

*Office of the General Counsel
Freedom of Information and Privacy Act*

2012 Chief FOIA Officer Report

The Broadcasting Board of Governors (BBG) is the federal agency responsible for all non-military U.S. Government-funded international broadcasting. The BBG's mission is to promote freedom and democracy and enhance understanding through multimedia communication of accurate, objective, and balanced news, information and other programming about America and the world to audiences overseas. The Voice of America and other elements of BBG-sponsored international broadcasting transmit news and information in 59 languages to more than 100 countries, reaching a weekly audience of 187 million people via radio, terrestrial and satellite television, mobile devices, and the Internet and social media.

At the BBG, Freedom of Information Act (FOIA) requests are centrally managed by the Office of the General Counsel (OGC). The OGC's FOIA team (hereinafter, the "FOIA Office") receives all incoming FOIA requests, coordinates the search for and processing of requested materials, and reviews and releases responses to requesters in coordination with the agency's Chief FOIA Officer (currently the Deputy General Counsel and Acting General Counsel). The BBG does not employ full-time FOIA personnel, but rather utilizes personnel with part-time or occasional FOIA duties. Currently, the BBG's FOIA Office consists of five employees (including the Chief FOIA officer) who perform part-time FOIA duties for the entire agency.

I. Steps Taken to Apply the Presumption of Openness

In order to ensure that the presumption of openness is applied to all decisions involving the FOIA, the Chief FOIA Officer has required that all FOIA Office personnel read and understand the President's FOIA memorandum and the Attorney General's FOIA guidelines and fully implement the presumption in response to FOIA requests to the agency. Agency FOIA Office personnel have attended Department of Justice training specifically focused on, or incorporating training on, these guidelines, including *FOIA for Attorneys and Access Professionals*, training on preparing DoJ's FOIA annual report, and the *Refresher Training Session on 2011 Agency Annual FOIA Reports*. While the agency did not hold or sponsor any group or institutional FOIA training in the past year, FOIA Office personnel consistently engaged in one-on-one training and instruction with both agency managers and records custodians regarding the FOIA's presumption of openness and the requirement to comply with the Presidential and Attorney General guidance memos. Additionally, the Chief FOIA Officer and FOIA Office personnel have provided numerous announcements and short briefings at agency staff meetings emphasizing that while the FOIA Office is responsible for coordinating the agency's FOIA program, it is the responsibility of all agency employees to ensure that FOIA requests are responded to in a sufficient and timely manner.

BBG FOIA Office personnel have been instructed to review all proposed redactions and documents recommended for withholding and apply the guidance described above to maximize the information made available to the public in light of the President's presumption in favor of

disclosure. Whenever the agency determines it cannot make a full disclosure of a requested record, it actively considers whether it can make a partial disclosure. FOIA Office personnel continue to implement the “foreseeable harm” standard outlined in the Attorney General’s guidance in determining whether information must be withheld or should be released.

In accordance with the Attorney General’s guidance, the BBG has increased the use of discretionary release of information that would otherwise be subject to withholding. As an integral part of the agency’s FOIA program, FOIA Office personnel review every proposed withholding or redaction of information for legal sufficiency and compliance with the FOIA. During that review, all material proposed for withholding under discretionary exemptions (primarily Exemptions 2 and 5) is further scrutinized to identify material suitable for discretionary release. Once such material is found, FOIA Office personnel then return to agency personnel responsible for it to determine whether the material can be released without resulting in foreseeable harm to the agency or its decision-making processes. In several FOIA requests in the past year, that process resulted in material initially marked for withholding ultimately being released to the public on a discretionary basis in accordance with Presidential and Attorney General guidance.

The BBG FOIA Office’s dedication to the President’s presumption of openness is readily apparent in its annual statistics. Requests where records were released in full increased from eight (8) in fiscal year (FY) 2010 to twenty-nine (29) in FY 2011, and those where records were released in part increased from thirteen (13) in FY 2010 to eighteen (18) in FY 2011. For reference, the total number of FOIA requests processed by the agency was thirty-seven (37) for FY 2010 and seventy-eight (78) for FY 2011, respectively.

II. Steps Taken to Ensure that Your Agency has an Effective System In Place for Responding to Requests

The agency continued to expand its use of technology to improve the efficiency and effectiveness of the FOIA Office’s ability to respond to requests. Working with the agency’s IT professionals, the FOIA Office transitioned to full digital processing of received requests. FOIA Office personnel use commercially-available digital information processing software to process and distribute requests electronically within the agency and to scan, review, and securely redact both paper and electronic records delivered to the FOIA Office. By enabling electronic review and redaction of FOIA materials, the agency is able to meet requester preferences for digital or paper document formats while reducing the time and expense required to process requests. The agency is currently exploring being able to accept and process FOIA requests via email for 100% electronic receipt, process, and delivery, and the FOIA Office is receiving adequate IT support toward that goal.

FOIA Office personnel meet regularly with the agency’s Chief FOIA Officer to discuss progress on responding to open requests, review overall program performance, and address any issues or challenges facing the program. In turn, the Chief FOIA Officer provides recurring reports to the Board of Governors regarding the program’s overall performance and other FOIA-

related issues as appropriate. Regular interaction with the Chief FOIA Officer ensures a free and open channel of direct communication with senior agency management to obtain support for the FOIA program and to resolve any problems affecting the effective processing of FOIA requests for information across the entire agency.

Following the issuance of the President's Executive Order on Open Government, the BBG previously assembled a team of professionals from the OGC, the International Broadcasting Bureau, and the agency's public relations offices (hereinafter, the "Open Government Team") in order to identify and implement, on a continuing basis, opportunities to make significant BBG-generated data sets available to the public. FOIA Office personnel meet periodically with the Open Government Team to collaborate on ways to increase openness and transparency at the agency. FOIA Office personnel are also contacted on an as-needed basis by members of the Open Government Team to analyze and discuss specific items or concepts for implementation as part of the agency's Open government Plan. Information made available through the Open Government process is available on the agency's public website (www.bbg.gov).

The Chief FOIA Officer monitors both the volume of requests made to the agency and the time taken to process them to evaluate whether or not adequate staffing and resources are being dedicated to FOIA administration. The staff and resources presently available for FOIA Administration is adequate for current FOIA workloads, although the agency's continuing upward trend in request volume will be closely monitored to determine if additional resources may be necessary to avoid deteriorations in program performance.

III. Steps Taken To Increase Proactive Disclosures

The agency continued to increase the amount of information proactively disclosed to the public. The Broadcasting Board of Governors has upheld its prior commitment to openness and transparency by conducting nearly all its business in public meetings freely open to public observation over the Internet to the public, both via live feed during actual meetings and on demand afterward, through the agency's public Internet website (www.bbg.gov). The Board also decided to proactively disclose numerous documents and records as well, such as formal Board resolutions, Board committee reports, other agency information of interest and value to the public. Additional information on the Board's activities can be found on the agency's website. The agency also proactively discloses several documents that previously were available only upon request, such as annual operating reports and budgets. Several high-interest items were proactively disclosed in the prior year, including the agency's annual budget submission, its 2012-2016 strategic plan, its 2011 Grantee consolidation assessment, and its 2010 Annual Language Service Review Briefing Book.

Although there is no formal process at the BBG for identifying documents that can be disclosed proactively, the FOIA Office works in concert with the Open Government team to identify documents or high value datasets that may be of public interest. The agency does not currently use social media in connection with its FOIA or Open Government functions, but it will continue to look for opportunities to expand into these areas as well.

It should be noted that the agency's largest and most valuable data set is the on-air programming it creates and distributes overseas. However, the agency is prohibited from disseminating its programming within the United States by the Smith-Mundt Act and thus may not proactively disclose it. Nevertheless, the agency remains committed to identifying and proactively releasing other information or documents of public interest.

IV. Steps Taken To Greater Utilize Technology

Although the BBG has made advances in increasing its utilization of technology to improve its FOIA program, it does not currently have the capability to receive or release requests electronically. However, it is aggressively pursuing the ability to do so this year. The agency uses an internal electronic database to log and track the progress of FOIA requests, in which 100% of the agency's FOIA requests are entered. Currently, the agency does not have the capability to permit requesters to track their own requests electronically via the Internet, but the agency is exploring the feasibility of adding such a capability to its FOIA program.

With the recent addition of digital scanning equipment and processing software, the agency has transitioned to processing all its FOIA requests electronically. Incoming FOIA requests are scanned and search taskers are sent within the agency via email. Records that are returned to the FOIA office in hard copy are then scanned into digital format and reviewed or redacted, while those returned in digital format are processed entirely electronically. All correspondence and final responses to requests are generated electronically, printed out in hard copy, and then sent via the United States Postal Service to the requester. Digital versions of final correspondence and FOIA responses are retained on the agency's computer network for future reference and document retention purposes.

Although information is retrieved from the agency's FOIA tracking system to compile its Annual FOIA report, the system does not contain any specialized report-generating functions. Nevertheless, given the level of FOIA activity at the BBG, the agency is generally satisfied that the level of technological support to the program is adequate.

V. Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

The BBG strives to answer each and every FOIA within statutory guidelines, and the agency continues to make progress toward that goal. In order to reduce processing times and ensure responses are as timely as possible, FOIA Office personnel routinely monitor the progress of individual FOIA requests from receipt until release. Furthermore, the Chief FOIA Officer is regularly briefed regarding the progress of open FOIA requests and provides guidance and advice as needed to improve processes and response times. Although the agency did not add personnel to the FOIA Office in 2011, FOIA Office personnel were recently added in 2010. As described in Paragraph IV above, the agency increased the use of IT technology to boost the percentage of electronic FOIA processing to increase overall efficiency and reduce processing and response times. In 2011, the agency eliminated dual-track processing in favor of a single

track, first-in first-out processing system. In FY 2010, the average completion time for all processed requests (simple and complex) was 42 days. In FY 2011, the average completion time for processed non-expedited requests declined to 31 days. Additionally, as of the close of FY 2011 the agency had no backlogged FOIA requests or appeals. The agency did not receive any FOIA consultations from other federal agencies last year.

Use of FOIA's Law Enforcement "Exclusions"

The BBG did not invoke any statutory exclusions pursuant to 5 USC 552(c) in FY 2011.

Spotlight on Success

The most successful story for the BBG's FOIA program since March of 2011 has been its increased efficiency and effectiveness in processing requests. Despite processing more than twice the number of requests in FY 2011 than in FY 2010, the dedication and professionalism of the agency's FOIA Office personnel still produced a reduction in overall processing times of nearly 25% from the previous year. By leveraging the individual talent and expertise of FOIA Office personnel and increasing the utilization of new information technology systems and equipment, the agency has been able to increase both the quantity of information it makes available to the public and the speed with which it provides it. This success is emblematic of the Board of Governors' demonstrated commitment to increasing the transparency and openness of BBG operations to the general public.