers/attorneys, and one FOIA specialist who acts as the FOIA Public Liaison. The FOIA requests USTR receives 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 line-by-line review of thousands of pages of text and emails. Many of USTR's documents contain sensitive national security information that is classified pursuant to Executive Order 13526. Before making a release determination, the FOIA Office often coordinates with other Federal agencies, foreign governments, and commercial entities whose information may be contained in USTR records. If a request involves a voluminous amount of material or searches in multiple locations, USTR may provide interim responses, releasing the records on a rolling basis. The annual number of FOIA requests USTR receives has steadily risen over the last several years from an average of 50 per year to a record high of 118 requests in FY2016.

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

Section I: Steps Taken to Apply the Presumption of Openness

FOIA Training:

1. Did USTR's FOIA professionals or the personnel at USTR 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.

2. If yes, please provide a brief description of the type of training attended and the topics covered.

Answer: *The Release of Ethics Documents under the FOIA and Privacy Acts* analyzed FOIA exemptions commonly used for ethics-related documents and the interface between the FOIA and Privacy Act. *The FOIA Amendments Training* provided an in-depth look at the amendments made by the FOIA Improvement Act of 2016.

3. 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: 75% (3 of the 4 FOIA Office staff).

4. 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 USTR's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

Answer: The FOIA Office added new staff in August 2016 who did not have the opportunity to attend training before year's end. In 2017, the USTR FOIA staff plans to attend Federal Records Act Training conducted by the National Archives and Records Administration as well as training offered by OIP.

B. Outreach

5. Did USTR's FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding administration of the FOIA?

Answer: FOIA staff participated in a number of White House-led interagency Open Government meetings that included discussions of FOIA improvement and modernization efforts. Some of these meetings included engagement with non-government FOIA stakeholders.

C. Other Initiatives

6. Describe any efforts USTR has undertaken to inform non-FOIA professionals of their obligations under the FOIA.

Answer: The FOIA staff has provided advice and counsel concerning obligations under the FOIA to USTR staff in small group settings either in response to questions or in the process of responding to a particular FOIA request.

7. Describe any other initiatives USTR has undertaken to ensure that the presumption of openness is being applied.

Answer: The FOIA Staff is developing a FOIA training program for all USTR employees that uses in-person and interactive virtual resources to instruct employees on their responsibilities under the FOIA. The training will provide practical advice on how to effectively search for records and how to apply FOIA exemptions in a careful manner that balances the presumption of openness against the foreseeable risks of disclosing exempt information. The USTR FOIA Office also is coordinating with the Office of Human Resources to include FOIA information in new employee packets.

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

A. Processing Procedures

1. For FY2016, what was the average number of days USTR reported for adjudicating requests for expedited processing?

Answer: Eight.

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

Answer: Not applicable.

3. During the reporting period, did USTR conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report data, using active workflows and track management, reviewing and updating processing procedures, etc.

Answer: Yes, USTR hired additional FOIA staff in August 2016, and the FOIA Office did a comprehensive program review during the last two months of FY2016. We reviewed our intake processes and explored ways we could more effectively and efficiently track and timely respond to FOIA requests. As a result, we restructured our FOIA log to capture all data points required in the Annual Report to the Attorney General, updated email templates and incorporated new language required by the FOIA Improvement Act of 2016, implemented a new processing checklist, and created a centralized SharePoint page to capture communications with requesters.

4. Provide an estimate of how many requests USTR processed in FY2016 that were from commercial use requesters.

Answer: Zero.

B. Requester Services

5. Does USTR provide a mechanism for requesters to provide feedback about their experience with USTR’s FOIA process? If so, please describe the methods used, such as making the FOIA Public Liaison available to receive feedback, using surveys posted on the agency’s website, etc.

Answer: We provide contact information in all requester correspondence for the FOIA program manager/attorney assigned to the request as well as the FOIA Public Liaison.

6. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the FOIA Public Liaison. Provide an estimate of how often requesters sought assistance from USTR’s FOIA Public Liaison.

Answer: Requesters sought assistance on about 25 occasions during FY2016.

7. The FOIA Improvement Act of 2016 requires agencies to make their reference material or guide for requesting records or information from the agency electronically available to the public. Please provide a link to USTR’s FOIA reference guide.

Answer: <https://ustr.gov/sites/default/files/Office-of-the-US-Trade-Representative-FOIA-Reference-Guide.pdf>
We expect to post a new comprehensive FOIA Reference Guide early in 2017.

C. Other Initiatives

8. Describe any other steps USTR has undertaken to ensure that our FOIA system operates efficiently and effectively.

Answer: USTR updated and modernized its FOIA implementing rule using an easy to understand plain language format. We expect to post an updated FOIA Reference Guide and other guidance materials early in 2017.

Section III: Steps Taken to Increase Proactive Disclosures

A. Posting Material

1. Describe USTR’s process or system for identifying “frequently requested” records that should be posted online.

Answer: USTR maintains a centralized tracking system that is sortable by subject matter. Upon receipt of three requests for the same or similar records, the FOIA staff contacts the IT staff to upload the records to www.ustr.gov.

2. Does USTR have a distinct process or system in place to identify other records for proactive disclosure? If so, please describe the process or system.

Answer: Yes. USTR uses a variety of methods to proactively inform and share timely updates with the media, Congress, cleared advisors, interested stakeholders, and the public. For example, the Office of Public Affairs manages the release of timely information directly to the public and the media regarding developments in trade policy and makes the information available on the USTR website in the form of press releases, fact sheets, blogs, reports, press events, in-person briefings and teleconferences.

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

Answer: Yes.

4. If so, briefly explain those challenges and how USTR is working to overcome them.

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

5. Provide examples of material USTR has proactively disclosed during the past reporting year, including links to the posted material

Answer: Fact sheets on a variety of trade issues: <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets>
Speeches and public remarks: <https://ustr.gov/about-us/policy-offices/press-office/speeches>

6. Did USTR use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe these efforts.

Answer: USTR has enhanced its ability to communicate information by upgrading to modern web design and usability standards, and bringing outreach efforts on the web up to date with comparable non-governmental websites. USTR also uses social media to publicize important announcements and events, such as the disclosure of the final text of the Trans-Pacific Partnership.

B. Other Initiatives

7. Describe any other steps USTR has taken to improve proactive disclosures. For example, has your agency engaged requesters in determining how and what to post? Has your agency used web analytics to inform your proactive disclosures?

Answer: USTR participated in several interagency Open Government joint stakeholder sessions with civil society where participants were encouraged to provide feedback on the types of information they wanted from USTR. In addition, USTR continues to use 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.

Section IV: Steps Taken to Greater Utilize Technology

A. Making Material Posted Online More Useful

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

Answer: Yes.

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

Answer: In FY2015, USTR updated its website to improve significantly the readability and usability of the information, and to embrace more modern design paradigms to match the expectations of Internet users. USTR continues to post information in easily consumable formats both on the website itself and through highly popular social media platforms such as Twitter and Medium.

B. Other Initiatives

3. Did USTR successfully post all four quarterly reports for FY2016?

Answer: No.

4. If USTR did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide USTR's plan for ensuring that such reporting is successful in FY2017.

Answer: Prior to the fourth quarter of FY2016, the FOIA Office had been unable to post quarterly reports to the USTR website due to technology limitations. Going forward, website enhancements will now allow us to create a new URL and timely post the quarterly reports.

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

A. Simple Track

1. Does USTR utilize a separate track for simple requests?

Answer: Yes.

2. If so, for USTR overall in FY2016, was the average number of days to process simple requests twenty working days or fewer?

Answer: No, it was 24 days.

3. Provide the percentage of requests USTR processed in FY2016 that were placed in your simple track.

Answer: 34 percent.

4. If USTR 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.

B. Backlogs

BACKLOGGED REQUESTS

5. If USTR had a backlog of requests at the close of FY2016, did that backlog decrease as compared with the backlog reported at the end of FY2015?

Answer: No.

6. If not, explain why and describe the causes that contributed to USTR not being able to reduce its backlog.

Answer: The number of FOIA requests USTR receives each year has steadily risen over the last several years from an average of 50 per year to a record high of 118 requests in FY2016. Also contributing to the increased backlog was the departure of the FOIA program manager/attorney. For almost half of FY2016, the USTR FOIA Office consisted only of the FOIA Public Liaison and the Chief FOIA Officer for whom FOIA is a collateral duty. After adding additional staff in August 2016, by the end of the first quarter of FY2017, the FOIA Office was able to decrease the backlog as compared with the backlog reported at the end of FY2015.

7. Report the request backlog as a percentage of the total number of requests USTR received in FY2016.

Answer: 19 percent.

BACKLOGGED APPEALS

8. If USTR had a backlog of appeals at the close of FY2016, did that backlog decrease as compared with the backlog reported at the end of FY2015?

Answer: Not applicable.

9. If not, explain why and describe the causes that contributed to USTR not being able to reduce its backlog.

Answer: Not applicable.

10. Report the appeal backlog as a percentage of the total number of appeals USTR received in FY2016.

Answer: Not applicable.

C. Status of Ten Oldest Requests, Appeals, and Consultations

TEN OLDEST REQUESTS

11. In FY2016, did USTR close the ten oldest requests that were reported pending in your FY2015 Annual FOIA Report?

Answer: No.

12. If no, please provide the number of these requests USTR was able to close by the end of the fiscal year. If you had less than ten total oldest requests to close, please indicate that.

Answer: Seven.

13. Of the requests USTR 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: One; interim responses were provided.

TEN OLDEST APPEALS

14. In FY2016, did USTR close the ten oldest appeals that were reported pending in your FY2015 Annual FOIA Report?

Answer: USTR closed the one administrative appeal that was pending at the beginning of FY2016.

15. If no, provide the number of these appeals USTR was able to close by the end of the fiscal year. If you had less than ten total oldest appeals to close, please indicate that.

Answer: Not applicable.

TEN OLDEST CONSULTATIONS

16. In FY2016, did USTR close the ten oldest consultations that were reported pending in your FY2015 Annual FOIA Report?

Answer: No.

17. If no, provide the number of these consultations USTR was able to close by the end of the fiscal year. If you had less than ten total oldest consultations to close, please indicate that.

Answer: USTR closed six of the seven oldest consultations that were pending at the end of FY2015.

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

18. Briefly explain any obstacles USTR faced in closing its ten oldest requests, appeals, and consultations from FY2015.

Answer: Loss of staff.

19. If USTR 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 USTR initially received the request, the date USTR sent the consultation, and the date when you last contacted the agency where the consultation was pending.

Answer: Not applicable.

20. If USTR did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how USTR intends to close those “ten oldest” requests, appeals, and consultations during FY2017.

Answer: USTR has added two part-time program officers/attorneys, which has allowed us to work towards eliminating the backlog. At the time of this report, the FOIA staff already has closed the one remaining oldest consultation.

E. Success Stories

Describe at least one success story emblematic of USTR's efforts out of all the activities undertaken since March 2016 to increase transparency and improve FOIA administration.

- **In the last quarter of FY2016, we added two program manager/attorneys to the FOIA Office staff, which more than doubled our personnel resources.**
- **In the first quarter of FY2017, the USTR FOIA Office has reduced its backlog by 56 percent, including four of its ten oldest pending perfected requests.**
- **In the first quarter of FY2017, the USTR FOIA Office issued a comprehensive plain-language overhaul of the USTR FOIA implementing rule.**
- **In the second quarter of FY2017, the USTR FOIA Office anticipates posting on the USTR website an easy to understand and fully updated FOIA Reference Guide and other guidance materials.**