

# 2019 Chief FOIA Officer Report of the Federal Communications Commission

## Thomas M. Johnson, Jr., General Counsel and Chief FOIA Officer

The Federal Communications Commission (FCC) is an independent regulatory agency. It was established by the Communications Act of 1934 and is charged with regulating interstate and international communications by radio, wire, satellite, and cable. It is directed by five Commissioners nominated by the President and confirmed by the United States Senate. The President designates one of the Commissioners as Chairman, who acts as the chief executive officer of the agency. The FCC is organized by function into seven operating Bureaus and eleven Staff Offices. Implementation of the Freedom of Information Act (FOIA) is the responsibility of all FCC components, as FOIA requests are processed by the Bureau or Office that is the custodian of the records sought. The Commission's General Counsel is the FCC's Chief FOIA Officer. The general reporting period for the Chief FOIA Officer (CFO) Report is March 2018 to March 2019. The FCC conducted a review of its administration of the FOIA and analyzed the data from its FOIA Annual Report from Fiscal Year 2018 (October 1, 2017, to September 30, 2018), supplemented by data gathered for the period through March 2019. Highlights of this review and analysis are:

- Consistent with the FOIA Improvement Act of 2016 and Department of Justice (DOJ) guidance, the FCC granted (in full or in part) 489 FOIA requests, or 58 percent of 848 requests processed, in FY 2018.
- As evidenced by at least two benchmarks, the FCC has successfully implemented DOJ guidance for distinguishing complex and simple FOIA requests, in the form of a checklist distributed within the agency by its Office of General Counsel (OGC) beginning in FY 2017:
  - The agency's average response time for simple track initial FOIA requests was 14.68 days in FY 2018. This is the second year in a row that the agency reported meeting the DOJ's 20-day benchmark and is a decrease in the response time of 18.26 days reported in FY 2017.
  - The agency processed 141 complex FOIA requests in FY 2018, up from 85 complex requests processed in FY 2017 and only one such request in FY 2016.
- In FY 2018, the FCC again reported a very low number of year-end backlogged FOIA requests: 9 of 848 processed. This is even lower than the FY 2017 backlog of 15.
- Even as the number of appeals received and processed increased significantly during FY 2018, the number of year-end backlogged appeals remains low at 11, compared with 8 in FY 2017 and 12 in FY 2016.

### *Section 1: 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?**

Yes.

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

Thomas M. Johnson, Jr., General Counsel, FCC, is the agency's Chief FOIA Officer.

**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. As explained in more detail in the response to Question 4 below, the agency's FOIA professionals and other staff attended training offered by, among others, the Department's Office of Information Policy and the FCC.

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

The training offered to FCC FOIA professionals or personnel who have FOIA responsibilities during the reporting period includes, but is not limited to, the following:

- FOIAonline New System Walkthrough and Training: CGI Group, which provides system support for FOIAonline in partnership with the federal government, conducted user training to familiarize FOIAonline users with new system upgrades implemented in July 2018. Along with staff at numerous agencies, approximately 100 FCC staff with FOIA responsibilities were asked to attend any of the sessions held on May 2, 2018 and May 9, 2018. In addition, the EPA conducted FOIAonline walkthroughs in a number of sessions available to FCC staff. A video of the walkthrough is available on the FCC's Intranet site.
- Department of Justice FOIA Training:
  - FOIA for Attorneys and Access Professionals, two-day sessions held on January 16-17, 2018, April 24-25, 2018, June 26-27, 2018, and July 24-25, 2018.
  - Advanced FOIA Seminar, held on February 20, 2018 and May 9, 2018.
  - Continuing FOIA Education, held on April 26, 2018 and July 26, 2018.
  - Introduction to the FOIA, held on May 29, 2018.
  - FOIA Litigation Seminar, held on June 28, 2018.

- Chief FOIA Officers Council Meeting (July 19, 2018 and October 4, 2018) – FCC staff, representing the Chief FOIA Officer, attended meetings of the Chief FOIA Officers’ Council, co-chaired by the National Archives and Records Administration Office of Government Information Services and the Department of Justice’s Office of Information Policy. Among the purposes of the CFO Council is developing recommendations to increase FOIA compliance and efficiency and sharing best practices and innovative approaches.
- Bureau Training: The Commission’s Office of General Counsel offers training to Commission bureau and office staff. The training covers both legal and practical aspects of applying the FOIA. Approximately 20 staff attended a training session held on December 11, 2018.
- The agency’s FOIA Service Center provides individual FOIAonline training for new FOIA professionals and other staff with FOIA responsibilities upon request.

**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.**

We believe that at least 80 percent of the FCC’s FOIA professionals and staff with FOIA responsibilities have attended at least one FOIA training during the reporting period.<sup>1</sup>

**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.**

Not applicable. However, in addition to the training offered by the OIP, the agency’s FOIA Service Center will continue to offer individualized FOIAonline training for all new FOIA professionals and other staff with FOIA responsibilities.

***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.**

As an agency receiving fewer than 1000 FOIA requests during the reporting period, the FCC has no formal outreach programs regarding its FOIA administration. The FOIA Service Center has a policy, however, to respond promptly to all contacts from the public about the agency’s FOIA process, with focus

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<sup>1</sup> The agency reported 10.33 staff with full-time FOIA responsibilities in the FY 2018 Annual FOIA Report. All agency staff with substantial FOIA responsibilities, including full-time, were asked to participate in any of the CGI FOIAonline system training and walkthrough sessions held online (listed as the first item in response to Question 4 above). Although the agency did not record precise attendance at these sessions, we believe that at least half of the approximately 100 staff asked to attend, did so. Thus, we believe that nearly all agency FOIA professionals attended at least one session of the CGI FOIAonline training alone. Although we did not obtain precise attendance figures for the remaining FOIA training sessions listed in response to Question 2, we are aware that at least several FOIA staff did so.

on areas that are not covered by online resources. Among others, the agency's FOIA webpage, FOIA.gov, and FOIAonline, offer information regarding its FOIA administration.

#### *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.**

The agency's internal FOIA webpage and public FOIA webpage provide information for employees who are not FOIA professionals, but who may need to provide records in response to a FOIA request or are otherwise interested in the FOIA process. For instance, the FCC's internal FOIA webpage provides contact information for staff FOIA experts in the agency's FOIA Service Center, Office of General Counsel, and component Bureaus and Offices. As indicated above, the agency's FOIA Service Center offers individual FOIAonline training for new FOIA professionals and other staff with FOIA responsibilities upon request. In addition, FOIA Service Center issued weekly reports to agency staff with FOIA responsibilities, and monthly reports to senior staff in the Bureaus and Offices, showing the status of their pending FOIAs throughout the reporting period. The Commission reviewed the Department of Justice's FOIA-related performance standards when they were issued. While the Commission has not adopted specific performance standards related to FOIA, such metrics would be included in more general evaluation criteria contained in employee evaluation standards.

- 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 agency's Office of General Counsel continues to execute the initiatives begun in previous reporting periods. Specifically, following the FOIA Improvement Act of 2016, the Chief FOIA Officer directed management in the FCC's bureaus and offices to devote resources to determining if discretionary releases are appropriate for records that otherwise would be protected from release under the FOIA exemptions. Additionally, FCC FOIA staff in all bureaus and offices were provided with a FOIA response template that includes language to use that acknowledges the agency's responsibility to determine if discretionary release is appropriate, and the result of that determination. The template also includes discussion of the harm that would result if an otherwise withheld record were released. Agency FOIA staff also review exempt documents to determine whether partial disclosures may be made.

#### *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 describes your agency's efforts in this area.

- 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.**

8.4 days.

- 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.**

Not applicable.

- 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.**

**Note: In September 2017, OIP released a FOIA Self-Assessment Toolkit as a resource for agencies conducting a self-assessment of their FOIA program. The Toolkit is available on OIP's website for all agencies to use.**

Yes. The FCC conducted a self-assessment of its FOIA program utilizing the OIP's FOIA Self-Assessment Toolkit. More generally, the responses to the questions in Sections 1-3 in this report reflect additional ways in which the agency has examined its FOIA administration by conducting individualized FOIA Online training, issuing internal FOIA status reports, and disclosing information proactively.

- 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).**

The FOIA Public Liaison received 28 requests for assistance with FCC FOIA matters. This figure does not include other requests from the public for assistance regarding, for example, records held by another federal agency or entity, or information that is not an agency record or is publicly available.

- 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.**

The FOIA Service Center actively tracks individual FOIA requests, and issues weekly informational reports to agency FOIA professionals showing FOIAs that are backlogged, FOIAs and Expedited Processing requests due, and FOIAs on hold, thus facilitating staff action and improving agency performance. The FOIA Service Center issued to senior staff in the Bureaus and Offices monthly reports showing the status of their pending FOIAs. Other factors, such as the quantity or the complexity of the records requested, challenge the agency's FOIA processing efficiency.

### *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. Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.
  - Freedom of Information Act (FOIA) Electronic Reading Room – The Commission added a section listing records disclosed in response to a FOIA request that the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records. <https://www.fcc.gov/general/freedom-information-act-electronic-reading-room>
  - Current Policy Initiatives and Proceedings -- The Commission established new webpages devoted to a number of policy initiatives and proceedings, including 5G technology, broadcast TV transition, telehealth, robocalls and spoofing, and the pending Sprint-T-Mobile merger applications. Each page is a one-stop source of information, providing links to FCC releases, news, and other resources, regarding the Commission’s efforts. <https://www.fcc.gov/5G>, <https://www.fcc.gov/TVrescan><https://www.fcc.gov/about-fcc/fcc-initiatives/connecting-americans-health>, <https://www.fcc.gov/about-fcc/fcc-initiatives/fccs-push-combat-robocalls-spoofing>, <https://www.fcc.gov/transaction/t-mobile-sprint>
  - Consumer and Public Safety Information – The Commission established new webpages related to consumer and public safety information, on topics from wireless emergency alerts, nationwide testing of the Emergency Alert System, and hurricanes that made landfall this year. <https://www.fcc.gov/consumers/guides/wireless-emergency-alerts-wea>, <https://www.fcc.gov/general/eas-test-reporting-system>, <https://www.fcc.gov/michael>, <https://www.fcc.gov/florence>, <https://www.fcc.gov/lane>
  - Social Media and RSS Feeds – The Chairman first used the new Twitter Moments feature in April 2018 to cover a road trip through multiple states. [https://twitter.com/i/moments/981521865918308353?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Emoment&ref\\_url=https%3A%2F%2Fwww.fcc.gov%2Fabout-fcc%2Ffcc-initiatives%2Fbridging-digital-divide-all-americans](https://twitter.com/i/moments/981521865918308353?ref_src=twsrc%5Etfw%7Ctwcamp%5Emoment&ref_url=https%3A%2F%2Fwww.fcc.gov%2Fabout-fcc%2Ffcc-initiatives%2Fbridging-digital-divide-all-americans). More generally, the Commission participates in several social media platforms to interface with the public on a daily basis. FCC accounts on platforms from Instagram to YouTube regularly update and provide the public with FCC news and releases. In addition, the agency offers automatic updates of its participation in social media by RSS feed subscription. <https://www.fcc.gov/news-events/social-media>, [FCC Podcast](#)

- FCC Podcasts – In August 2018, the FCC launched “More Than Seven Dirty Words,” a new podcast series featuring interviews with FCC staff and others related to communications. <https://www.fcc.gov/news-events/podcast> In September, Commissioner Rosenworcel began a podcast series, “Broadband Conversations,” featuring interviews with women making a digital impact. <https://www.fcc.gov/about/leadership/jessica-rosenworcel#podcast>

**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)).**

As an agency receiving fewer than 1000 requests per year, the Commission identifies records that are required to be proactively disclosed informally. In accordance with the requirements of the FOIA Improvement Act of 2016, the agency posts in its electronic FOIA reading room records that have been requested three or more times. More broadly, during the reporting period, the Commission added a section to its electronic FOIA reading room listing records disclosed in response to a FOIA request that the agency determines have become, or are likely to become, the subject of subsequent requests for substantially the same records. In addition, it is the FCC’s policy to post on its website any of its information that is of general interest to the public so long as there are no national security, law enforcement, legal, or privacy issues that prohibit its publication. The inventory of website content disclosed pursuant to this policy also is posted online at <https://www.fcc.gov/general/website-inventory-priorities-and-schedules>.

**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.**

The FCC’s policy on open data is showcased in a webpage providing further links, including: 1) FCC Open Data, enabling public innovation by publishing data underlying FCC regulatory proceedings with a focus on improving quality, openness, accessibility and utility; 2) FCC Developers Page, promoting the innovative application of FCC data by connecting developers with the tools they need to unlock government data; 3) FCC Digital Strategy, the agency’s participating in federal cross-agency initiatives to increase data usability and consumption; 4) FCC Data and Information Officers, a roster of FCC staff members dedicated to providing data and information; and 5) FCC blog posts on open government. The webpage may be accessed at <https://www.fcc.gov/general/open-government-fcc>.

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

As indicated above, the Commission identifies records that are required to be proactively disclosed informally, and generally posts material proactively beyond the requirements of the statute. The FCC participates in numerous social media and e-mail subscription services through which, among other things, it publicizes proactive disclosures for public awareness. These include Facebook, Twitter, Instagram, YouTube, and many others. For instance, the FCC maintains over fifty-five RSS feeds, by

which users can receive automatic updates covering the FCC Blog, actions by individual bureaus and offices, and numerous types of FCC documents and databases. Users can also receive this information by email subscription.

#### ***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. 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. In July, the Commission shifted to the substantially upgraded FOIAonline system to administer its FOIA program. The Commission has used FOIAonline exclusively to administer its FOIA program beginning in FY 2016. In addition, the agency's FOIA professionals are able to convert documents, emails, and other conventional digital materials to a pdf format automatically using Adobe Acrobat Pro software. This software provides a full range of FOIA processing tools, including redaction marking and application, FOIA exemption labeling, and deduplication using character searches. The software also enables documents to be provided in digital form to requesters without the need to scan or provide paper copies. For very large volume productions, the Commission has made use of file hosting services to provide records to requesters, rather than sending such records over multiple e-mails or on physical media. Although difficult to quantify, we believe that the conversion to FOIA Online and its subsequent 2018 upgrade, and the use of Adobe Acrobat Pro software and file hosting services, have led to more efficient FOIA processing.

- 1. 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. The agency's FOIA website addresses the elements noted in the OIP 2017 guidance. In particular, there is a clear link to the agency's FOIA webpage, <https://www.fcc.gov/general/foia-0#block-menu-block-4>, directly from the Office of General Counsel page. The FOIA webpage includes, as recommended in the OIP guidance, links to: i) the electronic reading room containing, among other things, a list of links to proactive disclosures; ii) instructions to the public on how to make a request or to contact the agency about an existing request; and iii) links to the Commission's Annual FOIA Reports and Chief FOIA Officer Reports, among other reports. Other direct links contained in the Commission's FOIA webpage include the agency's FOIA reference guide and regulations, FOIA text, and the Department of Justice FOIA guide.

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

Yes.

- 3. 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.**

Not applicable.

- 4. 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.**

For the agency's FY 2017 Annual Report, please see: <https://www.fcc.gov/reports-research/reports/annual-foia-reports/freedom-information-act-annual-report-fy-2017>. In addition, for the agency's FY 2018 (quarters 1-3) and FY 2017 reports, as well as FYs 2013-2016 (links to data in json and xml formats, please see <https://www.fcc.gov/general/foia-reports>.

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

As indicated above, the agency's FOIA program is administered using FOIAonline, substantially updated in July 2018, and utilizes Adobe Acrobat Pro XI software for processing records. For very large volume productions, the Commission has made use of file hosting services to provide records to requesters, rather than sending such records over multiple e-mails or on physical media. The use of these technologies requires additional specialized training, which can be an issue for staff for whom FOIA processing is only a small part of their work portfolio.

#### *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 2018 Annual FOIA Report and, when applicable, your agency's 2017 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? 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. The agency's multi-track system consists of simple, complex, and expedited tracks.

- 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?**

Yes, 14.68 days.

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

68.9 percent, or 584 of 848 total requests processed.

- 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?**

Not applicable.

### ***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?**

Yes. The number of backlogged initial FOIA requests in FY 2018 was 9, a decrease of six requests from the reported FY 2017 backlog of 15.

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

Not applicable because, as indicated above, the agency's initial request backlog decreased in FY 2018.

- 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.

Not applicable because, as indicated above, the agency’s initial request backlog decreased in FY 2018.

**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.”**

1.09 percent, or 9 of 820 incoming initial FOIA requests.

## **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?**

No, the number of backlogged appeals increased by 3, from 8 at the end of FY 2017 to 11 at the end of FY 2018.

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

Yes. The agency processed 35 appeals in FY 2018, an increase of 9 from the 26 appeals processed during FY 2017.

**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.

As indicated above, the agency’s appeal backlog increased by only 3 appeals, and the FY 2018 total of 11 backlogged appeals is a low figure. In addition, the agency received 34 appeals during FY 2018, an increase of 62 percent from the 21 appeals received during FY 2017.

**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."**

Thirty and one-half percent (30.5%), or 11 of the 36 total appeals received during FY 2018, were backlogged at the end of FY 2018.

### ***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?**

Not applicable.

**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?**

Not applicable.

### ***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 2016 and Fiscal Year 2017 when completing this section of your Chief FOIA Officer Report.

#### **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?**

No.

**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.**

The agency closed during FY 2018 seven of the ten oldest pending requests reported in the FY 2017 Report.

**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?**

Of the requests the Commission was able to close from its ten oldest, two requests were withdrawn. For one request, it was withdrawn after the Commission staff provided additional explanation for why related

records were withheld. The other request was withdrawn after the passage of time mooted the underlying commercial request.

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

As indicated in Section I, the FOIA Service Center issues weekly reports to staff with FOIA responsibilities, and monthly reports to Bureau and Office management, showing the status of pending FOIAs. FOIA staff in the Office of the Managing Director and the Office of the General Counsel regularly follow up with FOIA staff throughout the agency to help resolve pending matters.

**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?**

No.

**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.**

During FY 2018, the agency closed six of the ten oldest appeals that had been pending at the end of FY 2017. Of the remaining four appeals, in two instances the full Commission has since generally affirmed the initial decision. Two other appeals are left open for administrative reasons as the requests are currently in litigation.

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

The Commission delegated authority to its Chief FOIA Officer and General Counsel to address appeals where it is most efficient for such appeals to be handled without review by the full Commission. This authority has been used to address multiple appeals without the need to await a decision from the full Commission. Similarly, the Office of General Counsel has been given authority to attempt to informally resolve appeals with the consent of the requester.

**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?**

Not applicable. There were no consultations pending at the end of Fiscal Year 2017 or Fiscal Year 2018.

**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.**

Not applicable.

***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.**

As noted above, the Commission was able to close all but three of its ten oldest requests and all but four of its ten oldest appeals from FY 2017. The Commission had no pending consultations at the end of FY 2017. Of the remaining four appeals, in two instances the full Commission has since generally affirmed the initial decision. Two other appeals are left open for administrative reasons as the requests are currently in litigation.

**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.**

Not applicable.

**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.**

As indicated above, two of the FCC’s four oldest pending appeals have been closed. Two other appeals are left open for administrative reasons as the requests are currently in litigation.

***F. Success Stories***

**Out of all the activities undertaken by your agency since March 2018 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, OIP will highlight these agency success stories during Sunshine Week. 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 key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.**

Please see highlights on page 1 above.