

## **2019 Chief FOIA Officer Report**

The United States Agency for Global Media (USAGM), formerly known as the Broadcasting Board of Governors, is the federal agency responsible for all U.S. Government-funded civilian international broadcasting and media operations. The USAGM's mission is to inform, engage, and connect people around the world in support of freedom and democracy. Every week the Voice of America, Office of Cuba Broadcasting, and other elements of USAGM-sponsored international broadcasting transmit more than 4,000 hours of original news and informational content in more than 60 languages to approximately 345 million people in 100 countries via radio, terrestrial and satellite television, mobile devices, and the Internet and various social media platforms and applications.

### **Section 1: 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 your agency's Chief FOIA Officer at or above this level?**

Yes.

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

USAGM's Chief FOIA Officer is David J. Kligerman, the agency's General Counsel.

#### **B. FOIA Training**

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

Yes.

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

#### Chief FOIA Officers Council Meeting (October 2018)

During this meeting, in addition to updates by the Office of Information Policy and Office of Government Information Services, there was a discussion about the Final Report and Recommendations of the 2016-2018 FOIA Advisory Committee and Department of Justice, Office of Information Policy Agency Guidance



### Annual FOIA Report Training (October 2018)

This training covered updates and best practices for agencies in producing the required annual FOIA report.

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

Less than 50%

#### **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 your agency’s plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.**

The USAGM FOIA Program experienced a serious staffing turnover in 2018, losing its senior FOIA/Ethics counsel part way through the year. The Office of General Counsel (OGC), already understaffed, therefore had to temporarily staff both programs with attorneys already matrixed to other areas. With respect to FOIA, this matrixed staff was primarily focused on processing and responding to FOIA requests and addressing the backlog of requests.

In the meantime, OGC prioritized hiring for this position and a new Assistant General Counsel for FOIA, Ethics, and Privacy entered on duty in late April 2019. With the addition of this new FOIA counsel, as well as other staff additions to OGC, we confidently anticipate that most, if not all, of our FOIA professionals during the next reporting year will attend substantive FOIA training.

### **C. Outreach**

#### **7. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency’s FOIA administration.**

USAGM did not engage in any outreach or dialogue with the requestor community or open government groups regarding its administration of the FOIA. During this reporting period, however, USAGM took positive, affirmative steps to improve its FOIA administration, including streamlining certain internal processing procedures to help the agency reply to requestors more quickly, effectively addressing its backlog of FOIA requests, and hiring an experienced senior FOIA counsel to manage the FOIA program.

### **D. Other Initiatives**

#### **8. Describe any efforts your agency 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 your agency has considered including FOIA-related performance standards in employee work plans for employees who have any role in administering the FOIA.**

While we have not engaged in any formal initiatives, the USAGM FOIA program has initiated numerous informal conversations with non-FOIA professionals within the Agency – for example, IT personnel, program office FOIA liaisons, and supervisors – to educate them about their responsibilities under the FOIA.

OGC is currently engaged in efforts to review its performance standards and is considering including FOIA-related performance standards for some employees.

**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.**

The USAGM engages in an ongoing effort to ensure the presumption of openness is applied to all release determinations. When processing FOIA requests, FOIA Office personnel reviewed all proposed redactions and documents recommended for full withholding to maximize information made available to the public and increase the agency's openness and transparency. Whenever a full disclosure of a requested record could not be made because of protectable information, the FOIA Office carefully considered whether partial disclosure of the information could be made instead. Finally, before concluding any information should have been withheld from release, FOIA Office personnel applied the "foreseeable harm" standard codified in the FOIA Improvement Act of 2016 and worked with agency managers to assess the potential impact on agency operations prior to a final decision on releasability.

Further, in response to the Office of Management and Budget's Open Government Directive in 2009, USAGM has also maintained a page on its public website dedicated to its Open Government initiatives. Reflecting its commitment to implement principles of transparency, participation, and collaboration as the cornerstone of an open government, the Agency has posted its Open Government Plans for public review. As the independent federal agency supervising all U.S. government-supported civilian international broadcasting, the USAGM is dedicated to, and built upon, openness, and it continues to be open to additional opportunities to incorporate the three cornerstone principles into its core mission objectives.

## **Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests**

**1. For Fiscal Year 2018, 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 2018 Annual FOIA Report.**

The average number of days to adjudicate the six requests for expedited processing in 2018 was 30.

**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.**

Because of the small size of the USAGM FOIA program, the loss of one out of two full-time FOIA / Ethics staff in 2018 significantly affected the efficiency of the Agency's FOIA processing. However, the Agency expedited its hiring process to bring onboard a new FOIA / Privacy and Ethics attorney, and we expect that expedited processing times will improve for Fiscal Year 2019.

**3. During the reporting period, did your agency 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.**

Yes, during the reporting period, the USAGM FOIA Program reviewed its procedures and status of its case using its internal case tracking system, Agency FOIA policy, and Annual Reports. As a result of this self-assessment, the program was supplemented by additional temporary staffing and certain procedures were streamlined in order to decrease response times to requestors. In addition, the program updated certain response templates and enhanced its outreach to offices to which it sent requests to search for potentially responsive information.

**4. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2018 (please provide a total number or an estimate of the number).**

No requestor sought assistance from the USAGM's FOIA Public Liaison during Fiscal Year 2018.

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

USAGM publishes on its main FOIA site, as well as on its FOIA Reports page, a variety of methods to contact the FOIA program, including mail, fax, and electronic mail. The Agency also invites any questions or comments to be addressed to the FOIA Officer and submitted by email or phone.

USAGM implements an effective system: first, a single office within the Agency, OGC, handles all FOIA requests submitted to the Agency. When USAGM receives a request, a FOIA professional assigns it a tracking number and contacts the relevant USAGM offices to initiate a records search. Within each office, a single staff member tasked with handling FOIA requests coordinates the search process. USAGM's FOIA professionals are available to agency staff for consultations on the search process, Agency FOIA policy, and any related issues that may arise.

Challenges in efficiency in this system typically relate to resources. With the addition to of a new senior attorney, experienced in FOIA law and procedures, the USAGM is embarking on a comprehensive review of its FOIA program from intake through appeal, with the goal of incorporating new best practices that will enhance its processing procedures and response to the public.

### **Section III: Steps Taken to Increase Proactive Disclosures**

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

The Agency proactively posts the following materials on its public website (<https://www.usagm.gov/our-work/strategy-and-results/strategic-priorities/research-reports/>):

- USAGM Strategic Plan (2018-2022)
- USAGM FY2018 Performance and Accountability Report
- USAGM FY2020 Congressional Budget Justification
- 2018 Federal Employment Viewpoint Survey for USAGM
- USAGM 2018 Federal Activities Inventory Reform (FAIR) Act report

In addition, information about the USAGM Board of Governors is regularly updated (<https://www.usagm.gov/who-we-are/board/>) and includes:

- The entire video recording of the most recent Board of Governors meeting on March 6, 2019 (<https://www.usagm.gov/category/event/board-meeting/?type=past>)

Moreover, the Agency previously proactively posted and continues to maintain numerous materials regarding various aspects of its operation and administration (<https://www.usagm.gov/our-work/strategy-and-results/strategic-priorities/research-reports/>), including:

- 2017 AFPC Persian-Language Broadcasting Study
- Office of Technology, Services & Innovation Annual Reports (2011, 2012, 2013, 2014)
- USAGM Strategic Sustainability Performance Plan (2013, 2014, 2015, 2016)
- Equal Employment Opportunity Reports (for each year 2008-2015)
- No Fear Act data (for each quarter of each year 2005-2014)
- Federal Employment Viewpoint Surveys for the Agency (for each year 2007-2012, 2014-2017)
- Agency FAIR Act reports (for each year 2012-2017)
- Agency Service Contract Inventory data (for years 2011-2016)
- Compilation of the Agency's Systems of Records Notices
- Privacy Threshold Analyses performed on various Agency systems

As in prior years, the agency continued to make its most valuable information, namely the multimedia content it creates for dissemination to audiences overseas, directly and freely

accessible to the public via the Agency's official network websites. News and information produced by the Voice of America can be found at [www.voanews.com](http://www.voanews.com), and news and information produced by the Office of Cuba Broadcasting can be found at [www.martinoticias.com](http://www.martinoticias.com).

USAGM also continued to enhance transparency by proactively releasing information concerning open meetings of the Broadcasting Board of Governors, which were made available to the public over the Internet throughout the year, both by live feed during the meetings and on demand afterward, via the agency's public website at [www.usagm.gov](http://www.usagm.gov). Proactive releases of information regarding the Board's activities also included various supporting documents and records, such as formal Board resolutions, Board committee reports, and other items of potential public interest via the agency's public website.

**2. Please describe how your agency identifies records that have been requested and released three or more times (and are therefore required to be proactively disclosed pursuant to 5 U.S.C. § 552(a)(2)(D)).**

The Chief FOIA Officer, or the FOIA professionals who work under his guidance, periodically review the FOIA log to determine whether any "frequently requested" records can be identified for the purpose of creating a proactive disclosure. No more formal system is required in view of the relatively few (60) requests received in Fiscal Year 2018.

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

Yes.

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

During the reporting period, USAGM revamped its public website ([www.usagm.gov](http://www.usagm.gov)), in line with its re-branding from Broadcasting Board of Governors to U.S. Agency for Global Media. In the process, the Agency also updated its information and re-formatted the site to make it more user-friendly and accessible to the public.

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

We have no additional information on this point.

**Section IV:**

**Steps Taken to Greater Utilize Technology**

**1. Is your agency leveraging technology to facilitate efficiency in conducting searches, including searches for emails? If so, please describe the type of technology used. If not, please explain why and please describe the typical search process used instead.**

Yes. The USAGM's FOIA professionals work closely with the Agency's Information Technology (IT) Division to conduct efficient searches for responsive emails in Microsoft Outlook and for other information stored in the Agency's electronic databases. IT personnel are skilled at performing searches, primarily using eDiscovery in Office 365, in order to produce efficient yet comprehensive search results. They are also very familiar with and proficient at extracting information from those electronic databases.

**2. OIP issued [guidance](#) in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?**

Yes.

**3. Did your agency successfully post all four quarterly reports for Fiscal Year 2018?**

No. The Agency, however, has posted the Annual FOIA Report for 2018 (<https://www.usagm.gov/foia-reports/>) that contains information incorporating the fiscal year's quarterly data.

**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 2019.**

Staffing turnover within the FOIA Program disrupted the Agency's previous consistency in posting quarterly reports. With a new permanent and experienced Program Manager in place, we expect to return to successful quarterly reporting in Fiscal Year 2019.

**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 your agency's Fiscal Year 2017 Annual FOIA Report and, if available, for your agency's Fiscal Year 2018 Annual FOIA Report.**

The Agency's Annual FOIA Reports, including those for FY2017 and FY2018, can be found here: <https://www.usagm.gov/foia-reports/>.

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

During the reporting period, USAGM launched a redesigned public website ([www.usagm.gov](http://www.usagm.gov)), in line with its organizational re-branding from Broadcasting Board of Governors to U.S. Agency for Global Media. The new website features improved layout and navigability in

general, but also enables potential FOIA requestors to more easily locate and review information that USAGM has already posted. In addition, potential requestors can use the “search” feature of the website to filter and sort results by keywords; this makes it easier to locate information that the Agency has already made available to the public.

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

### **A. Simple Track**

**1. Does your agency utilize a separate track for simple requests? If your agency uses a multi-track system beyond simple, complex, and expedited to process requests, please describe the tracks you use and how they promote efficiency.**

Yes, during the reporting period, FOIA professionals made best efforts to identify and address simple, complex, and expedited requests.

**2. If your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2018?**

No

**3. Please provide the percentage of requests processed by your agency in Fiscal Year 2018 that were placed in your simple track.**

58%

**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?**

N/A

### **B. 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 2016 and Fiscal Year 2017 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 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?**

No.

**6. If not, did your agency process more requests during Fiscal Year 2018 than it did during Fiscal Year 2017?**

No. The FOIA Program experienced a staffing turnover during the reporting period.

**7. If your agency's request backlog increased during Fiscal Year 2018, please explain why and describe the causes that contributed to your agency not being able to 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.

N/A

**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 your agency in Fiscal Year 2018. If your agency has no request backlog, please answer with "N/A."**

6.7 % (4 backlogged requests out of 60) for FY2018

**BACKLOGGED APPEALS**

**9. If your agency had a backlog of appeals at the close of Fiscal Year 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?**

Yes.

**10. If not, did your agency process more appeals during Fiscal Year 2018 than it did during Fiscal Year 2017?**

N/A

**11. If your agency's appeal backlog increased during Fiscal Year 2018, please explain why and describe the causes that contributed to your agency not being able to reduce its 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.**

N/A

**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 your agency in Fiscal Year 2018. If your agency did not receive any appeals in Fiscal Year 2018 and/or has no appeal backlog, please answer with "N/A."**

N/A

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

**13. In the 2018 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2017 was asked to provide a plan for achieving backlog reduction in the year ahead. Did you agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2018?**

N/A

**14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2018, what is your agency's plan to reduce this backlog during Fiscal Year 2019?**

N/A

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

#### **OLDEST REQUESTS**

**15. In Fiscal Year 2018, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2017 Annual FOIA Report?**

Yes.

**16. 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 2016 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.**

N/A

**17. 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?**

N/A

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

In the last quarter of FY218, the USAGM FOIA Program conducted a self-evaluation, leading to a temporary increase in matrixed or detailed personnel to process and/or respond to FOIA requests, which significantly facilitated the Agency's ability to reduce the overall age of its pending requests.

### **TEN OLDEST APPEALS**

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

Yes.

**20. 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 2017 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.**

Yes. The Agency closed out the one appeal outstanding from FY2017 during the reporting period.

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

In the last quarter of FY218, the USAGM FOIA Program conducted a self-evaluation, leading to a temporary increase in matrixed or detailed personnel to process and/or respond to FOIA requests, which facilitated the Agency's ability to close out its appeals.

### **TEN OLDEST CONSULTATIONS**

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

N/A. The Agency did not have any pending consultations.

**23. 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 2017 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.**

N/A.

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

### **24. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2018.**

In FY2018, the Agency did not face unusual obstacles beyond an unexpected loss in staffing.

### **25. 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.**

N/A

### **26. 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 2018.**

## **F. Success Stories**

Over this past year, the USAGM FOIA Office explored various opportunities to provide more information in less time and to improve the service it provides to the public. The USAGM typically employs one attorney dedicated to managing the FOIA and Government Ethics programs, one legal analyst (non-attorney) dedicated to support those programs, and then, as needed, relies on matrixed OGC personnel, assigned part-time or occasional FOIA duties. The agency’s last FOIA/Ethics counsel left USAGM in the summer of 2018.

This staffing turnover inadvertently led to a backlog of FOIA processing. FOIA Office personnel met in the latter half of Fiscal Year 2018 to examine the causes behind the backlog existing at that point. It identified several internal program elements requiring adjustment to improve response times on open requests, including adding staff resources (including two more OGC attorneys and an employee from another department detailed part-time to the FOIA program) to process FOIA requests and reducing the time taken to acknowledge incoming FOIA requests and to finalize retrieved requests for release. In the meantime, OGC also expedited the recruitment and hiring process to fill the FOIA attorney position, and a candidate was selected within a few months.

As a result of those efforts, despite losing its FOIA counsel part way through this reporting period, the USAGM FOIA program successfully recovered. It is now poised for new growth and rebuilding in the coming year.