Chief FOIA Officer's Annual Report

Angelique M. Crumbly

Chief Freedom of Information Act Officer

March 2014

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.

FOIA Training

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

2. **If so, please provide the number of conferences or training held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.**

    In an effort to educate agency staff on their role in the FOIA process, the FOIA Public Liaison Officer and Lead Government Information Specialist conducted at least four (4) FOIA training sessions tailored for the Bureau for Management (M)/Office of Acquisition and Assistance (OAA) (M/OAA) staff, as the lion's share of the requests received seek acquisition and assistance related records. The class size for each session was an estimated 30 students. The training detailed the need to conduct thorough searches for records, identify and provide all responsive records to the FOIA Office, and the requirements of Executive Order 12,600 and the submitter notification process. Moreover, this FOIA training tailored for M/OAA is now a regular part of an agency course titled "The Essential Elements in Assistance."

    USAID also hosted a FOIA retreat for its agency Government Information Specialists. The retreat emphasized several critical processing areas. In that vein, a privacy expert from the Department of Labor addressed the topic of System of Records Notices and understanding Privacy Act exemptions paired with FOIA exemptions; representatives from the agency's FOIA database vendor shared updates, which will improve processing and reporting efficiencies; two (2) Department of Justice/Office of Information Policy attorneys provided a refresher of FOIA Exemptions 4 and 6, two (2) of USAID's frequently invoked exemptions; and the Director of the Office of Government Information Services (OGIS) provided guidance on customer service improvements and resourcefully resolving common FOIA issues.

3. **Did your FOIA professionals attend any FOIA training during the reporting period such as that provided by the Department of Justice?**

    Yes, USAID FOIA professionals participated in Department of Justice FOIA training, and two sessions provided by the American Society of Access Professionals (ASAP).

4. **Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period.**

   One hundred percent (100%) of USAID's FOIA professionals (Government Information Specialists) attended substantive FOIA training during the reporting period.

5. **OIP has issued guidance that every agency should make core, substantive FOIA training available to all of their FOIA professionals at least once a year. Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year.**

   USAID remains committed to training its FOIA professionals and funds Government Information Specialist American Society of Access Professionals (ASAP) memberships. Each year these professionals participate in ASAP FOIA training, in addition to Department of Justice training seminars, work-related agency courses and seminars hosted by other non-government vendors.

Outreach

6. **Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement.**

   The FOIA Public Liaison Officer and Lead Government Information Specialist participated in a Department of Justice/Office of Information Policy (DOJ/OIP) Requester "Fees" Roundtable. Both responded to questions presented by the requester community. Also, the Lead Government Information Specialist and one Senior Government Information Specialist participated in a DOJ/OIP Requester Roundtable about maximizing the administrative appeals process. In addition, the Government Information Specialists routinely dialogue with FOIA requesters on USAID's FOIA program and processes.

Discretionary Disclosures

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.

7. **Does your agency have a formal process in place to review records for discretionary release? If so, please briefly describe this process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases.**

   Currently, USAID looks closely at records where FOIA Exemption 5 may be invoked. When information is deemed deliberative, it is ordinarily withheld under Exemption 5. However, in order to seek opportunities for discretionary release, FOIA professionals consult with the

relevant program office, and General Counsel attorneys to consider if there is any foreseeable harm in the release of information. Through the collaborative analysis, the FOIA professionals ensure that the harm is clearly articulated and not abstract or speculative. If there is no clearly articulable harm, USAID will make a discretionary record release.

8. **During the reporting period did your agency make any discretionary releases of otherwise exempt information?**   Yes.

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

   The exemption that would have covered the information was FOIA Exemption 5.

10. **Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.**

   As a matter of discretion, USAID has released deliberative email communications, inter-agency memoranda, and draft materials.

11. **If your agency was not able to make any discretionary releases of information, please explain why.** Not applicable.

Other Initiatives

12. **Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014?** Yes.

13. **Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please provide links in your description.**

   USAID has an ongoing robust Open Government initiative. An Information Governance Committee was created, which comprises executive and senior agency leadership. The Committee identifies processes and recommends policy to release more data, information pursuant to the Open Government Act. See Section III of this report for more details on how USAID has increased proactive disclosures.

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." It is essential that agencies effectively manage their FOIA program.

Describe here the steps your agency has taken to ensure that your management of your FOIA program 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.

Personnel

During Sunshine Week 2012 OPM announced the creation of a new job series entitled the Government Information Series, to address the work performed by FOIA and Privacy Act professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

1. **Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series?**

    Yes, six (6) FOIA contractor positions were insourced and converted to U.S. direct-hire (USDH) Government Information Specialists (GIS) in FY 2013. Four (4) existing USDH FOIA professionals were converted to GIS. USAID has a total of 10 dedicated FOIA professionals classified as Government Information Specialists.

2. **If not, what proportion of personnel has been converted to the new job series?** Not applicable.

3. **If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted?** Not applicable.

Processing Procedures

4. **For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.**

    No. USAID's average number of days to adjudicate a request for expedited processing was 12.58 days. USAID will continue to prioritize request for expedited processing to facilitate adjudication within ten (10) days going forward.

5. **Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.**

    No. USAID receives a small amount of consultations and referrals which are already handled in an efficient manner on a case-by-case basis.

Requester Services

6. **Do you use e-mail or other electronic means to communicate with requesters when feasible?** Yes.

7. **Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?** Yes.

8. **Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc.**

    Many requesters seek "any and all" records and email communications. USAID's FOIA office has engaged the Bureau for Management (M), Office of the Chief Information Officer (CIO) (M/CIO) for viable solutions which would improve search processes and record retrieval times, in addition to more readily identifying responsive information within a series of communications and records. It is anticipated that this ongoing collaboration will result in improved efficiencies of operations and eliminate redundancies.

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 2013 to March 2014). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make proactive disclosures of information.

Posting Material

1. **Do your FOIA professionals have a system in place to identify records for proactive disclosures?** Yes.

2. **If so, describe the system that is in place.**

    For all new FOIA requests, the FOIA Registrar searches the FOIA database to identify similar record requests. If a similar record is identified, and it has been released at least two (2) times previously, then that record is considered for proactive disclosure. Additionally, USAID routinely identifies data sets and proactively discloses such information pursuant to the Government's Open Data Initiative.

3. **Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.**

The Foreign Assistance Dashboard (www.foreignassistance.gov) provides a view of U.S. Government foreign assistance funds and enables users to examine, research, and track aid investments in a standard and easy-to-understand format. The tool is designed to eventually integrate all U.S. Government foreign assistance budget, financial, and program data.

In FY 2013, for the first time ever, USAID released transaction-level financial data and information, totaling approximately 75,000 records across 30 data fields. Now, members of the public can download and search data themselves showing which vendors received Agency funding and how much they spent in a given time period. This information is also available in the IATI-compliant format (www.foreignassistance.gov/iati.aspx).

On March 20, 2013, USAID released the USAID Forward Progress Report highlighting the past year's successes and challenges. In a continued effort to improve transparency, USAID released the data behind the report on October 25, 2013, on the USAID Forward website (www.usaid.gov/usaidforward). USAID published data for six of the eight USAID Forward indicators at the country level; two of the eight were published at the vendor level.

On December 31, 2012, USAID launched a new website, Dollars to Results (D2R) (http://results.usaid.gov/), which linked money spent to results achieved in FY 2011 for 21 of USAID's performance management focus missions. The website was part of USAID's response to the President's Open Government Initiative. In December 2013, Missions signed off on updated D2R content, which includes data for FY 2012 and 16 additional missions.

As required by the Government Performance and Results Act Modernization Act of 2010, USAID and the Department of State publicly report, on a quarterly basis, on the progress of the joint FY 2012-2013 Agency Priority Goals on www.performance.gov.

Open Data

In response to Executive Order 13642 "Making Open & Machine Readable the New Default for Government Information," USAID began updating its process for identifying the Agency's data assets and refined procedures by which they will be reviewed to ensure that they contain no personally identifiable information, are devoid of data that might be a security risk to USAID personnel and/or its partners, and are documented adequately to facilitate public use. In anticipation of a November 30, 2013, deadline established under the Open Data Policy (M-13-13) by the Office of Management and Budget, USAID also began establishing criteria for determining which of its data assets would qualify for public listing. Making data available in standard, nonproprietary, and machine readable formats is also part of USAID's commitment to transparency under the IATI (www.aidtransparency.net).

Making Posted Material More Useful

4. **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, such as soliciting feedback on the content and presentation of posted material, improving search capabilities on the

site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.? Yes

5. **If so, provide examples of such improvements.**

   USAID makes data available in standard, nonproprietary, and machine readable formats, as well as IATI-compliant formats, where applicable.

   USAID uses a tool to solicit feedback on its information and data products. Users can interact with the data, see how others are using the data, and leave questions or comments. Customers can also fill out the USAID Comment and Contact form to leave comments or ask questions. When a customer fills out this form, it is routed to the appropriate contact at USAID who will then provide the customer with a response within five (5) business days. In FY 2013, USAID began planning to use this method to solicit feedback from the public on its Open Data Listing.

6. **Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized?**

   Yes, USAID used press releases and Agency Notices. Social media was not utilized for this effort.

7. **Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.**

   USAID has not faced any significant challenges.

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

   As indicated in Sections I and III, USAID is committed to openness and transparency and has increased the amount of data sets and information posted online.

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. Over the past several years agencies have reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2014, as we have done over the past years, the questions have been further refined and now also address different, more innovative aspects of technology use.

Online Tracking of FOIA Requests

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

    No. However, in Quarter 3 FY 2014, USAID is projected to launch a web portal Public Access Link (PAL) which will allow FOIA requesters to track the status of requests electronically.

2. **If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?**

    The tracking function will be provided through an online portal.

3. **Describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.**

    The web portal will specifically allow the FOIA requester to submit their request online; attach supporting documents; correspond with the Government Information Specialist assigned to their request; receive status updates; view the entire request submission history; and also receive the final response letter and documents. The portal will also allow the public to download frequently requested records from USAID's FOIA Library.

4. **In particular, does your agency tracking system provide the requester with an estimated date of completion for his/her request?** Yes

5. **If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability? If not, please explain why.**

    USAID is aggressively taking steps to establish online tracking capabilities and is projected to launch its web portal in Quarter 3, FY 2014.

Use of Technology to Facilitate Processing of Requests

6. **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?**   Yes.

7. **If so, describe the technological improvements being made.**

    The new web portal – Public Access Link – will enhance efficiency by allowing requesters to obtain status updates instantly. Additionally, document sharing platforms are used to facilitate ease of exchange and dissemination of information, internally and externally.

8. **Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program?**

> There are additional technological tools that would be helpful to achieving further efficiencies in USAID's FOIA program. Most notably, a software application that could scan responsive records, in particular email communications, and mark duplicates within the thread. This would help the Government Information Specialists (1) readily identify the duplicate communications and, (2) facilitate consistent withholding applications.

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 2013 Annual FOIA Report and, when applicable, use your agency's 2012 Annual FOIA Report.

Simple Track Requests

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.**

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

    b. **If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?**

    > No. However, the average number of days to process simple requests for Fiscal Year 2013 improved to 74.83 days from 163.02 days in Fiscal Year 2012.

    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?** Not Applicable.

Backlogs and "Ten Oldest" Requests, Appeals and Consultations

2. **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. Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative

3. 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 Years 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.

Backlogs

   a. **If your agency had a backlog of requests at the close of Fiscal year 2013, did that backlog decrease as compared with Fiscal Year 2012?** No.

   b. **If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?** Yes.

Ten Oldest Requests

   c. **In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?** Yes.

   d. **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 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed two of them, you should note that you closed two out of seven "oldest" requests.** Not applicable.

Ten Oldest Appeals

   e. **In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?** Yes.

   f. **If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C.(5) of your Fiscal Year 2012 Annual FOIA Report.** Not applicable.

Ten Oldest Consultations

   g. **In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012?** Yes.

   h. **If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report.** Not applicable.

Reasons for Any Backlogs

4. **If you answered "no" to any of the questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:**

   <u>Request and/or Appeal Backlog</u>

   a. **Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals?**

      Yes. USAID received 105 more requests in Fiscal Year 2013 (372 received) than in Fiscal Year 2012 (267 received).

   b. **Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff?** No.

   c. **Was the lack of a reduction in the request and/or appeal backlog caused by an increase in the complexity of the requests received?** No.

   d. **What other causes, if any, contributed to the lack of a decrease in the request and/or appeal backlog?** None.

   <u>"Ten oldest" Not Closed</u>

   e. **Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012.** Not applicable.

   f. **If your agency was unable to close any of its ten oldest requests or appeals 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.** Not applicable.

Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs

Given the importance of these milestones, it is critical that Chief FOIA Officers assess the causes for not achieving success and create plans to address them.

5. **If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2014.** Not applicable.

6. **If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency's plan for achieving backlog reduction in the year ahead.** Not applicable.

Interim Responses

OIP has issued guidance encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information.

7. **Does your agency have a system in place to provide interim responses to requesters when appropriate?** Yes.

8. **If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.**

    Of the 233 backlogged requests, an estimated 20 cases received a substantive interim response during Fiscal Year 2013, even though these requests were not finally closed.

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 2013?** No.

2. **If so, what is the total number of times exclusions were involved?** Not applicable.

Out of all the activities undertaken by your agency since March 2013 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas. As noted above, these agency success stories will be highlighted during Sunshine Week by OIP.   To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

- In accordance with the Attorney General's guidelines, USAID closed its ten oldest requests, appeals and consultations. To do so, an "Oldest Ten Taskforce" (Taskforce) was created to focus on these complex requests. The Taskforce worked these requests while simultaneously processing their ordinary case loads.

- USAID reduced the number of administrative appeals received. In Fiscal Year 2012, USAID received 18 administrative appeals and this number was reduced by 50% to nine (9) administrative appeals received in Fiscal Year 2013. The adoption of an "appeal proof" approach, entailing sound and legally defensible analyses yielded comprehensive, detailed release determinations letters and redacted records which led to the reduction of appeals.

- USAID launched a "Records Management & Access" agency-wide training. The Records Management Training has been a long-standing training at USAID. However, to build upon the importance of records management when searching for agency records in response to a FOIA request, the "Access" or FOIA component was added to what is now a week-long training. The FOIA portion expounds upon the importance of FOIA for all agency staff and not just the Government Information Specialists who process FOIA requests 100% of the time. The training includes a FOIA overview, how to scope a request, how to conduct a search for responsive records, and the importance of an administrative record.