

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



2018 CHIEF FREEDOM OF INFORMATION ACT
OFFICER ANNUAL REPORT

Agencies Receiving 50-1,000 Requests in FY2017

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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 275 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 three people - a Chief FOIA Officer and two part-time FOIA program managers/attorneys, one of whom 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 140 requests in FY2017.

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

A. 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 or conducted and the topics covered.

Answer: USTR FOIA staff attended both *The Freedom of Information Act for Attorneys and Access Professionals* program offered by the Department of Justice, Office of Information Policy, and Federal Records Act (FRA) training provided by the National Archives and Records Administration. FOIA staff also received training on a new eDiscovery tool deployed by the Executive Office of the President for FRA components.

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: 100 percent.

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: USTR is in full compliance with this OIP guidance.

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: The FOIA staff briefed the members of the trade advisory committees on access to and security of information. We also are in the process of revising guidance materials for the trade advisors.

C. Other Initiatives

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

Answer: In 2017, the USTR FOIA office implemented a FOIA training program that offers introductory and refresher training to new and current employees, respectively. Approximately one-third of USTR's staff participated in the refresher training, which covered topics such as records retention, classification and marking of documents, the purpose of the FOIA, and best practices for searching for responsive records. We require all new employees to attend the introductory FOIA training, which provides an overview of the process, including working with

requesters, conducting effective searches, and applying FOIA exemptions in a careful manner that balances the presumption of openness against the foreseeable risks of disclosing exempt information.

In addition, the FOIA staff provides ongoing 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 updated the USTR website with an easy to understand and fully updated FOIA Reference Guide and other guidance materials. We proactively added links to relevant materials in anticipation of the high public interest in the North American Free Trade Agreement (NAFTA) renegotiation and the creation of the U.S.-U.K. Trade and Investment Working Group. We also update frequently requested records such as USTR's FOIA logs and the Ambassador's calendar on a quarterly basis.

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

1. For FY2017, what was the average number of days USTR reported for adjudicating requests for expedited processing?

Answer: Six.

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: No, because the USTR FOIA Office conducted a comprehensive program review during the last two months of FY2016. We plan to conduct a self-assessment in 2018 utilizing the toolkit issued by OIP in September 2017.

4. 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: In FY 2017, requesters sought assistance on about 25 occasions.

5. Optional Survey Question: If possible, please provide an estimate of the average number of pages that USTR processes for each request. You may provide estimates for each track.

Answer: The FOIA Office does not track the number of pages we process for each request. To provide an estimate, we reviewed the number of pages released in full or in part and withheld in full in the disposition of 80 FOIA requests. On average, USTR processes 260 pages for simple requests and 1,026 pages for complex requests. Because search results almost always include duplicate and nonresponsive records, we anticipate the number actually processed is higher.

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

Answer: USTR updated its FOIA Reference Guide and other guidance materials using an easy to understand plain language format. The FOIA staff also worked with USTR IT staff and OIP to ensure timely quarterly reporting on FOIA.gov. The staff also has met regularly with Agency leadership to ensure that compliance with our FOIA responsibilities remains a priority at all levels of USTR.

Section III: Steps Taken to Increase Proactive Disclosures

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

Answer:

Information related to ongoing trade negotiations, *e.g.*, NAFTA: <https://ustr.gov/trade-agreements/free-trade-agreements/north-american-free-trade-agreement-nafta>

Frequently requested records, *e.g.*, FOIA logs, calendar of the United States Trade Representative: <https://ustr.gov/about-us/reading-room/freedom-information-act-foia/electronic-reading-room/frequently-requested-reco>

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>

2. 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 announcement of NAFTA renegotiations.

3. 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.

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

Answer: The USTR website is currently undergoing a redesign. We anticipate the improved search functionality will enable the public to more easily and effectively retrieve information relevant to their search. USTR is targeting the end of March 2018 for the updated website's launch.

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

Answer: USTR has participated in 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 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

1. Has USTR identified any best practices to leverage 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 yes, please describe the best practices, the types of technology used and the impact on your agency's processing.

Answer: Yes. The Executive Office of the President utilizes a centralized eDiscovery tool that allows us simultaneously to search potential record holders' email and files and to de-duplicate results. USTR FOIA staff has taken advantage of training on how to more effectively sort and review search results using this tool.

2. Did USTR successfully post all four quarterly reports for FY2017?

Answer: Yes.

3. 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: Not applicable.

4. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for USTR's FY2016 and FY2017 Annual FOIA Report.

Answer: <https://ustr.gov/about-us/reading-room/freedom-information-act-foia/annual-foia-reports>

5. Describe any other steps USTR has taken to improve use of technology in FOIA.

Answer: Not applicable.

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 FY2017, was the average number of days to process simple requests twenty working days or fewer?

Answer: Yes, it was 16 days.

3. Provide the percentage of requests USTR processed in FY2017 that were placed in your simple track.

Answer: 60 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 FY2017, did that backlog decrease as compared with the backlog reported at the end of FY2016?

Answer: Yes.

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

Answer: Not applicable.

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

Answer: Four percent.

BACKLOGGED APPEALS

8. If USTR had a backlog of appeals at the close of FY2017, did that backlog decrease as compared with the backlog reported at the end of FY2016?

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 FY2017.

Answer: Not applicable.

C. Backlog Reduction Plans

11. In the 2017 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in FY2016 was asked to provide a plan for achieving backlog reduction in the year ahead. Did USTR implement a backlog reduction plan last year? If so, describe USTR's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in FY2017?

Answer: Not applicable.

12. If USTR had a backlog of more than 1,000 requests in FY2017, what is USTR's plan to reduce this backlog during FY2018?

Answer: Not applicable.

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

TEN OLDEST REQUESTS

13. In FY2017, did USTR close the ten oldest requests that were reported pending in your FY2016 Annual FOIA Report?

Answer: No.

14. 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: Nine.

15. 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: Zero.

TEN OLDEST APPEALS

16. In FY2017, did USTR close the ten oldest appeals that were reported pending in your FY2016 Annual FOIA Report?

Answer: Not applicable.

17. 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

18. In FY2017, did USTR close the ten oldest consultations that were reported pending in your FY2016 Annual FOIA Report?

Answer: Yes.

19. 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: Not applicable.

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

20. Briefly explain any obstacles USTR faced in closing its ten oldest requests, appeals, and consultations from FY2017.

Answer: Loss of staff.

21. 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.

22. 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 FY2018.

Answer: The USTR FOIA Office is working with a trade policy research assistant in the substantive program office that is the subject of USTR’s oldest pending request.

F. Success Stories

Describe at least one success story emblematic of USTR’s efforts out of all the activities undertaken since March 2017 to increase transparency and improve FOIA administration.

- In FY2017, the USTR FOIA Office reduced its backlog by 82 percent, including nine of its 10 oldest pending perfected requests.
- In the second quarter of FY2017, the USTR FOIA Office posted an easy to understand and fully updated FOIA Reference Guide and other guidance materials on the USTR website.
- In 2017, the USTR FOIA office implemented a FOIA training program that offers introductory and refresher training to new and current employees, respectively.