



## **2020 Chief FOIA Officer Report**

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Chief, Legal, External Affairs and Performance Branch**



## 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?**

OGE's Chief FOIA Officer is a senior official equivalent to this level.

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

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### *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, the personnel at OGE who have FOIA responsibilities attended FOIA training during the reporting period.

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

The personnel at OGE who have FOIA responsibilities attended various courses and seminars offered by DOJ's Office of Information Policy and Graduate School USA. They also attended the American Society of Access Professionals (ASAP) National Training Conference, which featured sessions on the FOIA.

**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.**

100% of OGE staff with FOIA responsibilities attended substantive FOIA training during this reporting period.

**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.**

N/A

***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.**

Yes. OGE FOIA staff regularly reached out to requesters who had pending requests to provide status updates. In addition, OGE used its twitter account to show requesters and other members of the public how to access information on OGE’s website, including how to navigate OGE’s online FOIA resources and how to find ethics documents for senior government leaders.

***D. Other Initiatives***

**8. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA.**

Through email and staff meeting reminders, OGE regularly informs non-FOIA professionals of their obligations under the FOIA, particularly that any documents created or maintained as part of the non-FOIA professional’s job may be responsive to a FOIA request.

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

**1. For Fiscal Year 2019, 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 2019 Annual FOIA Report.**

4.5 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.**

N/A

**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.**

OGE regularly conducts self-assessments of its FOIA program by reviewing processing procedures and response templates and, when appropriate, making changes to increase efficiency, improve search processes, increase transparency, and otherwise improve the operation of OGE's FOIA program.

**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 2019 (please provide a total number or an estimate of the number).**

OGE estimates that requesters sought assistance from its FOIA Public Liaison about 15 times during FY 2019.

### 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 records that have been requested and released three or more times in accordance with 5 U.S.C. 552(a)(2)(D). Please include links to these materials as well.**

During the past reporting year, OGE continued proactively disclosing records processed for release under the FOIA, with applicable exemptions, on its [website](#).

In addition, the following materials were proactively disclosed on OGE's website during the past reporting year:

OGE Advisories: OGE posted all [written guidance](#) to executive branch ethics officials and employees, including legal, education, and program advisories.

Ethics Program Review Reports: OGE conducts reviews of agency ethics programs and issues recommendations to improve the ethics program if deficiencies are found. To confirm that the agency has acted on OGE's recommendations, OGE also conducts a follow-up review six months from the date of the report. OGE posted all [program review reports](#) and follow-up reports on its website.

Public Financial Disclosures & Ethics Agreements:

- Public financial disclosure reports submitted by the President and Vice President may be accessed [here](#).
- Public financial disclosure reports submitted by candidates for the Office of President or Vice President may be requested [here](#).
- Public financial disclosure reports submitted by appointees or nominees to positions for which the pay is set at Levels 1 and 2 of the Executive Schedule may be accessed [here](#).
- OGE has an automated online process for providing public access to other [public financial disclosure reports](#) (OGE Forms 278, 278e, and 278-T) for Presidential appointees confirmed by the Senate (PAS).
- OGE also posted the ethics agreements of PAS employees, which describe the steps an appointee will take to avoid any actual or apparent conflicts of interest, as well as records of ethics agreement compliance, at the above links.

Certificates of Divestiture: Information on requesting copies of Certificate of Divestitures (CDs), as well as a list of recent CDs that have been issued, may be accessed [here](#).

Executive Branch Agency Ethics Pledge Waivers: Copies of the waivers granted pursuant to Executive Order 13770 are available [here](#). Copies of the waivers granted pursuant to Executive Order 13490 are available [here](#).

Certain Waivers and Authorizations issued between May 1, 2016 – April 30, 2017: On April 28, 2017, OGE issued a directive (PA-17-02) requiring agencies to submit information and records related to certain waivers and authorizations. This [page](#) provides an overview of agency responses and instructions for how to request responsive documents.

Travel Reports: Agencies are required to submit to OGE semiannual reports of payments for travel, subsistence, and related expenses received from non-federal sources in connection with the attendance of employees at certain meetings or similar functions. OGE posted these [travel reports](#) on its website.

Annual Agency Questionnaire Responses: This [Questionnaire](#) asks agency ethics offices for information about ethics officials and the administration of agency ethics programs, as well as core elements of the ethics program that assist in the identification and resolution of potential conflicts of interest.

**2. 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, OGE is taking steps to make posted information useful to the public.

**3. If yes, please provide examples of such improvements.**

OGE is engaging in public outreach to help the public better understand the material posted to OGE's website. In addition to driving traffic to substantive ethics content on its website, OGE is using its Twitter account to educate the public about the executive branch ethics program and to explain the types of records available on OGE's website. In addition, OGE is the process of redesigning the website to make it more useful to the public and other stakeholders.

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

**1. Is your agency leveraging or exploring new technology to facilitate efficiency in its FOIA administration that you have not previously reported? If so, please describe the type of technology.**

Yes. OGE is exploring new technology to assist with processing records for release, including managing records and applying redactions.

**2. 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, OGE reviewed its FOIA website during the reporting period to ensure it addresses the elements noted in the guidance.

**3. Did your agency successfully post all four quarterly reports for Fiscal Year 2019?**

Yes, OGE successfully posted all four quarterly reports for Fiscal Year 2019.

**4. 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 2020.**

N/A

**5. 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 2018 Annual FOIA Report and, if available, for your agency's Fiscal Year 2019 Annual FOIA Report.**

The raw statistical data used to compile the Annual FOIA Reports is available [here](#). Specifically, the raw statistical data used to compile the 2018 Annual FOIA Report is available [here](#), and the raw statistical data used to compile the 2019 Annual FOIA Report is available [here](#).

## **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 2019 Annual FOIA Report and, when applicable, your agency's 2018 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?**

No. OGE utilizes tracks for expedited processing and non-expedited processing.

#### **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 2019?**

N/A

#### **3. Please provide the percentage of requests processed by your agency in Fiscal Year 2019 that were placed in your simple track.**

N/A

#### **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?**

No, the average number of days to process all non-expedited requests was not twenty working days or fewer. 80 percent of requests processed by OGE in Fiscal Year 2019 were placed in the non-expedited processing track.



## ***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 2018 and Fiscal Year 2019 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 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?**

Yes.

**6. If not, did your agency process more requests during Fiscal Year 2019 than it did during Fiscal Year 2018?**

N/A

**7. If your agency's request backlog increased during Fiscal Year 2019, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog.**

N/A

**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 2019. If your agency has no request backlog, please answer with "N/A."**

The percentage of requests that make up the backlog out of the total number of requests received by OGE in Fiscal Year 2019 is approximately 29 percent. As background, OGE received an unprecedented number of FOIA requests to be processed by its small FOIA team in Fiscal Years 2017 and 2018, resulting in a high number of backlogged requests. Despite continuing to receive a higher than average number of FOIA requests in Fiscal Year 2019, OGE still received far fewer requests in Fiscal Year 2019 as compared to Fiscal Years 2017 and 2018. As a result, the percentage of requests that make up the backlog out of the total number of requests received by OGE in Fiscal Year 2019 appears high despite a 70% reduction in OGE's backlog.

BACKLOGGED APPEALS

**9. If your agency had a backlog of appeals at the close of Fiscal Year 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?**

At the close of Fiscal Year 2019, OGE had no backlogged appeals.

**10. If not, did your agency process more appeals during Fiscal Year 2019 than it did during Fiscal Year 2018?**

N/A

**11. If your agency's appeal backlog increased during Fiscal Year 2019, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog.**

N/A

**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 2019. If your agency did not receive any appeals in Fiscal Year 2019 and/or has no appeal backlog, please answer with "N/A."**

N/A

*C. Backlog Reduction Plans*

**13. In the 2019 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2018 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 2019?**

N/A

**14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2019, what is your agency's plan to reduce this backlog during Fiscal Year 2020?**

N/A

***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 2018 and Fiscal Year 2019 when completing this section of your Chief FOIA Officer Report.

**OLDEST REQUESTS**

**15. In Fiscal Year 2019, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2018 Annual FOIA Report?**

Yes, in Fiscal Year 2019 OGE closed the ten oldest requests that were reported pending in OGE's Fiscal Year 2018 Annual FOIA Report.

**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 2018 Annual FOIA Report.**

N/A

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

OGE committed additional resources, including extra staff, toward reducing the overall age of OGE's pending requests.

**TEN OLDEST APPEALS**

**18. In Fiscal Year 2019, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2018 Annual FOIA Report?**

OGE did not have any pending appeals at the end of Fiscal Year 2018.

**19. 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 2018 Annual FOIA Report.**

N/A

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

N/A

## TEN OLDEST CONSULTATIONS

**21. In Fiscal Year 2019, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2018 Annual FOIA Report?**

OGE did not have any pending consultations at the end of Fiscal Year 2018.

**22. 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 2018 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.**

N/A

### **E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans**

**23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2019.**

Closing OGE's ten oldest requests required extra time and resources because the responsive records were voluminous and raised complicated legal questions related to disclosure of financial and other private information.

**24. 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.**

N/A

**25. 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 2020.**

N/A

## *F. Success Stories*

In Fiscal Year 2019, OGE made significant progress toward working down its backlog of requests. As background, OGE received an unprecedented number of FOIA requests to be processed by its small FOIA team in Fiscal Year 2017, amounting to an approximate 450% increase in FOIA requests compared to Fiscal Year 2016. The responsive records were often voluminous and raised complicated legal questions related to disclosure of financial and other private information. Despite continuing to receive a higher than average number of FOIA requests in Fiscal Years 2018 and 2019, OGE reduced its backlog by approximately 70 percent.

In addition to reducing its backlog number, OGE made other efforts to lessen the impact of its backlog of requests. Throughout Fiscal Year 2019, OGE provided a large number of interim records releases in response to voluminous requests. In addition, OGE made efforts to reach out to requesters with pending requests to provide status updates and other relevant information. For example, OGE often alerted requesters to new posted records that were similar to the topics of their requests.