OGE

AGENCY PRACTICES DATA CALL:
Release of Ethics Documents under the Ethics in Government Act

TRANSPARENCY

October
2022

Introduction

Transparency is a key element of the ethics program designed to prevent conflicts of interest in the executive branch.[1] It is necessary so that the public can participate in the oversight of the executive branch and its leaders. As the supervising ethics office for this program, the U.S. Office of Government Ethics (OGE) has both authority and a responsibility to ensure that agencies across the executive branch are creating transparency by fulfilling requests for publicly available ethics documents.[2]

To this end, OGE conducted a survey to determine how agencies fulfill requests for ethics documents and whether agencies need additional guidance or training. This report provides a high-level overview of the results of the findings of OGE's *Agency Practices Data Call: Release of Ethics Documents under the Ethics in Government Act*.

Background

In 2018, OGE conducted its first triennial data call based on agency ethics program practices, separate from its annual, compliance-focused questionnaire that agencies are required to submit to OGE each February 1st. By inquiring about agency program practices separately from compliance, OGE is able to identify the wide array of strategies that agencies have implemented across the executive branch and share this information with ethics officials and the public. This report provides highlights of the results of OGE's second triennial data call.

Methodology

OGE developed the data call questions after consultation with a focus group composed of agencies of various sizes and missions. OGE issued a Program Advisory, PA-22-01, on April 21, 2022 to announce the data call. The data call consisted of 10 questions: 7 multiple choice and 3 open-ended. The data call was created using a custom application and distributed via email to 137 agencies on May 2, 2022. OGE accepted only one response per "agency" or entity that had a Designated Agency Ethics Official (DAEO), regardless of the number of component offices.

See the **APPENDIX** for the list of data call questions.

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[1] See, e.g., 5 U.S.C. app. § 105(a); Pub. L. 112-105 § 11(b)(1)(B); and 18 U.S.C. § 208(d)(1).
[2] See 5 U.S.C. app. §§ 402(b)(10), 403(a)(2); 5 C.F.R. 2638.108(8); and 5 C.F.R. § 2638.202.

Agency Response Rate

The data call was distributed to 137 agencies and all 137 agencies responded, resulting in a 100% response rate.[3]

Data Limitations

When reviewing this report, it is important to keep in mind the following data limitations:

- OGE did not independently verify the information submitted by each agency.
- Agency ethics officials may interpret the questions differently, which may result in data variation.

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[3] Note: Because the White House Office submitted a response on behalf of the Office of the Cyber Director, the denominator for all calculations is 136.

Summary of Results

The Ethics in Government Act requires the public to provide certain information when submitting requests for ethics documents.[4] To collect this information, OGE created an ethics document request form (OGE Form 201) and makes it available on its website. This form can be used to request ethics documents from agencies.

Question: OGE asked agencies if their public websites contained a link to the ethics document request form (OGE Form 201), contact information for submitting requests, or if they have automated the processing of document requests.

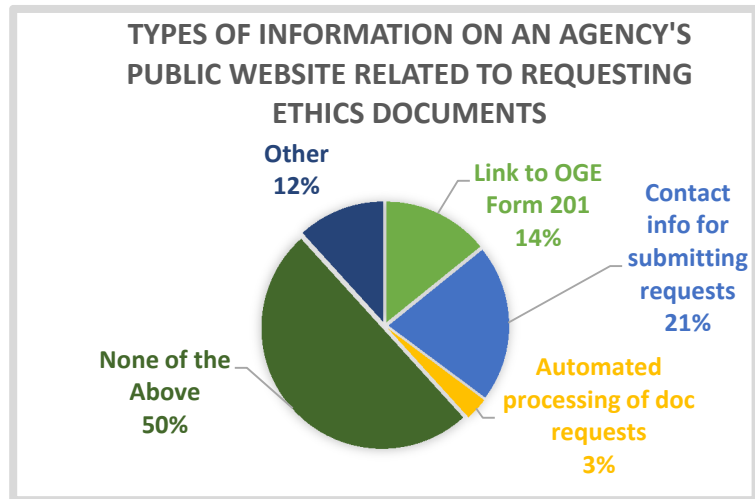*Key Findings: Half of the agencies do not have any of these on their public websites.*

TYPES OF INFORMATION ON AN AGENCY'S PUBLIC WEBSITE RELATED TO REQUESTING ETHICS DOCUMENTS

Other 12%
Link to OGE Form 201 14%
Contact info for submitting requests 21%
Automated processing of doc requests 3%
None of the Above 50%

Table 1

Question: OGE asked agencies how individuals submit ethics requests to their agencies.

Key Findings: The majority of agencies received requests for ethics documents using the OGE Form 201. Some agencies also reported receiving requests via email or mail.[5]

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[4] 5 U.S.C. app. § 105(b)(2)

[5] An individual may submit a request via email or mail but it must contain the statutorily required information from the requestor. This includes that person's name, occupation, address; the name and address of any other person or organization on whose behalf the inspection or copy is requested; and that such person is aware of the prohibitions on the obtaining or use of the report. 5 U.S.C. app. § 105(b)(2)

How Agencies Fulfill Requests for Ethics Documents

Question: OGE asked agencies who has primary responsibility for fulfilling requests for ethics documents.

RESPONSBILITY FOR FULFILLING REQUESTS

Other
7%

Ethics Office
93%

Table 2

Key Finding: The vast majority of agencies reported that the ethics office has primary responsibility for fulfilling requests for ethics documents.

Agencies Tracking of Requests

Question: OGE asked agencies if they track the number of days it takes to release ethics documents as well as what factors may increase the average time to fulfill a request. Tracking this information is not required.

Key Findings: The majority of agencies track the number of days to release ethics documents in at least some cases.

Agencies reported an average release date of less than 3 days. The next most common release date response was over 7 days. A few agencies indicated that it takes them approximately 20-30 days to release the documents.
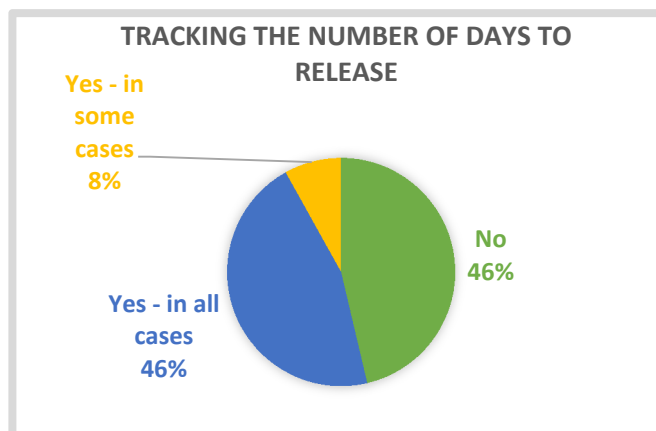
TRACKING THE NUMBER OF DAYS TO RELEASE

Yes - in some cases
8%

No
46%

Yes - in all cases
46%

Table 3

The majority of agencies confirmed that both requests for more than one type of ethics document (e.g., financial disclosures, ethics agreements, waivers) and requests for the documents for individuals whose documents have not been requested before increase the average time to fulfill a request.

<u>Question:</u> OGE asked agencies which ethics documents had been requested between April 2021 and April 2022 and the approximate number of requests for each kind of document.[6]

Key Findings: In total, 92 agencies reported receiving requests for approximately 29,621 ethics documents. The remaining agencies reported not receiving any request during the specified time period.
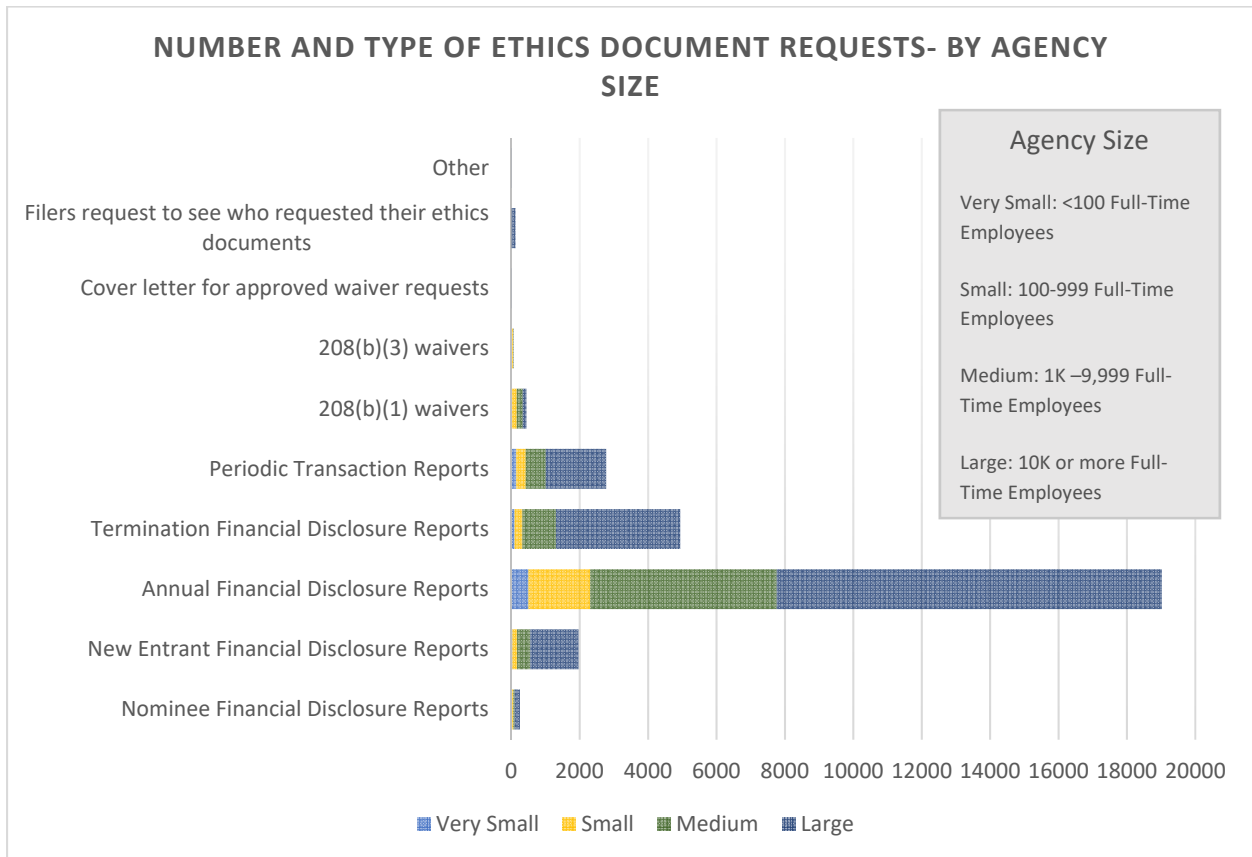
NUMBER AND TYPE OF ETHICS DOCUMENT REQUESTS- BY AGENCY SIZE

Agency Size

Very Small: <100 Full-Time Employees

Small: 100-999 Full-Time Employees

Medium: 1K –9,999 Full-Time Employees

Large: 10K or more Full-Time Employees

Categories (top to bottom): Other; Filers request to see who requested their ethics documents; Cover letter for approved waiver requests; 208(b)(3) waivers; 208(b)(1) waivers; Periodic Transaction Reports; Termination Financial Disclosure Reports; Annual Financial Disclosure Reports; New Entrant Financial Disclosure Reports; Nominee Financial Disclosure Reports

X-axis: 0, 2000, 4000, 6000, 8000, 10000, 12000, 14000, 16000, 18000, 20000

Legend: Very Small · Small · Medium · Large

Table 4

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[6] This number is characterized as approximate because several agencies noted in their response that they provided an approximate number or were not able to provide the number of all requests. These agencies noted receiving requests for "all" reports for certain individuals and "all" reports during a specific timeframe.

Key Findings: OGE analyzed the approximate number of requests for ethics documents received between April 2021 and April 2022 by agency size[7]and found that large agencies received 62 percent of the requests.

NUMBER OF DOCUMENTS RELEASED BY OGE

As the supervising ethics office, OGE is responsible for making available disclosures and related ethics documents for about 1,000 of the approximately 26,000 public filers in the executive branch. Also, OGE provides copies of certificates of divestitures issued to individuals in the executive branch.

During the time period covered by the data call (April 2021 – April 2022), **OGE processed approximately 24,000 requests to inspect nearly 46,000 ethics** documents, including public financial disclosure reports, periodic transaction reports, certificates of divestiture, and other covered records. OGE developed a searchable, sortable online system for ethics document release. The online system provides access for users to request documents and can be searched by an individual's name or agency.

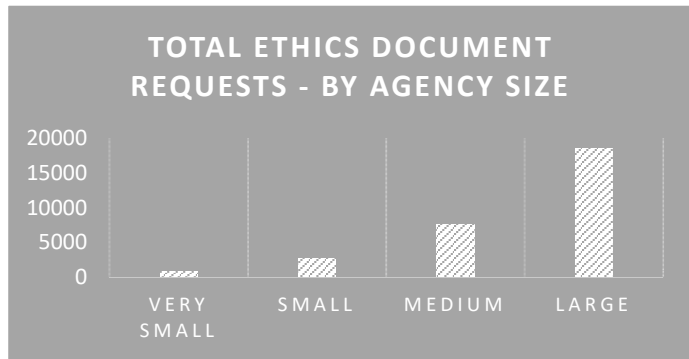**TOTAL ETHICS DOCUMENT REQUESTS - BY AGENCY SIZE**

Table 5

Question: OGE asked agencies whose ethics documents had been requested between April 2021 and April 2022.

Key Findings: The largest share of requests are for the ethics documents of Political Appointees, followed by Senior Executives (SES).
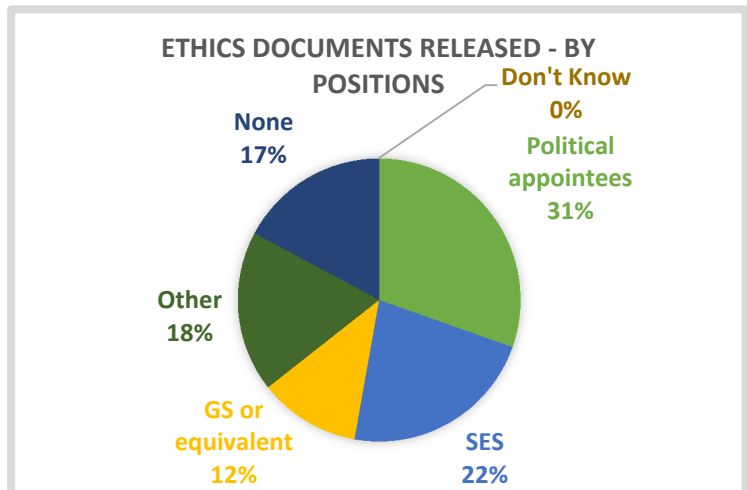
ETHICS DOCUMENTS RELEASED - BY POSITIONS

Don't Know 0%
Political appointees 31%
None 17%
Other 18%
GS or equivalent 12%
SES 22%

Table 6

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[7] OGE used data from the 2021 Annual Questionnaire to determine agency size. Three agencies (the CIA, NGA, and ODNI) do not provide the number of employees in their Annual Questionnaire response because the information is classified, therefore they are not included in the agency size comparisons.

APPENDIX

Agency Practices Data Call: Release of Ethics Documents under the Ethics in Government Act

Requests

1. Does your agency's website contain any of the following? Check all that apply.

    ☐ A link to OGE Form 201
    ☐ Contact information for submitting requests for ethics documents
    ☐ Automated processing of document requests
    ☐ Other (please describe)
    ☐ None of the above

2. Generally, how do requestors submit ethics document requests to your agency? Check all that apply.

    ☐ OGE Form 201
    ☐ A form your agency has created
    ☐ An email or mail containing the statutorily required information from the requestor (that person's name, occupation, address; the name and address of any other person or organization on whose behalf the inspection or copy is requested; that such person is aware of the prohibitions on the obtaining or use of the report. 5 U.S.C. app. § 105(a)(2)(A))
    ☐ Other (please describe)

3. Does your agency require requestors to list the individual's name whose ethics documents they are requesting in order to fulfill a request?

    ○ Yes – in all cases
    ○ Yes – in some cases (please explain)
    ○ No

    If yes:

    a. How do you provide information about which individuals have ethics documents that are available for request from your agency? Check all that apply.

        ☐ Provide a list on the agency website
        ☐ Release in response to a FOIA request
        ☐ Other (please describe)
        ☐ None of the above

b. What is you agency's rationale for requiring requestors to list the individual's name to fulfill a request?

Fulfillment

4.   Does the ethics office at your agency have primary responsibility for fulfilling requests for documents under the Ethics in Government Act?

     ○ Yes
     ○ No

If no:

a. Who has primary responsibility? _____

5.   Describe your agency's process for fulfilling ethics document requests under the Ethics in Government Act (e.g., receipt, routing, approval, release, tracking, records management, communications with requestors).

Tracking

6.   Does your agency track the number of days it takes to release documents under the Ethics in Government Act?

     ○ Yes – in all cases
     ○ Yes – in some cases
     ○ No
     ○ Don't know

If yes:

a. On average, how long would you estimate it takes to fulfill a request for a single ethics document? _____

b. What, if any, of the following increases the average time to fulfill a request? Check all that apply.

☐ Requests for more than one type of ethics document (e.g., financial disclosures, ethics agreements, waivers)
☐ Ethics documents for multiple individuals
☐ Ethics documents for individuals whose documents have not been requested before
☐ The number of ethics documents requested
☐ The time span of the ethics documents (e.g., an individual's documents over multiple years)
☐ How the request is submitted (e.g., online system, email, mail)

☐ Other (please describe)
☐ None of the above

7.   In the last 12 months, which of the following documents have been requested and, if known, what was the approximate number of requests for each kind of document? Check all that apply and fill in your estimate.

☐ Nominee financial disclosure reports
☐ # of Documents requested: _____
☐ New entrant financial disclosure reports
☐ # of Documents requested: _____
☐ Annual financial disclosure reports
☐ # of Documents requested: _____
☐ Termination financial disclosure reports
☐ # of Documents requested: _____
☐ Periodic transaction reports
☐ # of Documents requested: _____
☐ 208 (b)(1) waivers
☐ # of Documents requested: _____
☐ 208(b)(3) waivers
☐ # of Documents requested: _____
☐ Cover letter for approved waiver requests
☐ # of Documents requested: _____
☐ Filers request to see who requested their ethics documents
☐ # of Documents requested: _____
☐ Other_____
☐ No documents requested
☐ Don't track

8.   In the last 12 months, whose ethics documents have been requested? Check all that apply.

☐ Political appointees
☐ SES
☐ GS or equivalent
☐ Other (please describe)
☐ None
☐ Don't know

9.   Please share any known limitations on the data relied upon to respond to this survey.

10.   Please share any additional comments you may have, including any promising practices that you find to be helpful in responding to requests.