



# Chief FOIA Officer's Report

U.S. Department of Education  
March 2012



# Chief FOIA Officer's Report - 2012

## **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.

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

**The Department of Education and the FOIA Service Center (FSC) have made significant efforts in response to the President's call for transparency and open government by carefully aligning the FSC's program agenda with the Department's Open Government initiatives. This agenda included increasing awareness through training to strongly voice the Department's commitment to apply a presumption of openness for making decisions involving FOIAs.**

**In September of 2011, the Department of Education (Department) and the FOIA Service Center (FSC) provided training electronically for all personnel involved in FOIA processing throughout the department. This particular "FOIA Overview" training module provides basic information about the FOIA, and identifies fee and expedited processing considerations.**

**The FSC also conducted desk-side training and directed training and frequently asked information to FOIA Coordinators throughout the Department.**

**The Department has demonstrated a commitment to communicating and training FOIA personnel and relevant program staff on the most recent guidance from the Justice Department regarding the presumption of openness through bi-monthly Quality Assurance meetings with the Department FOIA coordinators from the principal offices. In addition to sharing information, these hourly sessions focus on a particular FOIA processing issue where the Department requires improvement and to increase cooperation.**

**The Department is also committed to communicating and training personnel to leverage "Best Practices" for handling requests so that FOIA is openly applied wherever possible. The Department will build upon this effort over the course of the year and the FSC will develop target-specific training for the Department to inform personnel of the substantive requirements of FOIA and the Department's FOIA procedures.**

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

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The FSC staff (including FOIA Public Liaisons) and other Department personnel with FOIA duties attended external training sessions provided by the Department of Justice and the American Society of Access Professionals as refresher training and to increase their knowledge about the overall principles of transparency in this Open Government era.

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.

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

The Department remained committed to the Open Government principle for transparency by releasing as much information as possible. Minus a foreseeable harm or legal reason, the Department's practice over the course of the year was to make a discretionary release of material reviewed under FOIA where possible.

### Breakdown of the Usage of Exemptions 2 and 5 across FY 2009, 2010, and 2011.

The data below displays the total number of cases processed, the total number of exemptions used, the number of times both exemption 2 and 5 were used, and the percentage of exemptions 2 and 5's usage for fiscal years 2009, 2010, and 2011.

Fiscal Years	Total Number of Cases	Number of Times Exemptions Used	Times Exemption 2 was Used	Percentage of Exemption 2 Usage	Times Exemption 5 was Used	Percentage of Exemption 5 Usage
2009	2232	1387	57	4.11%	143	10.31%
2010	2077	1272	34	2.67%	89	7.00%
2011	2486	1629	42	2.58%	119	7.31%

The data overall shows an upward trend in the total number of cases processed over the past three years. It also displays that over the past three years there has been an overall downward trend in the usage of exemptions 2 and 5, with a slight increase in the past year (FY 2011). The *percentage of exemption 2 usage* has decreased more than a percentage over the past three years. The *percentage of exemption 5 usage* has decreased by more than 3 percent over the past three years.

A further analysis of the usage of exemptions 2 and 5 exposes where the usage of these exemptions has not decreased and in some cases increased. (*The below referenced data can be found on page 13 of the 2009 Annual Report, page 13 of the 2010 Annual Report, and page 14 of the 2011 Annual Report.*)

### FY 2009

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The usage of exemptions 2 and 5 was widespread across many of the Department of Education's Program offices, however used most frequently by the Office for Civil Rights-Denver, Federal Student Aid, and Office for Civil Rights-Boston.

## FY 2010

The usage of these exemptions dropped significantly in FY2010, however increased within Office of Management-Privacy, Information and Records Management Services and stayed consistent in Office for Civil Rights-Denver. Office of Management-Privacy, Information and Records Management Services usage of exemption 2 was 17.6% of the total usage and exemption 5 usages was 12.3% of total usage. Office for Civil Rights-Denver's usage of exemption 2 was 38.2% of total usage and exemption 5 usages was 14% of total usage.

## FY 2011

The usage of these exemptions increased slightly in FY 2011; however, there was a decrease within Office of Management--Privacy, Information and Records Management Services. Alternatively, the Office of Safe and Drug-Free Schools greatly increased its use of exemption 2 and FSA increased its overall usage of both exemptions, while Office for Civil Rights-Denver's usage of both exemption 2 and 5 were consistent with prior years. (*See below*)

Principal Office Component	Percentage of Exemption 2 Usage	Percentage of Exemption 5 Usage
Office of Management--Privacy, Information and Records Management Services	16.60%	4.20%
Office of Safe and Drug-Free Schools	30.90%	1.06
Office for Civil Rights-Denver	26.10%	19.30%
Federal Student Aid	11.90%	11.70%

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

The Department routinely makes discretionary releases of information under FOIA where exemptions b2 (internal agency matters of a relatively trivial nature) and b5 (deliberative process privilege) are regarded. See above Breakdown of the Usage of Exemptions 2 and 5 across FY 2009, 2010, and 2011 as reflected in the Department's 2011 Annual FOIA Report. The Annual Report also reflects the more frequent use of non-discretionary exemptions b4, b6, b7A and b7C.

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

**The Department conducts a two-level quality review of all documents that were identified as not fully releasable under FOIA. This second review process layer ensures that information is repeatedly scrutinized for the fullest release possible. An even greater emphasis is placed upon the second reviewers in the process to ensure a foreseeable harm has been established and segregable information is released.**

**The second review is required for all documents received under FOIA where discretionary releases are possible. A separate review process is established at the appeals level to further ensure the Department makes a determination to release information to the greatest extent possible.**

**All reviewers are trained to conduct FOIA reviews in concert with the Department's practice to release all material reviewed under the FOIA minus any FOIA exemption requiring withholding such material or any identifiable harm requiring the material not be released.**

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

**The Department has made an added effort to refer to the President's FOIA Memorandum and the Attorney General's Guidelines during FOIA bi-monthly meetings with the FOIA Coordinators and other FOIA personnel. The reemphasis about the Department's commitment further ensures a presumption of openness is applied to all decisions involving the FOIA. In addition to continually referencing the presumption of openness commitment within the FOIA cadre, the Department took the actions identified below.**

**We implemented a process for proactive (in advance of a FOIA request) and discretionary (using a no-foreseeable-harm determination threshold) release of records. Annually, the Department receives more than 700 requests for contracts, grant applications, and information about federally funded programs. The FSC staff has worked with several program offices, including the Office of Postsecondary Education (OPE) and the Office of English Language Acquisition (OELA) to identify and post these types of documents in the FOIA Library.**

**Provided FOIA Library visitors access to common FOIA requested documents and also hyperlinks directly to program offices to make it easier for the public to locate the most recent copy of the document they are seeking without needing to submit a FOIA request.**

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:

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

**Yes. The number of requests where records were released in full increased slightly from 700 in fiscal year 2010 to 758 in fiscal year 2011.**

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

**Yes. The number of requests where records were released in part also increased from 740 in fiscal year 2010 to 1,179 in fiscal year 2011.**

The data below demonstrates the trends with *records that were released in full and records released in part*. This data was drawn from page 12 of the 2009, 2010, and 2011 Annual Reports.

Fiscal Years	Total Number of Processed Requests	Number of Full Releases	Percentage of Full Releases	Number of Partial Grants/Denials	Percentage of Partial Grant/Denial	Combined Percentage
<b>2009</b>	2232	720	32%	859	38%	71%
<b>2010</b>	2077	700	34%	740	36%	69%
<b>2011</b>	2486	758	30%	1179	47%	78%

The data above shows the total number of processed requests, number of full releases, what percentage full releases made up of total responses, the number of partial grants/denials, what percentage partial grants/denials made up of total responses and the combined percentage for the two statistics.

**Full Releases:**

The data displays that from 2009 to 2010 there was a 2% increase in the number of full releases. However, from 2010 to 2011 there was a 4% decrease in full releases and an overall 2% decrease in the span of 2009 to 2011.

**Partial Releases:**

The data for partial grants/denials shows that from 2009 to 2010 there was 2% decrease in the number of partial grants/denials. However, from 2010 to 2011 there was an 11% increase in the number of partial grants and from 2009 to 2011 there was an overall 9% increase in the number of partial grants/denials.

Lastly, the trend from 2009 to 2011 regarding the number of full releases and partial grant/denials displays there has been a 7% increase over the three years, with a slight decrease in 2010.

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

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

**The Department ensures FOIA professionals have sufficient IT support for the FOIA case management system by designating a FOIA Public Liaison as the IT administrator for the case management workflow system. Instead of a FOIA Coordinator's need for assistance being incorporated within the Department's IT support workload by calling the Department's "IT Help Desk," FOIA Coordinators are able to resolve most electronic FOIA issues through a single point of contact by calling the FOIA Service Center Hotline number.**

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

**The Chief FOIA Officer regularly engages the FOIA personnel in the Department's FOIA Service Center which is the centralized area for managing the FOIA.**

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

**The FSC continues to work with the Open Government team to ensure progress is being made. The FOIA Service Center staff worked in collaboration with the Department's Open Government Team to produce the Open Government Plan. The plan outlines how ED has taken many steps to ensure a presumption of openness is applied to all decisions involving the FOIA by increasing awareness through training, proactive and discretionary release of records, and increasing efficiency.**

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

**The Chief FOIA Officer regularly assesses the number of existing FTE and contractor support staff to determine if adequate staffing is devoted to responding**

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**to FOIA requests. Through Chiefs of Staff meetings, Principal Offices have been encouraged to ensure adequate resources are available to process requests and achieve meaningful backlog reduction.**

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

**The Department often reviews the electronic case management workflow system used for tracking FOIA, troubleshoots for existing problems and alerts the vendor supporting the system of any electronic workflow disruptions and concerns. As needed, the vendor will provide fixes and upgrades to ensure the system is operating efficiently and effectively.**

**In addition, the Department's FSC staff meets regularly to discuss the FOIA program agenda established for the year and seeks to find ways to further improve the handling of FOIA, including refining business processes, improving training methods, drafting policies or procedures, and increasing communication and outreach.**

### **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 2011 to March 2012). 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.

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

**The Department continues to populate the FOIA Library with frequently requested documents, proactively released documents, and discretionarily released documents. More than 80 new documents were posted during the year.**

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

**Annually, the Department receives more than 700 requests for contracts, grant applications, and information about federally funded programs to include American Recovery and Reinvestment Act (ARRA) documents. Many of these records are posted for public viewing.**

**Examples include, but are not limited to:**

**Race To The Top – Early Learning Challenge (RTT-ELC) Grants-37 applications totaling over 30,000 pages**



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**Family Educational Rights and Privacy Act (FERPA) Webinar-Case Study 1 (High School Feedback Report) and Case Study 2 (Head Start Program) are located at <http://www2.ed.gov/policy/gen/guid/fpco/index.html>**

## **Gainful Employment Administrative Records**

**Also see response to question 5 directly below.**

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

**The Department identifies types of documents that have been previously requested and now proactively releases responsive documents into the public domain via the FOIA Library, in advance of receiving a FOIA request. Additionally, the FOIA Service Center is working in concert with the Department's program offices to more readily identify material to publish in the FOIA Library.**

4. Beyond posting new material, is your agency taking steps to make the 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 the posted material, improving search capabilities, providing explanatory material, etc.?

**The Department provides access to posted documents and other material, and uses hyperlinks, located in the FOIA Library, to lead requesters directly to program offices' websites making it easier for the public to locate information. The Department may list a point of contact in association with particular postings to solicit feedback or to address inquiries.**

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

**The Department uses other venues to notify the public of important events and provides information updates via its website and other social media tools. The tools presently in use are described below.**

***Electronic newsletters:* The Department has multiple periodic electronic newsletters that inform parents, teachers, education stakeholders, and other members of the public. These electronic newsletters are open to the public via the Department's opt-in policy, in which subscribers may stop delivery at any time. EDInfo, ED Review, Education Innovator, IESNews, Research e-News, Touching Base, PreventionED, and OVAE Connection are the currently available newsletters, and the Department will continue to create newsletters as new special topics are identified. For more information on the Department's electronic newsletters, please visit: <http://www.ed.gov/news/newsletters/>**

***ED.gov Blog:* The ED.gov blog is a primary tool for the Department of Education to publish and promote up-to-date information on agency and the Secretary's events and news headlines. In addition to publishing information, the blog also allows for inclusion of videos, opportunities for public commenting, and electronic subscription via Really Simple Syndication (RSS) features found in third-party**

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blog reading software. The Department plans on extending its blog tools to other offices within the Department. The main Ed.gov blog can be found at:  
<http://www.ed.gov/blog>

*Media releases:* Frequently throughout the day, the Department of Education releases newsworthy items via its electronic press room. This section of ed.gov features press releases, speeches, media advisories, and the Secretary's weekly schedule. The Department's press room is located at:  
<http://www.ed.gov/news/landing.jhtml>

*Twitter:* Twitter is an online social network tool that sends status updates to subscribers. The Department uses Twitter daily to send important updates of Department activities. The main Department Twitter feed is available at  
<http://twitter.com/usedgov> and others are listed at  
<http://www2.ed.gov/about/overview/focus/social-media.html>

*Facebook:* Facebook is another online social network tool that the Department uses to send updates to subscribers. Facebook is used daily to send important updates about the Department and the Secretary. The main Department Facebook page is  
<http://www.facebook.com/ED.gov> and at  
<http://www.ed.gov/about/overview/focus/social-media.html>

*YouTube:* YouTube is a video-sharing service that the Department uses to distribute audio and video clips. The Department's YouTube channel features taped stakeholder meetings, messages from senior officials, and other special topic features. The YouTube channel for the Department can be found at  
<http://www.youtube.com/usedgov>

## **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?

Requests to the Department are made electronically via e-mail, facsimile, and through the Internet.

The Department established an online FOIA request form for requesters to submit FOIA requests electronically which can be found at:  
[http://www2.ed.gov/policy/gen/leg/foia/request\\_foia.html](http://www2.ed.gov/policy/gen/leg/foia/request_foia.html)

Approximately 80% of all requests made are done so electronically via the website or email to [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov) or other program offices.

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

**The Department's FOIA operations are centralized in one office which has the capability to track all requests electronically.**

**The Department currently uses commercial off-the-shelf (COTS) software which tracks requests.**

*Online tracking of FOIA requests:*

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

**The Department uses a commercial product which has the capability to allow a FOIA requester to track FOIA requests electronically. To date, the Department has not used this function. However, we intend to start posting our FOIA case status log in the Department's Electronic FOIA Library.**

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

**Yes. The Department is taking steps to use the commercial product's feature which will allow FOIA requesters to track FOIA requests electronically.**

*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 de-duplicate documents?

**The Department's current commercial product for FOIA tracking is being upgraded to increase overall functionality and will be used in conjunction with other applications to better facilitate the processing of requests by the end of the year.**

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

**An upgrade is required to ensure a smooth transition during the Department's IT refreshes. The current version of the software has experienced compatibility issues in this environment which means FOIA operations and productivity would be drastically affected without this upgrade. This version has passed FDCC and 508 testing compliance.**

**The current upgrade will also have an added capability to send alerts to the Department's program offices as reminders to better manage the FOIA process.**

## **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.

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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 2011 Annual 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 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, answer the question 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. The Department has established a multi-track system to process requests which has a category for "simple" requests that are placed on the fastest non-expedited track.**

- 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?

**No. When information was granted, the average number of days to process simple requests was 32.32 in FY2011. When considering all cases, the average number of days to process a simple request was 30.38 days, in comparison to 103.24 days for complex requests.**

- 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

2. Sections XII.D.(2) and XII.E.(2) of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report – Backlogged Requests/Appeals," 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 Requests," and Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," from both Fiscal Year 2010 and Fiscal Year 2011 should be used for this section.

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

**Yes. The number of backlogged requests decreased from 456 in FY 2010 to 371 in FY 2011. This decrease is attributed to the Department's successful backlog reduction efforts.**

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Fiscal Year	Pending Requests at Start of Year	Number of Requests Received	Number of Requests Processed	Pending at End of Year	Change in Number of Pending Requests from Start to End of Year	Percentage Change from Start to End of Year
2009	344	2307	2323	419	21% (increase)	75 (Increase)
2010	419	2114	2077	456	8% (increase)	37 (Increase)
2011	456	2401	2486	371	19% (Decrease)	85 (decrease)

Over the past year (2010-2011) the backlog of requests did decrease and did so by 19%. This was an improvement from the prior year (2009 to 2010) where there was an increase of 8%. However, these numbers need to be considered while also examining the changing of the number of the incoming requests. (Table Below):

Fiscal Year	Pending Requests at Start of Year	Number of Requests Received	Change in number of requests	Percentage change in Number of Requests	Number of Requests Processed	Pending at End of Year
2009	344	2307	n/a	n/a	2323	419
2010	419	2114	193 (decrease)	8% (decrease)	2077	456
2011	456	2401	287 (increase)	14% (increase)	2486	371

From 2009-2010, there was an 8% decrease in the number of requests received. This decrease was matched with an 8% increase in the number of cases added to the backlog in 2010. These numbers do not reflect the desired changes being sought.

Alternatively, 2010-2011 saw more positive changes. From 2010 to 2011 there was a 14% increase in the number of requests received, and a 19% decrease in the backlog in 2011. In other words, the Department of Education was able to decrease its backlog while receiving an increased number of requests.

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

**No. The number of administrative appeals in the backlog increased in Y2011. This may be due to the fact that the FOIA Appeals Coordinator position located within the Department's central FOIA office was vacant for a period during the previous year and for a period during 2011, as well as an increase in the number of administrative appeals received. Over the course of 2011, there**

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were 32 appeals received and 15 processed, while 23 were pending at the start of the year. This resulted in a year-end total of 40 appeals, which was an increase of 17 appeals or a 74% increase. The chart below reflects the Department's appeals in terms of number received and processed, and in terms of the backlogged appeals.

## Appeals Received and Processed

Number Received During FY 2010 from Last Year's Annual Report – 23

Number Received During FY 2011 from Current Annual Report – 32

Number Processed During FY 2010 from Last Year's Annual Report – 23

Number Processed During FY 2011 from Current Annual Report – 15

Number of Backlogged Appeals as of End of FY 2010 from Previous Annual Report - 23

Number of Backlogged Appeals as of End of FY 2011 from Current Annual Report - 40

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

**Yes. In FY2011, the Department closed all of its ten oldest pending requests from FY2010.**

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

**No. The decrease in work activity or operating efficiency was due to a loss of staff with important skills and knowledge relevant to managing the process.**

3. 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

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

N/A

- c. Was the lack of a reduction in the request 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 backlog?

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N/A

Administrative Appeal Backlog:

- a. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?

**Yes. The lack of reduction in the backlog is partly attributed to an increase in the number administrative appeals received in FY2011. See chart of administrative appeals in above section.**

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

**Yes. The lack of reduction in the backlog is attributed to a loss of staff (FOIA Appeals Coordinator), changes in the appeal workflow processes, and an increase in the number administrative appeals received. The loss of staff resulted in a loss of expertise and institutional knowledge. The Department went through a vacant period with no staff in the FOIA Appeals Coordinator position and some time was expended before the new staff was fully trained.**

4. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received?

**No. The lack of reduction in the backlog is attributed to a loss of staff (FOIA Appeals Coordinator), and an increase in the number administrative appeals received.**

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

**The impact of the loss of key staff contributed to a loss of operating efficiency and a lack of a decrease in the number of administrative appeals processed.**

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 backlogs and to improve timeliness.

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

**Yes. The Department routinely sets goals and monitors the progress of the FOIA caseload of initial requests and appeals. To identify bottlenecks and to assist with targeting areas for improvement, the Department uses a variety of management reports (including executive dashboards, bi-weekly and monthly reports, etc.) and tools to keep track of the processing of FOIA requests and appeals.**

2. Has your agency increased its FOIA staffing?

**The Department has not increased its FOIA staffing in FY11 but it has filled the vacant FOIA Appeals Coordinator position.**

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

**Yes. The commercial product used by the Department is routinely updated. The product has been instrumental in organizing workload for efficiency and timeliness.**

**The Department periodically upgrades the Personal Computers and makes other hardware improvements to increase timeliness.**

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 the documents, or establishing guidelines or agreements with other agencies on the handling of particular information to speed up or eliminate the need for consultations?

**The Department is taking steps to improve its overall efficiency and effectiveness in handling FOIA requests, including requests received as consultations from other agencies. The Department will develop standard operating procedures to address all areas of FOIA processing over the course of FY2012.**

**The FOIA Service Center will continue to consult the Department's Business Transformation Team (BTT) that conducted a study of the agency's FOIA processes during FY 2011 on how to improve processes. These discussions will also include ways to improve the handling of consultations received from other agencies.**

**The Department has not improved its consultations in FY11. However, in FY12 the Department plans to expand its use of information technology to assist with managing consultations by providing the necessary resource support needed to keep track of each consultation and for the added ability to monitor progress to ensure timely responses. To date, the Department has not implemented specific steps to improve consultations.**

## **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 2011?

N/A

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

N/A



## Chief FOIA Officer's Report - 2012

# 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 agency's efforts.

**Since March 2011, the U.S. Department of Education successfully met the following Organizational Assessment measures: closure of the 10 oldest FOIA requests by September 30, 2011; reduced the Department's FOIA overall backlog of requests by 12% at the start of fiscal year 2011, and increased proactive release of documents to the FOIA Library by 25% during fiscal year 2011.**