

## Chief FOIA Officer Report for Department of Veterans Affairs

### I. Steps Taken to Apply the Presumption of Openness

**1. Describe below the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. This section should include a discussion of the range of steps taken by your agency to apply this presumption, from publicizing the President's FOIA Memorandum and Attorney General's FOIA Guidelines and providing training on them, to implementing the presumption in response to FOIA requests and administrative appeals, with examples or statistics illustrating your agency's action in making discretionary releases of records or partial releases when full disclosure is not possible.**

The Department of Veterans Affairs (VA) is strongly committed to implementing the President's initiatives on openness and transparency. On January 29, 2009, the Secretary of VA issued a department-wide memorandum to Assistant Secretaries reinforcing his commitment to the principles of transparency and openness. The Secretary asked that key officials ensure that information be made available in a timely manner. The VA Chief FOIA Officer disseminated this information department-wide, and held training sessions for FOIA Officers that explained how to apply the presumption of openness and the foreseeable harm standard. Additionally, several VA FOIA facilities held training sessions for their field offices to ensure a presumption of openness when making determinations on FOIA requests.

In April 2009, VA held a training session for FOIA Officers to discuss the Attorney General's FOIA Memorandum, which provided guidance to agencies on how to implement the President's goals of openness and transparency.

Several offices within VA have publicized the President's FOIA Memorandum and Attorney General's FOIA Guidelines to their subcomponents, including distributing these documents and providing further training

Other offices have developed internal FOIA Standard Operating Procedures Guides which established authorized personnel to respond to FOIA requests and centralized the FOIA processes and responsibilities.

Several offices such as the National Cemetery Administration (NCA) no longer cites the "low 2" provision of Exemption 2 to withhold disclosure of routine internal Agency documents that present no potential harm if released to the public. The implementation of this presumption resulted in a greater number of partial disclosures of federal contract award documents during FY 2009.

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### **2. Report whether your agency shows an increase in the number of requests where records have been released in full or where records have been released in part when compared with those numbers in the previous year's Annual FOIA Report.**

Although it is difficult to determine the exact number of backlogged requests for the past fiscal year due to the fact that the VA began using its electronic FOIA tracking solution in June 2009, our quarterly backlog averages have decreased from 1,300 in the fourth quarter of 2008 to 319 in the first quarter of 2010. A comparison of full grants and partial grants between FY 2008 and FY 2009 shows:

	<b>FY2008</b>	<b>FY2009</b>
<b>Full Grants</b>	51,601	23,792
<b>Partial Grants</b>	2,332	4,570

The apparent decrease in the overall volume of our numbers is largely attributed to the fact that the FY2008 Annual FOIA Report is a combination of FOIA and PA requests, where as the FY2009 report reflects FOIA only.

Several offices within the VA have reported an increase in their number of requests where records have been released in full or where records have been released in part: the VA Health Resource Center (HRC) FOIA office reports an 81% full grant, 10% partial grant, 2% denial, and 7% no records response rate.

### **II. Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests**

**Describe here the steps your agency has taken to ensure that your system for responding to requests is effective and efficient. 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.**

The VA has put in place several initiatives to ensure efficient FOIA implementation. By acquiring a web-based FOIA tracking system, FOIA officers can now track the status of FOIA requests, transfer cases electronically, and upload FOIA correspondences with requesters. This tool allows the VA's geographically dispersed FOIA officers to be up-to-date on any FOIA request received.

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In order to further increase the effectiveness of the FOIA tracking tool, VA has designated a FOIA Program Manager who provides technical assistance to FOIA Officers using the system. The FOIA Program Manager also conducts routine data integrity checks to ensure that the data inputted in the system is accurate and available.

Furthermore, several FOIA offices have hired more staff and contractor support to address FOIA backlogs, as well as identify methods to help streamline the FOIA process to reduce department-wide response times to FOIA requests.

Several VA FOIA offices have also taken part in ensuring that their offices have an effective system for responding to requests: The VA FOIA Office is working with other FOIA Offices such as the Office of Resolution Management (ORM) to develop FOIA training for ORM's field officers.

### **III. Steps Taken To Increase Proactive Disclosures**

**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 since issuance of the new FOIA Guidelines.**

When the VA General Counsel (GC) provides training and advice to FOIA agency officials, the GC advises that discretionary disclosures be made even though portions of records may be exempt from disclosure and no foreseeable harm may result as a result of the discretionary release.

Other VA Offices, such as the Office of Operations, Security, and Preparedness plan to conduct a review of their materials that may be disclosed in light of the presumption of openness without compromise or harm to national security, personal privacy, or law enforcement interests.

### **IV. Steps Taken To Greater Utilize Technology**

#### **1.) Does your agency currently receive requests electronically?**

An increasing number of FOIA offices currently receive requests electronically. The VA is in the process of updating its FOIA regulations, which include provisions that permit requests to be electronically received. In addition, each FOIA office will create a group mailbox where requests may be submitted electronically.

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**2.) If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically?**

The VA has not established a department-wide mechanism to receive requests electronically due to the fact that current FOIA regulations require that requests be signed. Electronically submitted requests rarely contain requester signatures. With the advent of the President's memo on openness and transparency, the VA has taken steps to incorporate electronic receipt of requests into its processes by updating its FOIA regulations.

**3.) Does your agency track requests electronically?**

Yes, the VA uses FOIAXpress to electronically track all requests and that allows department-wide collaboration in responding to any FOIA request. The tracking system is compliant with OPEN Government Act requirements whereby each FOIA request that is logged in is assigned a unique FOIA tracking number. This tracking tool helps FOIA public liaisons provide request statuses to requesters.

**4.) If not, what are the current impediments to your agency utilizing a system to track requests electronically?**

Not applicable.

**5.) Does your agency use technology to process requests?**

Most VA FOIA offices utilize technology to process requests. All FOIA installations are equipped with computers, word processing applications and photocopiers. Some of the larger FOIA facilities are equipped with and use scanning software to digitize paper records. When possible, agencies disclose responsive records electronically to requesters.

The VA's FOIA tracking software allows for the intra-agency transfer of FOIA requests from one component to another. This tool enables VA FOIA officials to cut back on the amount of time required to make determinations on FOIA requests.

**6.) If not, what are the current impediments to your agency utilizing technology to process requests?**

Not Applicable.

**7.) Does your agency utilize technology to prepare you agency Annual FOIA Report?**

Yes, the FOIA tracking tool that the VA has acquired keeps track of all items required under the FOIA and is compliant with the new FOIA Annual Report requirements established under the OPEN Government Act amendments of 2007 and allows a FOIA Officer to create an Annual FOIA Report.

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**8.) If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report?**

Not applicable.

**V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests**

**1. If you have a backlog, report here whether your backlog is decreasing. That reduction should be measured both in terms of the numbers of backlogged requests and administrative appeals that remain pending at the end of the fiscal year, and in terms of the age of those requests and appeals.**

Our number of backlogged requests decreased from 2,840 in FY 2008 to 503 in FY 2009. The decrease in the number of these requests is partly attributed to the VA FOIA offices' successful backlog reduction efforts. The VA has also been systematically closing out its oldest pending FOIA requests. The chart below reflects the VA's backlog in terms of requests and administrative appeals, and in terms of the date the request was received:

	Initial Requests		Appeals	
	FY 2008	FY 2009	FY 2008	FY 2009
<b>Pending Backlog</b>	2,840	503	68	72
<b>Date of oldest request</b>	03/26/2003	04/04/2006	11/10/2005	04/07/2009

Although it is difficult to determine the exact number of backlogged requests for the past fiscal year due to the fact that the VA has started using its electronic FOIA tracking solution in June 2009, our quarterly backlog averages have decreased from 1,300 overdue requests in the fourth quarter of 2008 to 319 in the first quarter of 2010.

**2. If there has not been a reduction in the backlog describe why that has occurred and what steps your agency is taking to bring about a reduction.**

In FY 2008, the Department received 157 appeals and closed 230. The number of appeals pending at the end of FY 2008 was 68. In FY 2009, GC received 241 appeals and closed 87. The number of appeals pending at the end of FY 2009 was approximately 222. Of those 222 appeals, approximately 84% were received in 2009. In addition to the increase in appeals received by the Department, the appellate authority was required to shift FOIA resources to other items that have been increasing exponentially in recent years (such as information security and e-discovery).

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Furthermore, additional resources were pulled from making determinations on FOIA appeals in order to draft a complete revision of VA's FOIA regulations. Once staffing levels are reestablished and the regulations are implemented, the Department anticipates further reduction in the backlog of FOIA appeals.

### **3. Describe the steps your agency is taking to improve timeliness in responding to requests and to administrative appeals.**

The VA has taken steps to improve timeliness in responding to its FOIA requests and to reduce its backlogs. Several offices such as the Veterans Health Administration (VHA) headquarters FOIA office hired additional staff. Prior to this fiscal year, VHA's FOIA Office consisted of one VHA FOIA Officer and one Program Specialist. Due to recent staffing changes, the VHA FOIA Office now consists of three VHA FOIA Officers and two contract support positions. VHA anticipates that these added positions will improve timeliness in responding to requests and reduce its current backlog over time. Similar to VHA, the Office of Acquisition and Logistics (OAL) contracted three additional FOIA analysts in September 2008 to reduce its FOIA backlog. As of August 2008, OAL reported a backlog of 254 FOIA requests and has been reduced to 49 as of February 2010.