

# **Executive Office of the President**

## **Office of the United States Trade Representative**



## **2019 CHIEF FREEDOM OF INFORMATION ACT OFFICER ANNUAL REPORT**

**Agency Received More than 50 Requests in FY 2017**

**Janice Kaye, Chief FOIA Officer  
Chief Counsel for Administrative Law**

## **Introduction**

The Office of the United States Trade Representative (USTR), the second largest component of the Executive Office of the President (EOP), 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 255 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 186 requests in FY 2018.

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 Leadership**

##### **1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. Is USTR's Chief FOIA Officer at or above this level?**

Answer: Yes. The FOIA Office is part of the Office of General Counsel, and the Chief FOIA Officer is the Chief Counsel for Administrative Law who reports directly to the General Counsel. This is a senior position with the authority to make recommendations on any adjustments to agency practices, policies, personnel, and funding that may be necessary to improve FOIA implementation.

**2. Please provide the name and title of USTR's Chief FOIA Officer.**

Answer: Janice Kaye, Chief Counsel for Administrative Law.

**B. FOIA Training:**

**3. Did USTR's FOIA professionals or the personnel at USTR who have FOIA responsibilities attend any substantive FOIA training or conference during the reporting period such as that provided by the Department of Justice?**

Answer: Yes.

**4. If yes, please provide a brief description of the type of training attended or conducted and the topics covered.**

Answer: USTR FOIA staff attended *The Chief FOIA Officer Report Refresher Training* program offered by the Department of Justice, as well as FOIA workflow and advanced training on the eDiscovery platform managed by the EOP. In addition, the USTR FOIA Office conducts mandatory, introductory FOIA training for all new employees.

**5. Provide an estimate of the percentage of USTR's FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.**

Answer: 100 percent.

**6. 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.

**C. Outreach**

**7. 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: Yes. The FOIA staff routinely engages with requesters, the majority of whom are representatives of the media or open government groups. For example, we often contact requesters to clarify or narrow overly broad requests, gather missing or incomplete information, explain how our eDiscovery platform works, and how to request USTR records that the National Archives and Records Administration controls.

#### **D. Other Initiatives**

- 8. Describe any efforts USTR has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In 2016, the Department publicized FOIA-related performance standards for employees that have any role in administering the FOIA, including non-FOIA professionals. Please also indicate whether USTR has considered including FOIA-related performance standards in employee work plans for employees who have any role in administering the FOIA.**

Answer: USTR requires all new employees to attend 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 2018, the USTR FOIA Office provided 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. We intend to rollout FOIA training sessions in 2019 covering topics such as classification and marking of documents, what constitutes foreign government information, and understanding the scope of Exemption 5.

The FOIA office has recommended the inclusion of FOIA-related performance standards in non-FOIA professionals' work plans to the Office of Administration, and the addition is under consideration.

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

Answer: The FOIA Staff encourages proactive disclosure on the USTR website. Examples include providing links to materials in anticipation of high public interest such as the USMCA and US–Korea Free Trade Agreement negotiations, posting our FOIA logs on a quarterly basis, and disclosing the calendars of senior level officials and visitor logs each month.

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

- 1. For FY 2018, what was the average number of days USTR reported for adjudicating requests for expedited processing?**

Answer: Seven.

- 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 FY 2016. We plan to conduct a self-assessment in 2019 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 during FY 2018.**

Answer: In FY 2018, requesters sought assistance on about 45 occasions.

**5. Please describe the best practices used to ensure that USTR's FOIA system operates efficiently and effectively and any challenges USTR faces in this area.**

Answer: The FOIA staff collaborates with USTR's substantive and regional offices to ensure that we understand the scope of the records being sought, and we contact the requester along with our subject matter experts to clarify any ambiguities. We consider factors such as the scope and expected volume of documents to determine whether we should have an individual employee search their records or use the centralized eDiscovery platform. We design searches using precise keywords to accurately locate responsive records and minimize non-responsive results like press clips. We review search results, recommend appropriate redactions, and consult with USTR staff and/or third parties to finalize FOIA responses. We periodically meet with the EOP eDiscovery experts to learn about platform enhancements and to review and solve issues like searches that produce high numbers of non-responsive records.

USTR's greatest challenge is the steady increase in the number of requests without additional resources. In FY 2018, we received 30 percent more requests than in FY 2017, and USTR's FOIA staff has remained the same. Although USTR almost tripled the number of backlogged requests from FY 2017 to FY 2018 (5 to 14), at the time of this report, we have closed eight of our oldest requests reducing our remaining backlog to six requests.

### **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., USMCA: <https://ustr.gov/trade-agreements/free-trade-agreements/north-american-free-trade-agreement-nafta>

Frequently requested records, e.g., FOIA logs and travel records: <https://ustr.gov/about-us/reading-room/freedom-information-act-foia/electronic-reading-room/frequently-requested-reco>

Calendars of the United States Trade Representative and other senior officials: <https://ustr.gov/about-us/reading-room/freedom-information-act-foia/foia-library/frequently-requested-records>

Visitor Logs: <https://ustr.gov/about-us/reading-room/freedom-information-act-foia/foia-library/frequently-requested-records/visitor>

Information on USTR's monitoring and enforcement actions, e.g., Section 201 and 301 investigations, dispute settlement matters, subsidies enforcement: <https://ustr.gov/issue-areas/enforcement>

Speeches and public remarks: <https://ustr.gov/about-us/policy-offices/press-office/speeches>

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

**2. Please describe how USTR identifies records that have been requested and released three or more times.**

Answer: USTR uses a central tracking system for all incoming FOIA requests. Because our FOIA staff is small, the same attorney often will work on similar FOIA requests, e.g., China tariffs or records related to BREXIT, which makes it easy to identify records that already have been requested and released.

**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: USTR redesigned its website in 2018 to improve search functionality, which makes retrieving relevant information both easier and more effective.

**5. Please describe the best practices used to improve proactive disclosures and any challenges USTR faces in this area.**

Answer: To inform our decisions on proactive disclosure, we review the daily news clips because today's headlines often become tomorrow's FOIA requests. One challenge we face is with respect to the format in which we produce a record. For example, USTR calendars are created and disclosed in the Outlook daily format so we are not able to provide documents in the Outlook memo format, which is not available to USTR employees.

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

- 1. Is USTR leveraging technology to facilitate efficiency in conducting searches, including searches for emails? If so, please describe the type of technology used.**

Answer: Yes. The FOIA Office conducts a majority of searches using the centralized eDiscovery platform to allow us simultaneously to search potential record holders' email and files and to de-duplicate results.

- 2. Has USTR reviewed its FOIA website during the reporting period to ensure it addresses the elements noted in OIP's 2017 guidance?**

Answer: Yes.

- 3. Did USTR successfully post all four quarterly reports for FY 2018?**

Answer: Yes.

- 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 FY 2019.**

Answer: Not applicable.

- 5. 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 FY 2017 and FY 2018 Annual FOIA Reports.**

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

- 6. Please describe the best practices used in greater utilizing technology and any challenges USTR faces in this area.**

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 FY 2018, was the average number of days to process simple requests 20 working days or fewer?**

Answer: Yes, it was 17 days.

**3. Provide the percentage of requests USTR processed in FY 2018 that were placed in your simple track.**

Answer: 71.8 percent.

**4. If USTR does not track simple requests separately, was the average number of days to process all non-expedited requests 20 working days or fewer?**

Answer: Not applicable.

***B. Backlogs***

**BACKLOGGED REQUESTS**

**5. If USTR had a backlog of requests at the close of FY 2018, did that backlog decrease as compared with the backlog reported at the end of FY 2017?**

Answer: No.

**6. If not, did USTR process more requests during FY 2018 than it did during FY 2017?**

Answer: Yes.

**7. If USTR's request backlog increased during FY 2018, please explain why and describe the causes that contributed to USTR not being able to reduce its backlog.**

Answer: In FY 2018, we received 30 percent more requests than in FY 2017 and USTR's FOIA staff remained the same. Although USTR almost tripled the number of backlogged requests from FY 2017 to FY 2018 (5 to 14), at the time of this report, we have closed eight of our oldest requests reducing our remaining backlog to six.

**8. 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 USTR in FY 2018.**

Answer: 5.91 percent.

## **BACKLOGGED APPEALS**

- 9. If USTR had a backlog of appeals at the close of FY 2018, did that backlog decrease as compared with the backlog reported at the end of FY 2017?**

Answer: Not applicable.

- 10. If not, did USTR process more appeals during FY 2018 than it did during FY 2017?**

Answer: Not applicable.

- 11. If USTR's appeal backlog increased during FY 2018, please explain why and describe the causes that contributed to USTR's not being able to reduce its backlog.**

Answer: Not applicable.

- 12. 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 USTR in FY 2018.**

Answer: Not applicable.

### ***C. Backlog Reduction Plans***

- 13. In the 2018 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in FY 2017 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 FY 2018.**

Answer: Not applicable.

- 14. If USTR had a backlog of more than 1,000 requests in FY 2018, what is USTR's plan to reduce this backlog during FY 2019?**

Answer: Not applicable.

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

#### **TEN OLDEST REQUESTS**

- 15. In FY 2018, did USTR close the ten oldest requests that were reported pending in your FY 2017 Annual FOIA Report?**

Answer: No.

**16. 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.

**17. 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.

**18. Beyond work on the ten oldest requests, please describe any steps USTR took to reduce the overall age of your pending requests.**

Answer: For complex requests, we targeted a final response date no longer than 157 days, i.e., the average response time for complex requests in the prior fiscal year. For all requests, we submitted search requests to our eDiscovery team within one to two business days of receipt.

#### **TEN OLDEST APPEALS**

**19. In FY 2018, did USTR close the ten oldest appeals that were reported pending in your FY 2017 Annual FOIA Report?**

Answer: Not applicable.

**20. 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.

**21. Beyond work on the ten oldest appeals, please describe any steps USTR took to reduce the overall age of your pending appeals.**

Answer: Not applicable.

#### **TEN OLDEST CONSULTATIONS**

**22. In FY 2018, did USTR close the ten oldest consultations that were reported pending in your FY 2017 Annual FOIA Report?**

Answer: Yes.

**23. 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***

**24. Briefly explain any obstacles USTR faced in closing its ten oldest requests, appeals, and consultations from FY 2018.**

Answer: Of USTR's six oldest requests, three involve records from prior administrations and require consultations with other agencies. Two should close by the end of the second quarter of 2019, and we are continuing to work with the final requester (a graduate student) to narrow the scope of her request as she refines her thesis statement.

**25. 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.

**26. 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 FY 2019.**

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 2018 to increase transparency and improve FOIA administration.**

- In FY 2018, the FOIA Office advocated for improved website search functionality that has been implemented and now is available on [www.ustr.gov](http://www.ustr.gov).
- In FY 2018, the USTR FOIA Office increased its proactive disclosures to include senior-level officials' calendars and monthly visitor logs.
- We have fostered productive working relationships with our most frequent requesters to enhance timeliness and completeness of responses.
- We worked closely with our Assistant US Attorney to bring long-standing FOIA litigation to a successful conclusion.