Federal Trade Commission
Chief FOIA Officer Report

March 2022

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Elizabeth Tucci, Deputy General Counsel for Legal Counsel and Chief FOIA Officer

INTRODUCTION

The Federal Trade Commission (FTC) is an independent law enforcement agency established in 1914. The FTC's dual mission is to promote competition and protect consumers in broad sectors of the economy. The FTC's work is performed by the Bureaus of Consumer Protection, Competition, and Economics. That work is aided by seven regional offices and several program offices.

The FTC administers its FOIA program through its Office of General Counsel. The FOIA program employs five attorneys and five government information specialists, with occasional support of contractors and other staff, and processes all record requests made to the agency. As Chief FOIA Officer for the FTC, I am pleased to report that the FOIA program continues to improve its administration of FOIA. In Fiscal Year (FY) 2021, the FTC continued to decrease the delays in FOIA request processing. To do so, the FTC's FOIA professionals conducted training for the agency's FOIA liaisons and management on how to identify responsive records. Despite COVID 19 and mandatory telework for all 2021, the processing delays in receiving records from responsive FTC offices significantly decreased. As a result, the FTC received and processed approximately 1,388 FOIA and Privacy Act requests—an increase of almost 200 additional FOIA requests— and had only nine backlogged requests at the end of FY2021. Other FOIA successes and initiatives undertaken since FY 2021 include:

- The FTC continued its strong performance in the first quarter of FY2021. Specifically, the agency received 282 FOIA and Privacy Act requests in the first quarter of FY2021 and closed 258 or 89% of pending first quarter requests.

- The agency continued its strong performance despite the challenges of mandatory telework during all of FY 2021. The agency continued to adapt its external and internal processes by, inter alia, encouraging requesters to submit their requests online, and holding regular bi-weekly staff meetings via Zoom for Government.

Section I: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying DOJ's FOIA Guidelines is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working 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?

   Answer: Yes. According to the Government Accountability Office (GAO), the FTC Chief FOIA Officer should be at the assistant secretary level or equivalent. (GAO-18-365, June 25, 2018.) The assistant secretary level is comparable to senior executive positions at levels III, IV, and V. The FTC designated a Deputy General Counsel, a senior executive position, as the agency's Chief FOIA Officer.

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

   Answer: Elizabeth Tucci, Deputy General Counsel for Legal Counsel.

B. FOIA Training

3. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. *See* 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

   Answer: Due to the COVID-19 pandemic, we were unable to offer in-person FOIA trainings as we have in the past. However, the lead FOIA Attorney conducted individual virtual trainings for incoming office liaisons across the agency, including making training available to incoming political appointees and senior leadership. These virtual training courses provided liaisons with the knowledge and support they needed to conduct proper searches for files and understand the overall FOIA process. Finally, the FOIA office created streamlined training manuals and condensed FOIA reference guides for distribution throughout the agency in 2021.

4. 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?

   Answer: Yes, FOIA professionals and personnel both attended and conducted FOIA training during this reporting period.

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

Answer: The FOIA office offered a variety of different training sessions in the form of in-person and conference-call briefings to numerous FTC employees who are working on FOIA cases. Several FOIA professionals also attended the following DOJ/OIP courses:

- *Introduction to the Freedom of Information Act* (November 2020); and
- *FOIA Best Practices* Workshop (April 2021).

FOIA staff trained each new FOIA liaison. The FOIA liaisons are responsible for ensuring staff in their FTC unit conduct proper FOIA request document searches in the timeframe requested by the FOIA office. FOIA staff instruct the liaisons on best practices for records management and the FOIA process generally.

6. Please 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%.

7. 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.

   Answer: N/A

8. Did the personnel at your agency who have FOIA responsibilities attend training in federal records management during this reporting period?

Answer: No

C. Outreach

9. Did your FOIA professionals engage in any outreach or dialogue, outside of the standard request process, 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.

   Answer: Each FOIA staff member handling requests provides his or her direct telephone number to the requester in the acknowledgment, extension, and response letters. Additionally, individuals can contact the FTC's FOIA Hotline (at 202-326-2430) with questions and our FOIA email inbox (FOIA@FTC.GOV). The FTC also provides contact information for its Chief FOIA Officer and FOIA Public Liaison online (at https://www.ftc.gov/about-ftc/foia/freedom-information-act-contacts). Through these avenues, the FOIA Office routinely communicates with requesters and other members of the

public on an individual basis and is available to answer questions regarding FOIA policies or procedures.

D. Other Initiatives

10. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe :

- how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and
- if senior leaders at your agency received a briefing on your agency's FOIA resources, obligations and expectations during the FOIA process?

Answer: The FTC Office of General Counsel (OGC) and its FOIA office engage in ongoing conversations with agency staff on FOIA matters, making every effort to inform non-FOIA professionals of their obligations under the Act. The Assistant General Counsel who oversees the FOIA program provides a FOIA briefing at each New Employee Orientation seminar. In addition, the FOIA Team Lead has held agency-wide training and individual training on FOIA best practices.

The FTC has FOIA performance elements for its FOIA professionals, but the FTC has not incorporated such an element into non-FOIA professional performance standards. The percentage of a non-FOIA employee's time participating in the agency's FOIA program is too *de minimis* to warrant a unique FOIA performance element. Non-FOIA professionals generally receive ratings on the timeliness, thoroughness, and quality of all their work including any FOIA responsibilities.

Aside from providing formal FOIA guidance and training, the FOIA office is always available to answer questions from FTC staff, and provides an individual FOIA contact to staff for all FOIA requests sent to staff for document searches so that the staff may ask questions, as needed.

11. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

Answer: Pursuant to the principles set forth in OMB's 2009 Open Government Directive and the U.S. Chief Information Office's 2016 Open Plan Guidance, the FTC created its Open Government Plan. In keeping with that plan, the FTC has taken and continues to take steps to improve its transparency and enable customers and website visitors to locate information more easily. For instance, the FTC has made available online: business guidance, economic reports, speeches, consumer robocall complaints, FOIA responses, and a wide range of other information and datasets that would otherwise require a FOIA request to access. More information is available at https://www.ftc.gov/site-information/open-government.

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

DOJ's FOIA Guidelines emphasize that "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." It is essential that agencies effectively manage their FOIA program.

Please answer the following questions to describe the steps your agency has taken to ensure that the management of your FOIA program is effective and efficient. You should also include any additional information that that describes your agency's efforts in this area.

1. For Fiscal Year 2021, 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 2021 Annual FOIA Report.

   Answer: 12.7 days.

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A of your agency's Fiscal Year Annual Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

   Answer: The agency will properly flag incoming FOIA requests seeking expedited processing. In doing so, the agency will issue a final determination on expedited requests within 10 calendar days.

3. The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within 180 days. In 2016, OIP issued Guidance for Agency FOIA Regulations and the accompanying Template for Agency FOIA Regulations to assist agencies in updating their regulations in accordance with the statute. Has your agency updated its FOIA regulations in accordance with the FOIA Improvement Act of 2016? If not, what is your agency's plan to update your regulations?

   Answer: Yes.

4. Standard Operating Procedures (SOPs) generally document your agency's internal processes for administering the FOIA beyond your FOIA regulations and FOIA Reference Guide. As noted in OIP's guidance, having SOPs can improve the consistency and quality of an agency's FOIA process. SOPs can also serve as a significant resource for incoming FOIA professionals and a way to preserve much of the agency's institutional knowledge on administering the FOIA from how to handle requests from start-to-finish, to identifying and making proactive disclosures, to maintaining a FOIA website. Does your agency have up-to-date internal SOPs for your FOIA administration?

   Answer: Yes

5. If not, please provide a timeline for when your agency plans to develop or update its SOPs
   Answer: NA

6. Has your agency established alternative means of access to first-party requested records outside of the FOIA process?

   Answer: Yes.

7. If yes, please provide examples. If no, please explain if such opportunities exist at your agency and whether there are any challenges in establishing alternative means of access

   Answer: Yes. Roughly 20% of FOIA requests that the FTC receives are first party-requests. First party-requests are requests for copies of consumer complaints that consumers submit to the agency. In compliance with the guidance the Office of Management and Budget issued in its Memorandum, M-21-04 Modernizing Access to and Consent for Disclosure of Records Subject to the Privacy Act, the FTC has identified a secure and efficient solution that is now being implemented.

8. Did your agency conduct a self-assessment of its FOIA administration during the reporting period? If so, please describe the self-assessment methods used, such as analyzing Annual Report or raw data, using active workflows and track management, reviewing and updating processing procedures, etc. In addition, please specifically highlight any data analysis methods or technologies used to assess your agency's FOIA program.

   Answer: Yes. The FTC's FOIA program continually conducts self-assessments of its timeliness in processing requests and the quality of its responses and customer service. In addition to reviewing the FTC FOIA Annual and Quarterly Report data to identify areas where the program might need to streamline and improve its processing procedures, the FOIA team generates biweekly management reports and holds biweekly staff meetings to, among other things, discuss backlogged and complex requests, strategize solutions, and identify areas in need of improvement. During the reporting period, the FOIA program identified several such areas, and as a result, undertook steps to improve its FOIA processing or procedures. Among other changes that were made, several FOIA response templates and language were revised to accord with case law and agency policy.

   Answer: Approximately 55 times.

9. 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 2021 (please provide a total number or an estimate of the number).

   Answer: Approximately 55 times

10. Has your agency reviewed its FOIA-related staffing capabilities to identify resources needed to respond to current and anticipated FOIA demands?

Answer: Yes.

11. 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.

    Answer: The FOIA program has several practices in place to foster consistency and efficiency of responses. For example, the program:

    - Utilizes a web based FOIA processing system (FOIAXpress) to manage its FOIA requests, which is an effective tool for document sharing and review. The system allows FOIA staff to electronically assign request numbers and quickly search for specific requests, requesters, and other request-related information. It also allows management to effectively track the FOIA program's performance, by issuing real-time reports and charts showing FOIAs pending, backlogged, and much else.

    - Upgraded to the current FOIAXpress system specifically to maximize efficiency, improve search capabilities, and increase collaboration between different program offices within the agency when searching for responsive records and reviewing requests. The agency continues to use Public Access Link (PAL) online portal, through which requesters can submit and check the status of FOIA requests. These changes have streamlined the intake process and improved workflow generally.

    - Maintains a FOIA step-by-step guidance on using the FOIAXpress system, searching for responsive records, processing records, making redactions, and responding to requesters. Additionally, the FOIA team maintains a separate manual that outlines the FOIA intake process.

    - Trains non-FOIA professionals and advises and communicates with records custodians while processing FOIA requests to resolve issues that arise, for instance, when preparing fee estimates or executing a search for documents.

    - Despite the impacts of the global health crisis, the FOIA team holds bi-weekly meetings via Zoom for Government to review the status of outstanding requests, resolve pending issues, collaborate on processing requests to avoid redundancy, and identify process efficiencies and opportunities for greater customer outreach.

Section III: Steps Taken to Increase Proactive Disclosures

The Department of Justice has long focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

   Answer: FOIA staff are trained to identify instances of related requests, and routinely meet with management to discuss trends in requests to determine those records that might qualify for proactive disclosure under the FOIA. The number of "hot topics" (or frequently requested records or subjects) is currently 8 and can be found on the FTC's website at https://www.ftc.gov/about-ftc/foia/frequently-requested-records.

2. Provide examples of any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

   Answer: The FTC continued to update its FOIA Reading Room, posting frequently requested agency records, to include the following:

   - Commission Voting Policy at Commission Voting Policy | Federal Trade Commission (ftc.gov)
   - July 1, 2021 Resolutions Authorizing Investigations into Key Law Enforcement Priorities, available at July 1, 2021 Resolutions Federal Trade Commission (ftc.gov)
   - Consumer Sentinel, available at Consumer Sentinel Federal Trade Commission (ftc.gov)
   - VOIP Companies, available at VOIP Companies Federal Trade Commission (ftc.gov)
   - Facebook Assessment Reports at Facebook | Federal Trade Commission (ftc.gov)

3. Does your agency disseminate common types of material outside of FOIA, including in online databases where the public may access them? If yes, please provide examples and, if applicable, statutory authority.

   Answer: Aside from records identified as frequently requested, the FTC posts information or data online, without waiting for individual requests to be received, that it deems of interest to the public. More about this policy can be found at https://www.ftc.gov/site-information/open-government.

4. 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?

   Answer: Yes

5. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable

formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges

Answer: The FTC has for years provided information in various file formats to make it more accessible and useful to the public. More recently, the agency has begun identifying datasets that can be made available via an Application Programming Interface (API) or in machine-readable format, which allows data users and developers to query, gather, and manipulate the FTC's data. Providing data in this format should facilitate broad dissemination of its content to the public, and it aligns with the FTC's Open Government Plan and Strategic Plan. The FTC's first API endpoint is for Early Termination Notices for mergers that are reviewed under the HSR Act, which are released most weekdays and are among the most popular content on FTC.gov. More information on the FTC API is available at https://www.ftc.gov/developer.

6. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office? If so, describe this interaction.

Answer: Yes, prior to disclosure the FOIA office consults with other agency staff. We communicate and request concurrence for records we intend to release.
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Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information more accessible. In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that that describes your agency's efforts in this area.

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

Answer: Yes.

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program.

Answer: The FTC FOIA office leverages available technology to collaborate and consult with program offices when searching for responsive documents. For instance, program offices and FOIA staff utilize internal network drives to deliver and share documents. The team recently integrated an E-scan process that allows all mailed FOIA request to be scanned. The FOIA staff also request and receive records electronically through a document management tool in FOIAXpress. When a set of documents is particularly voluminous, FOIA staff often utilize e-discovery applications to sort, compare, deduplicate, and search for

keywords. This capability is especially useful for deduping multiple strings of emails, where original messages are repeated in later versions of the string. It reduces overall processing time significantly by eliminating the need for time intensive manual search and review.

3. 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?

   Answer: Yes

4. Did all four of your agency's quarterly reports for Fiscal Year 2021 appear on your agency's website and on FOIA.gov?

   Answer: No

5. 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 2022.

   Answer: We did not successfully post all quarterly reports due to a technical error. We are now aware of the new protocol for posting quarterly reports and will be create deadlines.

6. 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 2020 Annual FOIA Report and, if available, for your agency's Fiscal Year 2021 Annual FOIA Report.

   Answer: The raw statistical data for FY 2020 and 2021 is included in the FTC's 2021 FOIA Annual Report, which is posted : https://www.ftc.gov/policy/reports/foia-annual-reports

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

   Answer: Since 2003, the FTC has accepted and processed FOIA requests using the FOIAXpress application. FOIAXpress allows for faster processing of requests, as it allows FOIA processing from cradle-to-grave (request receipt and document collection, review, redaction, etc.), all within a centralized web-based system. Last fiscal year, the FOIA program upgraded to FOIAXpress version 10.5, which includes more features to process requests. Along with that upgrade, the program migrated to FOIAXpress cloud and implemented the FOIAXpress Public Access Link (PAL), an online portal where requesters can submit requests, access records, and connect with the agency.

The FOIA program also sends correspondence via email unless otherwise specifically requested. A secure file sharing application, Accellion, is occasionally used to transmit large files or documents containing personally identifiable or sensitive information. FOIA requesters receive documents much more quickly when transferred via Accellion than when sent in print or on a CD-Rom via USPS.

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

The Department of Justice has emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations.

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2020 Annual FOIA Report and, when applicable, your agency's 2019 Annual FOIA Report.

A. Simple Track

Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

1. Does your agency utilize a separate track for simple requests?

   Answer: Yes, the FTC uses a multi-track processing system, which places simple requests on a different processing track than more complex requests and those granted expedited processing. It does not utilize tracks beyond simple, complex, and expedited.

2. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2021?

   Answer: Yes. The FTC's average number of days to process simple requests was 3.8 days.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2021 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100.

   Answer: Approximately 58.54% were simple requests.

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?

   Answer: 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 2020 and Fiscal Year 2021 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 2021, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2020?

   Answer: No. The number of backlogged requests in FY2020 was two (2). That number in FY2021 was nine (9).

6. If not, did your agency process more requests during Fiscal Year 2021 than it did during Fiscal Year 2020?

   Answer: Yes, we processed 1,375 requests compared to 1,204 in FY2020

7. If your agency's request backlog increased during Fiscal Year 2021, 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.

   Answer: In FY21 the FTC saw an increase in FOIA requests compared to FY20. In FY20 the FTC processed a total of 1,204, compared to 1,375 in FY21. In addition, administrative appeals increased by 55%.

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 2021. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. If your agency has no request backlog, please answer with "N/A."

Answer: 0.64%

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2021, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2020?

   Answer: N/A. The FTC had no backlogged appeals at the close of either fiscal year.

10. If not, did your agency process more appeals during Fiscal Year 2021 than it did during Fiscal Year 2020?

    Answer: N/A.

11. If your agency's appeal backlog increased during Fiscal Year 2021, 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.

    Answer: 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 2019. If your agency did not receive any appeals in Fiscal Year 2020 and/or has no appeal backlog, please answer with "N/A."

    Answer: N/A.

C. Backlog Reduction Plans

13. In the 2021 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1,000 requests in Fiscal Year 2020 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 2021?

    Answer: N/A.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2021 what is your agency's plan to reduce this backlog during Fiscal Year 2022?

Answer: N/A.

D. Status of Oldest Requests, Appeals, and Consultations

Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2020 and Fiscal Year 2021 when completing this section of your Chief FOIA Officer Report.

OLDEST REQUESTS

15. In Fiscal Year 2021, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2020 Annual FOIA Report?

Answer: 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 2020 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

Answer: N/A.

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

Answer: N/A

TEN OLDEST APPEALS

18. In Fiscal Year 2021, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2020 Annual FOIA Report?

Answer: Yes.

19. 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 2021 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

Answer: N/A.

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

Answer: N/A.

TEN OLDEST CONSULTATIONS

21. In Fiscal Year 2021, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2020 Annual FOIA Report?

Answer: N/A. The FTC did not have any pending consultations at the end of the fiscal year.

22. 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 2020 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Answer: N/A.

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

23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2020.

Answer: N/A.

24. 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.

Answer: N/A.

25. 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 2022.

Answer: N/A.

F. Success Stories

Out of all the activities undertaken by your agency since March 2020 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency's efforts.

Answer: With the appointment of a new FTC Chair, Lina Khan, and new FTC initiatives, an uptick has occurred in FOIA requests seeking access to the calendars of agency leadership. To

respond to the increased demand, dedicated FOIA staff have been assigned to handle similar requests quickly, and the calendars are being posted as frequently requested records.

The Office of Management and Budget ("OMB") issued guidance requiring agencies to accept electronic forms that allow an individual to provide consent to disclose information from or access to their records. OMB provided that guidance in its Memorandum M-21-04 Modernizing Access to and Consent for Disclosure of Records Subject to the Privacy Act. Specifically, the memo outlined how an agency must accept access and consent forms from individuals who can remotely identity-proof and authenticate through the agency's digital processes.[1]

Roughly 20% of FOIA requests that the FTC receives are Privacy Act or First party-requests that require identity-proofing and authentication. Generally, these Privacy Act requests seek copies of consumer complaints that consumers submit to the agency. In compliance with M-21-04, the FTC has identified a secure and efficient solution to process first-party requests and will implement the secure process in January 2022.

[1] Office of Mgmt. & Budget, Exec. Office of the President, OMB M-21-04, Modernizing Access to and Consent for Disclosure of Records Subject to the Privacy Act (Nov. 12, 2020).