



OFFICE OF THE COMMISSIONER  
UNITED STATES SECTION

INTERNATIONAL BOUNDARY AND WATER COMMISSION  
UNITED STATES AND MEXICO

**United States Section of the International Boundary and Water Commission (USIBWC)  
Chief Freedom of Information Act (FOIA) Officer's Annual Report**

**USIBWC Chief FOIA Officer: Luisa M. Alvarez, Acting Legal Adviser, USIBWC**

**Section I: Steps Taken to Apply the Presumption of Openness**

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.

*FOIA Training:*

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

**NO. The USIBWC experienced a complete turnover in its legal office during 2013. The legal office ran the FOIA program in the agency. As a result of one attorney's retirement and the other's resignation, an agency auditor assumed FOIA responsibilities for the agency from June 2013 until February 2014.**

2. If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.

**NONE. See answer above.**

3. Did your FOIA professionals attend any FOIA training during the reporting period such as that provided by the Department of Justice?

**NO. See answer above.**

4. Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period.

**NONE. See answer above.**

5. OIP has issued guidance that **every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year**. Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year.

**The Agency's Acting Legal Adviser and Assistant Legal Adviser have taken charge of the FOIA program starting February 2014. The head of the agency fully supports FOIA training for both of them in 2014.**

**The Assistant Legal Adviser's Performance Plan includes attending one of the FOIA training workshops provided by Department of Justice (DOJ) during 2014.**

*Outreach:*

6. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement.

**NO. See Answer to 1.**

*Discretionary Disclosures:*

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

7. Does your agency have a formal process in place to review records for discretionary release? If so, please briefly describe this process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases.

**NO. There is not a formal process in place for whether documents which fall within a FOIA exemption can be released as a matter of discretion. However, the Agency generally will decide in favor of disclosure if a discretionary release is an option. This determination is made by the Agency's reviewing FOIA officer and is done on a case-by-case basis.**

8. During the reporting period did your agency make any discretionary releases of otherwise exempt information?

**YES.**

9. What exemptions would have covered the information that was released as a matter of discretion?

**Exemption 5.**

10. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.

**Draft Continuity of Operations Plans for headquarters and all field offices.**

11. If your agency was not able to make any discretionary releases of information, please explain why.

**See answer above.**

*Other Initiatives:*

12. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014.

**YES. Although IBWC completed the quarterly reports for FY13, the data was not displayed on FOIA.gov. IBWC is working with DOJ to resolve the technical issues in order to resolve this for the future.**

13. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please provide links in your description.

**See USIBWC Website at <http://www.ibwc.state.gov/>**

**Our webpage discloses frequently requested information such as:**

**Current Projects and Activity Maps**

**Environmental Reports and Studies**

**Lower Rio Grande Flood Control Project brochure**

**Minutes between U.S. and Mexican Sections of the IBWC**

**Minutes between U.S. and Mexican Sections of the IBWC by Project**

**Treaties between the U.S. and Mexico**

**Water Accounting Reports**

**Annual Reports covering the activities of the U.S. Section of the IBWC**

**Criteria for Construction Activities within the limits of USIBWC**

**Floodways**

**Permits and License Checklist, Instructions for License Request**

**Strategic Plan**

**USIBWC's Executive Order 13392 Implementation Plan**

**Equal Opportunity Policy**

**EEO Program Counselor's Handbook**

**Policy and Procedure on Harassment**

**Handbook for Procedures for Facilitating the Provision of Reasonable Accommodations.**

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

As the Attorney General emphasized in his FOIA Guidelines, "application 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.

Describe here the steps your agency has taken to ensure that your management of your FOIA program is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

*Personnel:*

During Sunshine Week 2012 OPM announced the creation of a new job series entitled the Government Information Series, to address the work performed by FOIA and Privacy Act professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

1. Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series?

**NO. The Agency's Human Resource Office confirmed that no Agency staff is eligible for conversion as outlined in the OPM's 2012 Memorandum for Chief Human Capital Officers regarding the creation of the new Government Information job**

**series. Human Resources considered the annual number of FOIA requests too low to justify conversion of any staff to a Government Information officer.**

2. If not, what proportion of personnel has been converted to the new job series?

**NONE.**

3. If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted?

**FOIA professionals at this Agency are also the attorney advisers GG-0905 Series. Therefore, we do not plan to convert those positions.**

*Processing Procedures:*

4. For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

**No expedited FOIA's in 2013.**

5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.

**NO.**

*Requester Services:*

6. Do you use e-mail or other electronic means to communicate with requesters when feasible?

**YES.**

7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?

**NO. The Agency will advise any party appealing an Agency FOIA decision of the mediation services offered by the Office of Government Information Services (OGIS) within the National Archives and Records Administration and direct them to <http://www.justice.gov/oip/foiapost/2010foiapost21.htm> for more information regarding such mediation services.**

8. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc.

**NONE.**

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

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Describe here the steps your agency has taken both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive

disclosures that have been made during this past reporting period (i.e., from March 2013 to March 2014). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

*Posting Material:*

1. Do your FOIA professionals have a system in place to identify records for proactive disclosures?

**NO. No formal system is in place. However, certain offices within the Agency will ask our webmaster to upload information the Agency wants to share with the general public.**

2. If so, describe the system that is in place.

**We post frequently-requested materials on the Agency website at: <http://www.ibwc.state.gov/>. These materials include:**

**Current Projects and Activity Maps  
Environmental Reports and Studies  
Lower Rio Grande Flood Control Project brochure  
Minutes between U.S. and Mexican Sections of the IBWC  
Minutes between U.S. and Mexican Sections of the IBWC by Project  
Treaties between the U.S. and Mexico  
Water Accounting Reports  
Annual Reports covering the activities of the U.S. Section of the IBWC  
Criteria for Construction Activities within the limits of USIBWC  
Floodways  
Permits and License Checklist, Instructions for License Request  
Strategic Plan  
USIBWC's Executive Order 13392 Implementation Plan  
Equal Opportunity Policy  
EEO Program Counselor's Handbook  
Policy and Procedure on Harassment  
Handbook for Procedures for Facilitating the Provision of Reasonable  
Accommodations.**

**Further, this year, the Agency is contemplating making all documents that have been released pursuant to FOIA requests available on the Agency's website.**

3. Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.

**See answer above.**

*Making Posted Material More Useful:*

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, such as soliciting feedback on the content and presentation of posted material, improving search capabilities on the site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.?

**NO.**

5. If so, provide examples of such improvements.

**See answers above.**

6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized?

**NO.**

7. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.

**NO.**

8. Describe any other steps taken to increase proactive disclosures at your agency.

**None.**

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

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. Over the past several years agencies have reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2014, as we have done over the past years, the questions have been further refined and now also address different, more innovative aspects of technology use.

*Online tracking of FOIA requests:*

1. Can a FOIA requester track the status of his/her request electronically?

**NO.**

2. If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?

**NO.**

3. Describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.

**NONE.**

4. In particular, does your agency tracking system provide the requester with an estimated date of completion for his/her request?

**NO.**

5. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability? If not, please explain why.

**NONE. Agency has limited personnel, time and funds with which to accomplish online tracking.**

*Use of technology to facilitate processing of requests:*

6. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

**YES.**

7. If so, describe the technological improvements being made.

**The agency has use of file transfer (EPT sites) and WinZip technology for larger files.**

8. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program?

**NO.**

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

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section 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 those contained in the specified sections of your agency's 2013 Annual FOIA Report and, when applicable, your agency's 2012 Annual FOIA Report.*

*Simple Track Requests:*

1. 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.

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

**YES.**

- b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?

**Yes. 14.6.**

- c. If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?

**N/A**

*Backlogs and "Ten Oldest" Requests, Appeals and Consultations:*

2. 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. 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 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.

Backlogs

- a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012?

**There was no agency backlog in FY2013.**

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?

**There was no agency backlog in FY2013.**

Ten Oldest Requests

- c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?

**YES.**

- d. 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 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed two of them, you should note that you closed two out of seven "oldest" requests.

**See above answer.**

Ten Oldest Appeals

- e. In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?

**No appeals.**

- f. If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C.(5) of your Fiscal Year 2012 Annual FOIA Report.

**No appeals.**

Ten Oldest Consultations

- g. In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012?

**No consultations.**

- h. If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report.

**No consultations.**

*Reasons for Any Backlogs:*

- 3. If you answered “no” to any of the questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:

**No Backlogs, appeals or consultations for 2013 or 2013.**

Request and/or Appeal Backlog

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals?

N/A

- b. Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff?

N/A

- c. Was the lack of a reduction in the request and/or appeal backlog caused by an increase in the complexity of the requests received?

N/A

- d. What other causes, if any, contributed to the lack of a decrease in the request and/or appeal backlog?

N/A

“Ten oldest” Not Closed

- e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012.

N/A

- f. If your agency was unable to close any of its ten oldest requests or appeals 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

*Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:*

Given the importance of these milestones, it is critical that Chief FOIA Officers assess the causes for not achieving success and create plans to address them.

4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2014.

N/A

5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency’s plan for achieving backlog reduction in the year ahead.

N/A

*Interim Responses:*

OIP has issued **guidance** encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information.

6. Does your agency have a system in place to provide interim responses to requesters when appropriate?

**YES. There is no formal system in place to provide interim responses to requesters. If the request requires a large volume of responsive documents, as documents are identified, the Agency will release such documents as they are cleared for release.**

7. If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

**No backlogs in 2013**

**Use of FOIA’s Law Enforcement “Exclusions”**

In order to increase transparency regarding the use of the FOIA’s statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to “treat the records as not subject to the requirements of [the FOIA],” 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. Did your agency invoke a statutory exclusion during Fiscal Year 2013?

**No.**

2. If so, what was the total number of times exclusions were invoked?

**Spotlight on Success**

Out of all the activities undertaken by your agency since March 2013 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. The success story can come from any one of the five key areas. As noted above, these agency **success stories** will be highlighted during Sunshine Week by OIP. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

**Acting legal adviser and assistant legal adviser are currently running the FOIA program for the Agency. Our success story for 2013 was that we released *draft* reports regarding the USIBWC plan to continue operations during an emergency.**