



**Report of the
Chief FOIA Officer
of the
U.S. Trade and Development Agency**

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FY2011 CHIEF FOIA OFFICER REPORT

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The United States Trade and Development Agency (USTDA or the Agency) submits this report at the request of the Office of Information Policy of the United States Department of Justice.

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.

USTDA is a small, commercially-oriented agency that receives a relatively small number of FOIA requests each year. In FY2011, the Agency received 28 FOIA requests. For a number of years, USTDA has assigned one Assistant General Counsel, who acts as the Agency's FOIA Public Liaison, to review FOIA requests as part of his or her overall agency responsibilities. Because the number of FOIA requests USTDA receives is low, the Assistant General Counsel is able to review each request directly, applying the presumption of openness to each one. In addition, beginning in FY2010, one Information Resource Assistant has been assigned to help the Assistant General Counsel log and process FOIA requests. USTDA has found that its system for processing FOIA requests is efficient and ensures the meaningful application of the presumption of openness to each request. In FY2011, USTDA nearly eliminated its backlog of FOIA requests and responded to nearly half of the FOIA requests it processed with full record grants and to nearly one-quarter with partial record grants. The Agency did not respond to a single FOIA request in FY2011 with a full record denial.

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

The Chief FOIA Officer and Assistant General Counsel in charge of FOIA matters have familiarized themselves with the President's FOIA Memorandum and the Attorney General's FOIA Guidelines and endeavor to apply the presumption of openness to each FOIA request. Because the Assistant General Counsel reviews each FOIA request directly, USTDA did not hold a FOIA conference or conduct other FOIA training during the reporting period.

2. Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?

USTDA's FOIA professionals did not attend any specialized FOIA training in FY2011.

3. Did your agency make any discretionary releases of otherwise exempt information?

USTDA did not make any discretionary releases of otherwise exempt information in Fiscal Year 2011.

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

Because of the nature of USTDA's work, the exemption that would most often apply to information that could be released as a matter of discretion is Exemption 5, which pertains to privileged inter-agency or intra-agency memoranda or letters.

5. Describe your agency's process to review records to determine whether discretionary releases are possible.

Each FOIA request and all potentially responsive records are reviewed directly by the Assistant General Counsel in charge of FOIA matters in light of the presumption of openness. He or she applies FOIA, the President's FOIA Memorandum and the Attorney General's FOIA Guidelines to all responsive records to determine whether discretionary releases are possible and strives to make discretionary releases whenever appropriate.

6. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

Because USTDA receives a relatively small number of FOIA requests each year, it is able to provide individualized legal attention to each request. As such, the Assistant General Counsel in charge of FOIA matters reviews each FOIA request and all potentially responsive records, and applies the presumption of openness in processing the request. USTDA believes that the individualized attention to each request by an attorney knowledgeable about FOIA's requirements and aims ensures that the presumption of openness is consistently and properly applied.

In Section V.B.(1) of your agency's Annual FOIA Report, entitled "Disposition of FOIA Requests – All Processed Requests" the first two columns list the "Number of Full Grants" and the "Number of Partial Grants/Partial Denials." Compare your agency's 2011 Annual FOIA Report with last year's Annual FOIA Report, and answer the following questions:

7. Did your agency have an increase in the number of responses where records were released in full?

Yes. In FY2011, USTDA released records in full in response to 21 FOIA requests. In FY2010, the Agency released records in full in response to four FOIA requests.

8. Did your agency have an increase in the number of responses where records were released in part?

Yes. In FY2011, USTDA released records in part in response to 11 FOIA requests. In FY2010, the Agency released records in part in response to three FOIA requests.

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, "[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."

This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support.

Describe here the steps your agency has taken to ensure that its system for responding to requests 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.

When a new FOIA request is received by USTDA, the request is logged into the Agency's electronic FOIA log and forwarded to the Assistant General Counsel in charge of FOIA matters, who reviews the request. The search for responsive documents is initiated promptly by the Information Resource Assistant and is followed up by the Assistant General Counsel. Working in cooperation with USTDA's other FOIA personnel, the Assistant General Counsel determines whether USTDA has any responsive documents and applies the presumption of openness in determining which documents are releasable. The Assistant General Counsel continuously works to ensure that the system for responding to requests is effective and efficient, and if necessary implements changes or improvements as appropriate.

1. Do FOIA professionals within your agency have sufficient IT support?

Yes. USTDA has found the level of IT support provided to its FOIA professionals to be adequate.

2. Is there regular interaction between agency FOIA professionals and the Chief FOIA Officer?

Yes. USTDA is a small agency of approximately 50 full-time employees and both the Chief FOIA Officer and Assistant General Counsel in charge of FOIA matters maintain open lines of communication with each other and with all Agency staff.

3. Do your agency's FOIA professionals interact with your Open Government Team?

Yes. USTDA's Chief FOIA Officer and Assistant General Counsel in charge of FOIA matters interact regularly with the Open Government Team.

4. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to FOIA administration.

The Chief FOIA Officer and the Assistant General Counsel in charge of FOIA matters meet to discuss whether adequate staffing is being devoted to FOIA administration. USTDA expects to continue these meetings regularly to ensure that adequate staffing is in place. In addition, beginning in FY2010, an Information Resource Assistant has been assigned to support the Assistant General Counsel on FOIA matters. Evidence of sufficient staffing is to be found in USTDA's expeditious processing of FOIA requests in FY2011. At the end of the fiscal year, only one FOIA request remained pending before the Agency.

5. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.

USTDA continually monitors its system for processing FOIA requests with an eye toward making it more efficient and effective.

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 to increase the amount of material that is available on your agency website, including providing examples of proactive disclosures that have been made during this last reporting period (i.e., from March 2011 to March 2012). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make proactive disclosures of information.

1. Has your agency added new material to your agency website since last year?

Yes.

2. Provide examples of the records, datasets, videos, etc., that have been posted this past year.

USTDA's website contains a significant amount of current information. In the past year, the Agency posted its 2011 Annual Report, which includes financial information, recent speeches by USTDA officials and press releases, among other things. The types of records that are regularly posted and updated on USTDA's website include USTDA brochures, USTDA annual reports and other USTDA publications and information. USTDA's website also contains information about USTDA- and other government-sponsored events.

3. Describe the system your agency uses to routinely identify records that are appropriate for posting.

The Chief FOIA Officer and the Assistant General Counsel maintain an open line of communication with each other as well as with all USTDA staff to identify records that are appropriate for posting on USTDA's website.

4. Beyond posting new material, is your agency taking steps to make the information more useful to the public, especially the community of individuals who regularly access your website, such as soliciting feedback on the content and feedback of the posted material, improving search capabilities, providing explanatory material etc.?

Yes. USTDA is a commercially-focused agency with a significant interest in disseminating clear and useful information about its activities to the public. The Agency's website is well-organized, regularly updated and searchable, and contains clear and easy-to-find contact information for a number of individuals, including USTDA's webmaster. In FY2011, USTDA also redesigned its website's homepage to incorporate more direct links to priority sections of its website and added a new section to highlight the Agency's priority sectors and programs.

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

USTDA has endeavored to increase proactive disclosures with respect to USTDA's library database of USTDA-funded activities. USTDA maintains a regularly updated web page on USTDA "Library Holdings" which allows individuals to electronically search USTDA's library database for completed USTDA-funded studies by region, country or sector.

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. In 2010 and 2011 agencies reported widespread use of technology in handling FOIA requests. For 2012, the questions have been further refined and now also address different, more innovative aspects of technology use.

Electronic receipt of FOIA requests:

1. Can FOIA requests be made electronically to your agency?

Yes. In FY2011, USTDA established an email address that the public may use to submit FOIA requests to the Agency. FOIA requests may now be made to USTDA via mail, facsimile and email.

2. If your agency processes requests on a decentralized basis, do all components of your agency receive requests electronically?

USTDA is a small agency and processes its FOIA requests on a centralized basis.

Online tracking of FOIA requests:

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

No, a FOIA requester cannot track the status of his/her request electronically at the present time.

4. If not, is the agency taking steps to establish this capability?

USTDA is continually working to improve its FOIA processing procedures. Given the relatively small number of requests the Agency receives each year and its system for logging FOIA requests, the Assistant General Counsel and Information Resource Assistant are readily able to locate information about the status of FOIA requests. The Agency also endeavors to notify requesters of any delay in the processing of specific requests engendered by, for instance, a need to consult with another agency or notify a submitter of potentially privileged or confidential commercial or financial information.

Use of technology to facilitate processing of requests:

5. 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 re-duplicate documents?

Given the small number of FOIA requests received by USTDA each year, and the direct review of each request by the Assistant General Counsel, USTDA believes that its current system makes appropriate use of technology.

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

Please see above.

V. STEPS TAKEN TO REDUCE BACKLOGS AND IMPROVE TIMELINESS IN RESPONDING TO REQUESTS

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 and appeals. *For the figures required in this Section, please use those contained in the specified sections of your Agency's Annual 2011 FOIA report.*

- 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 FOIA 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. If your agency does not utilize a separate track for processing simple requests, please answer the questions below using the figure provided in your report for your non-expedited requests.**

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

Yes.

- b. If so, for your agency overall, for Fiscal Year 2011, was the average number of days to process simple requests twenty working days or fewer?**

N/A. For FY2011, USTDA did not receive any FOIA requests which fell within the "simple" category. Accordingly, the number of days to process simple requests reported on the Agency's 2011 Annual FOIA Report is 0.

- 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?**

USTDA does track simple requests separately, but did not receive any FOIA requests in FY2011 that were placed into the simple track. The answer to the question based on all non-expedited requests processed by USTDA in FY2011 is no. The average number of days to process those requests was greater than twenty working days.

- 2. Sections XII.D.(2) and XII.E.(2) of your Agency's Annual FOIA Report, entitled "Comparison of Number of Requests/Appeals from Previous and Current Annual Report – Requests/Appeals Received, Processed, and Backlogged" show the numbers of any backlog of pending requests or pending appeals From Fiscal Year 2011 as compared to Fiscal Year 2010. You should refer to those numbers when completing this Section of your Chief FOIA Officer Report. In addition, Section**

VII.E, entitled “Pending Requests – Ten Oldest Pending Perfected Requests” and Section VI.C.(5), entitled “Ten Oldest Pending Administrative Appeals,” both from Fiscal Year 2010 and Fiscal Year 2011 should be used for this section.

a. If your agency had a backlog of requests at the end of Fiscal Year 2011, did that backlog decrease as compared to Fiscal Year 2010?

Yes. There was only one backlogged FOIA request at the end of FY2011, as compared to 19 backlogged requests at the end of FY2010.

b. If your agency had a backlog of administrative appeals at the end of Fiscal Year 2011, did that backlog decrease as compared to Fiscal Year 2010?

USTDA did not have any backlogged FOIA appeals at the end of FY2011.

c. In Fiscal Year 2011, did your agency close the ten oldest requests that were pending as of the close of Fiscal Year 2010?

No. USTDA closed all but one FOIA request that was pending at the end of FY2010.

d. In Fiscal Year 2011, did your agency close the ten oldest administrative appeals that were pending as of the close of Fiscal Year 2010?

There were no administrative appeals pending as of the close of FY2010.

If you answered “no” to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation:

Request Backlog:

a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?

N/A. USTDA significantly reduced its overall request backlog in FY2011 as compared to FY2010, however, one request that was pending at the end of FY2010 remained pending at the end of FY2011.

b. Was the lack of a reduction in the request backlog caused by a loss of staff?

N/A. See above.

c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of requests received?

N/A.

d. What other causes, if any, contributed to the lack of a decrease in the request backlog?

There was a substantial decrease in USTDA's FOIA request backlog in FY2011 as compared to FY2010.

Administrative Appeal Backlog:

N/A

All agencies should strive to both reduce any existing backlogs or requests and appeals and to improve their timeliness in responding to requests and appeals. Describe the steps your agency is taking to make improvements in those areas. In doing so, answer the following questions and then also include any other steps being taken to reduce backlog and increase timeliness.

1. Does your agency routinely set goals and monitor the progress of your FOIA caseload?

Yes. USTDA continually strives to process FOIA requests promptly and has set a goal of maintaining or surpassing the efficiency it achieved in FY2011. In addition, the Agency continually evaluates whether it can do more to proactively disclose useful and relevant information about its activities to the public. It is USTDA's hope that its use of technology to make such information available and easily accessible will contribute to a reduced need for interested members of the public to submit FOIA requests to it.

2. Has your agency increased its FOIA staffing?

As mentioned above, USTDA assigned an Information Resource Assistant to assist the Assistant General Counsel on all FOIA requests in FY2010. That has proven effective, as evidenced by the Agency's expeditious processing of FOIA requests in FY2011, and USTDA has not found it necessary to further increase its FOIA staffing.

3. Has your agency made IT improvements to increase timeliness?

USTDA has not found it necessary to make IT improvements to increase timeliness, given the relatively small number of FOIA requests the Agency receives and its expeditious processing of those requests.

- 4. If your agency receives consultations from other agencies, has your agency taken steps to improve the efficiency of the handling of such consultations, such as utilizing IT to share documents, or establishing guidelines or agreements with other agencies on the handling of particular information to speed up or eliminate the need for consultations?**

USTDA rarely receives consultations from other agencies and has not found it necessary to utilize any special procedures to address consultations from other agencies.

Use of FOIA's Law Enforcement Exclusions

In order to increase transparency regarding the use of FOIA's statutory law enforcement exclusions, which authorize agencies under 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 in Fiscal Year 2011?**

No.

- 2. If so, what is the total number of times exclusions were invoked?**

N/A.

Spotlight on Success

Out of all the activities undertaken by your agency since March 2011 to increase transparency and improve FOIA administration, describe here one success story that you would like to highlight as emblematic of your efforts.

USTDA made remarkable progress in the processing of its FOIA requests in FY2011. The Agency had 19 pending FOIA requests at the beginning of FY2011 and received an additional 28 FOIA requests during the course of the fiscal year. By the end of FY2011, USTDA had processed all but one of those requests. Furthermore, USTDA responded to nearly half of the total FOIA requests it processed in FY2011 with full record grants and to nearly one-quarter with partial record grants. The Agency did not respond to any FOIA request in FY2011 with a full record denial.

USTDA's success in FY2011 is attributable to adequate staffing, knowledgeable FOIA professionals and an efficient system for processing FOIA requests. In FY2012, USTDA will continue to employ its best efforts to process FOIA requests promptly and thoroughly and to apply the presumption of openness to all FOIA determinations.