

# 2023 Chief FOIA Officer Report of the Federal Communications Commission

## P. Michele Ellison, General Counsel and Chief FOIA Officer

The Federal Communications Commission (FCC or Commission) is an independent regulatory agency. It was established by the Communications Act of 1934 and is charged with regulating interstate and international communications by radio, wire, satellite, and cable. It is directed by five Commissioners nominated by the President and confirmed by the United States Senate. The President designates one of the Commissioners as Chair, who acts as the chief executive officer of the agency. The FCC is organized by function into seven operating Bureaus and twelve Staff Offices. Implementation of the Freedom of Information Act (FOIA) is the responsibility of all FCC components, as FOIA requests are processed by the Bureau or Office that is the custodian of the records sought. The Commission's General Counsel is the FCC's Chief FOIA Officer. As specified in the *Guidelines for 2023 Chief FOIA Officer Reports*, the general reporting period for this Chief FOIA Officer (CFO) Report is March 2022 to March 2023. The FCC conducted a review of its administration of the FOIA and analyzed the data from its FOIA Annual Report from Fiscal Year 2022 (October 1, 2021, to September 30, 2022), supplemented by data gathered for the period through March 2023. The FCC's performance demonstrates its commitment to openness and proactive disclosure and its ongoing efforts at self-assessment and improvement of its FOIA program. Highlights of this review and analysis include:

- The agency was able to conduct its FOIA program in an effective and timely manner under pandemic-related telework policies in effect during the entire reporting period.
- Consistent with the FOIA Improvement Act of 2016 and Department of Justice (DOJ) guidance, the FCC granted (in full or in part) 289 FOIA requests, or 56.9% of 508 requests processed, in FY 2022.
- The agency's average response time for simple track initial FOIA requests was 17.17 days in FY 2022. This is the sixth year in a row that the agency has met and exceeded the DOJ's 20-day benchmark.
- The number of pending appeals at the end of FY 2022 remains low at 10.
- The average response time for expedited processing requests was 6.62 days in FY 2022, decreasing from 7.83 days in FY 2021 and remaining under the 10-day benchmark for the seventh year in a row.
- In FY 2022, the FCC again reported a low number of year-end backlogged FOIA requests: 33 of 508 processed.
- The agency pro-actively posted on its website more than 10 million records in FY 2022.

### **Section I: FOIA Leadership and Applying the Presumption of Openness**

The guiding principle underlying the Attorney General's [FOIA Guidelines](#) is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

## A. Leadership Support for FOIA

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. See 5 U.S.C. § 552(j)(1) (2018). Is your agency's Chief FOIA Officer at or above this level?

Yes.

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

P. Michele Ellison, FCC General Counsel, is the agency's Chief FOIA Officer.

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

Effective FOIA administration is central to Goal 6 of the *FCC Strategic Plan Fiscal Years 2022-2026*, Foster Operational Excellence. The Office of the Managing Director (OMD) and Office of General Counsel (OGC) have primary responsibility to administer the FCC's FOIA program, and more generally support the FCC's mission regulating interstate and international communications by radio, television, wire, satellite, and cable. The FCC is the United States' primary authority for communications law, regulation, and technological innovation.

## B. Presumption of Openness

4. The Attorney General's 2022 FOIA Guidelines provides that "agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions." Does your agency provide such confirmation in its response letters?

Yes. Pursuant to established practice, FCC FOIA response letters must expressly consider the foreseeable harm standard as applicable to responsive records. The OGC reviews every draft agency FOIA response letter and any responsive records prior to release to ensure, among other things, that the foreseeable harm standard has been addressed expressly and appropriately.

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interest protected by a FOIA exemption. This is commonly referred to as a *Glomar* response. With respect to these responses, please answer the below questions:

- a. In addition to tracking the asserted exemption, does your agency specifically track whether a request involved a *Glomar* response?
- b. If yes, please provide:
  - i. the number of times your agency issued a full or partial *Glomar* response (separate full and partial if possible);
  - ii. the number of times a *Glomar* response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).
- c. If your agency does not track the use of *Glomar* responses, what would your agency need to do to track in the future? If possible, please describe the resources and time involved.

The FCC has not used *Glomar* responses during the reporting period and in the last several years; based on past experience, does not anticipate doing so in FY 2023. Therefore, the agency does not have a formal process for tracking such responses and does not plan to add tracking during FY 2023. However, if the agency were to adopt a formal system for tracking *Glomar* responses, it would need to assess the feasibility of adding a software feature to its FOIA system and would

need to explore the relative time and personnel resources that would be required for such an undertaking given the dearth of *Glomar* responses issued by the agency.

6. Optional -- If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

One key focus has been ensuring ongoing training and professional development of FOIA staff. During the reporting period, the FOIA Service Center, in conjunction with the OGC, transmitted new guidance to staff with FOIA responsibilities throughout the FCC, specifically providing the March 15, 2022 Attorney General's Memorandum. The guidance highlighted, among other things, the Memorandum's discussion of the presumption of openness and reminded staff of the obligation to apply the presumption.

## **Section II: Ensuring Fair and Effective FOIA Administration**

The Attorney General's [FOIA Guidelines](#) provide that "[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of FOIA obligations by the entire agency workforce." The Guidelines reinforce longstanding guidance to "work with FOIA requesters in a spirit of cooperation." The Attorney General also "urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency's FOIA administration" as part of ensuring fair and effective FOIA administration.

### **A. FOIA Training**

1. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

During the reporting period, the Commission has undertaken a variety of tangible efforts to ensure appropriate FOIA training for relevant staff. The FCC requires all agency staff to take a Records Management training course annually, as described in more detail below. The agency also offered additional targeted training. For example, on July 13, August 18, and December 6, 2022, OGC conducted virtual training providing a basic overview of the FOIA and the procedural requirements involved in processing a FOIA request. On December 8, 2022, the OMD Performance Evaluation and Records Management (OMD-PERM) conducted training for new staff regarding agency programs and requirements, including administration of the agency's FOIA program, for which OMD-PERM is responsible. In addition, the FOIA Service Center, housed in the FCC's OMD, routinely shares information about DOJ FOIA Training sessions with the agency's FOIA professionals and other staff with FOIA responsibilities, and numerous staff with substantial FOIA responsibilities attended one or more of these FOIA sessions during the reporting period.

Tailored FOIA training for the agency's Bureaus and Offices is conducted on request. In addition, the FOIA Service Center maintains an ongoing training program, providing individual FOIA training to any staff on request. The agency made updates to its FOIA Intranet page, which makes available to all staff a number of FOIA training materials on demand. Significant revisions to these materials were provided directly to all staff with FOIA responsibilities.

2. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend substantive FOIA training during the reporting period such as that provided by the Department of Justice?

Yes. As explained in more detail in the response to Question 5 below, the agency's FOIA professionals and other staff attended training offered by the DOJ's Office of Information Policy (OIP) and the FCC.

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

- DOJ FOIA Training:

- FOIA Tech Showcase Follow Up Workshop - March 31, 2022
- Virtual Introduction to the Freedom of Information Act - April 6, 2022
- Virtual Processing from Start to Finish Workshop - April 19, 2022
- Virtual Procedural Requirements and Fees Training - May 3, 2022
- Virtual FOIA Summit for Agency FOIA Professionals - May 4, 2022
- Virtual Litigation Workshop - May 11, 2022
- Virtual Exemption 1 and Exemption 7 Training - June 1, 2022
- Virtual Exemption 4 and Exemption 5 Workshop - June 14, 2022
- Virtual Privacy Considerations Training - July 7, 2022
- Virtual Continuing FOIA Education - July 12, 2022
- Virtual Annual/Quarterly FOIA Report Training - October 4, 2022
- Virtual Chief FOIA Officer Report Training - October 18, 2022
- Virtual Introduction to the Freedom of Information Act - November 8, 2022
- Virtual Freedom of Information Act Litigation Seminar - November 9, 2022
- Virtual Procedural Requirements and Fees Training - December 6, 2022
- Virtual Exemption 1 and Exemption 7 Training - January 11, 2023
- Virtual Exemption 4 and Exemption 5 Training - January 18, 2023
- Virtual Privacy Considerations Training - January 25, 2023
- Virtual Advanced Freedom of Information Act Training - February 8, 2023

- On July 13 and August 18, 2022, OGC conducted virtual training titled, "Freedom of Information Act (FOIA) Workshop: What FCC Employees Need to Know," providing a basic overview of the FOIA and the procedural requirements involved in processing a FOIA request. The training was offered agency-wide and intended for staff with FOIA responsibilities. On December 6, 2022, OGC conducted a similar training session for staff of the International Bureau.

- On December 8, 2022, the OMD Performance Evaluation and Records Management (OMD-PERM) conducted training for new staff regarding agency programs and requirements, including administration of the agency's FOIA program, for which PERM is responsible.

- The FCC mandates an annual Records Management training course for all agency staff. The National Archives and Records Administration (NARA) also requires mandatory annual records management training for all agency personnel including federal employees, contractors, volunteers, and others that create, receive, access, or use Federal records on behalf of the agency. The course is offered by video on demand through the agency's Intranet. The agency monitors completion of this mandatory training requirement.

- FOIA training materials are widely available to all staff, including staff with FOIA responsibilities, on demand through the agency's Intranet. Among these are a FOIA Overview; detailed information from the joint DOJ - FCC training held onsite several years ago; FOIAonline resources including the FOIAonline User Training Manual, FOIAonline coordinator list and best practices, as well as a detailed FOIA "Things to Remember" worksheet for issuing initial responses.

4. Please provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

All of the FCC's FOIA professionals and staff with FOIA responsibilities attended at least one FOIA training session during the reporting period.<sup>1</sup>

5. 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.

Not applicable.

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and if senior leaders at your agency received a briefing on your agency's FOIA resources, obligations and expectations during the FOIA process?

The agency has ongoing efforts in both these areas. The agency's internal and public FOIA webpages provide detailed information for employees who are not FOIA professionals, but may need to provide records in response to a FOIA request or who are otherwise incidentally involved in the FOIA process. For instance, the FCC's internal FOIA webpage provides contact information for staff FOIA experts in the agency's FOIA Service Center, OGC, and component Bureaus and Offices, as well as links to the FOIA training and materials described above that are available to all staff. As indicated above, the agency's OGC offers specialized FOIA training sessions to the Bureaus and Offices upon request.

OGC engages with agency senior leadership on a regular basis regarding FOIA responsibilities, including backlogs and other pending FOIA issues. In addition, the FOIA Service Center issued weekly reports to agency staff with FOIA responsibilities, and monthly reports to senior staff in the Bureaus and Offices, showing the status of pending FOIA requests throughout the reporting period.

## **B. Outreach**

7. Did your FOIA professionals engage in any outreach or dialogue, outside of the standard request process, 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. The FOIA Service Center encourages dialogue with any member of the requester community prior to filing in FOIAonline, to help the requester more reasonably describe and clarify the request. This pre-filing consultation helps both to direct requesters to publicly-available records that can be accessed immediately and outside of the standard FOIA request process and to improve the efficient routing of FOIA requests once filed. Some frequent requesters contact the FOIA Service Center regularly prior to filing to discuss the type of information at issue and where it may likely be found, so that the information sought is reasonably described and the appropriate custodian Bureau or Office is identified in the filed request, thus reducing processing delays. Additionally, the FOIA Service Center engages in post-filing consultations in many cases where a request in FOIAonline does not meet the requirements of a properly filed FOIA request.

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<sup>1</sup> All individuals with substantial FOIA responsibilities attended the mandatory Records Management training course. As indicated above, in addition, numerous staff with substantial FOIA responsibilities attended the remaining FOIA sessions listed in response to Question 3.

8. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue, and, if applicable, any specific examples.

Yes. It is standard practice for agency staff to contact requesters proactively to clarify or narrow the scope of complex or voluminous requests. In addition to reducing processing time, such outreach can serve to more clearly identify the records sought and to reduce processing fees. For example, in multiple cases during the reporting period staff contacted the requester and explained that materials publicly available on the Commission's website were responsive to the request, and offered further assistance to locate the records, revise the request to identify additional records sought, or withdraw the request. In another example, staff proactively contacted multiple requesters who sought copies of consumer complaints filed with the FCC and explained that the responsive records were voluminous and offered assistance to help reduce processing time or estimated fees. In response, the requesters in many instances narrowed their requests by subject matter or time period or agreed to receive responsive records on a rolling basis.

9. 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 Fiscal Year 2022 (please provide a total number or an estimate of the number).

We estimate 45 occasions on which requesters sought assistance from the FOIA Public Liaison. These requests typically seek the status of a pending FOIA request or seek help utilizing databases and other information provided on the FCC's website. Such requests were promptly addressed, either directly by the FOIA Public Liaison or by routing to the appropriate Bureau or Office staff, who are asked to follow up with the FOIA Public Liaison when the request is resolved. (Note: This figure does not include multiple exchanges with the requester that may have followed, or the multiple requests by the FOIA Public Liaison to other agency Bureaus and Offices to resolve the initial assistance request.)

### **C. Other Initiatives**

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

Yes. The agency reviews its personnel resources on an ongoing basis to meet its program objectives, including FOIA. FOIA responsibilities are assigned to full-time FOIA staff, as well as to other staff, on an as-needed basis to meet variations in the FOIA workload. During the reporting period and as part of its overall workforce planning efforts, the agency initiated the process to hire additional FOIA professionals in light of retirements and other departures.

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

Weekly and monthly reporting on FOIA processing is an important best practice successfully implemented by the agency. The FOIA Service Center actively tracks individual FOIA requests and issues weekly informational reports to agency FOIA professionals showing FOIA requests that are backlogged, soon-to-be backlogged, or on hold, thus facilitating timely staff action and improving agency performance. The FOIA Service Center also circulates to senior staff in the Bureaus and Offices monthly reports showing the status of pending FOIA requests, ensuring appropriate oversight within each organizational unit.

12. Optional-- If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.

As indicated above, during the reporting period, the FOIA Service Center, in conjunction with the OGC, transmitted new guidance to staff with FOIA responsibilities throughout the FCC, including the March 15, 2022 Attorney General's Memorandum. The guidance highlighted the Memorandum's discussion of the presumption of openness and other guidelines to update and strengthen the federal government's commitment to the fair and effective administration of FOIA.

### **Section III: Proactive Disclosures**

The Attorney General's [FOIA Guidelines](#) emphasize that "proactive disclosure of information is . . . fundamental to the faithful application of the FOIA." The Guidelines direct agencies to post "records online quickly and systematically in advance of any public request" and reiterate that agencies should post records "in the most useful, searchable, and open formats possible."

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

As an agency receiving fewer than 1,000 FOIA requests per year, the Commission informally identifies records that are required to be proactively disclosed and posts material proactively beyond the requirements of the statute. The Commission has adopted a three-pronged strategy on proactive disclosures. First, in accordance with the requirements of the FOIA Improvement Act of 2016, the agency posts in its electronic FOIA reading room records that have been requested three or more times. Second, and more broadly, the electronic FOIA reading room lists records disclosed in response to a FOIA request that the agency determines have become, or are likely to become, the subject of subsequent requests for substantially the same records. In addition, it is the FCC's policy to post on its website any information that is of general interest to the public so long as there are no national security, law enforcement, legal, or privacy issues that prohibit its dissemination. The inventory of website content disclosed pursuant to this policy is available online at <https://www.fcc.gov/general/website-inventory-priorities-and-schedules>.

2. Provide examples of any 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.

- Freedom of Information Act (FOIA) Electronic Reading Room – The Commission maintains a webpage among other things listing records disclosed in response to FOIA requests that the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records. <https://www.fcc.gov/general/freedom-information-act-electronicreading-room>
- Connectivity Programs – The Commission launched several new and updated webpages related to connectivity programs: Affordable Connectivity Outreach Grant Program: <https://www.fcc.gov/acp-grants>; Affordable Connectivity Pilot Programs: <https://www.fcc.gov/affordable-connectivity-pilot-programs>; Affordable Connectivity Program Social Media: <https://www.fcc.gov/affordable-connectivity-program-social-media>; Emergency Connectivity Fund Social Media Images: <https://www.fcc.gov/emergency-connectivity-fund-social-media-images>; Tribal Libraries: <https://www.fcc.gov/tribal-libraries>; Tribal Libraries E-Rate Cheat Sheet: <https://www.fcc.gov/tribal-libraries-e-rate-cheat-sheet>; Tribal Libraries E-Rate Pilot Program: <https://www.fcc.gov/tribal-libraries-e-rate-pilot-program>
- Consumer Guidance – The Commission launched new and updated webpages providing consumer outreach and guidance: 988 Suicide and Crisis Lifeline: <https://www.fcc.gov/988-suicide-and-crisis-lifeline>; 988 Suicide and Crisis Lifeline Social Media: <https://www.fcc.gov/988-suicide-and-crisis-lifeline-social-media>; Broadband Data Collection Consumer Information: <https://www.fcc.gov/BroadbandData/consumers>; Broadband Data

Collection Help Center: [https://www.fcc.gov/BroadbandData/governments](https://help.bdc.fcc.gov/hc/en-us;_Broadband Data Collection Information for Governments: <a href=); Compliance Guides for Small Businesses: <https://www.fcc.gov/communications-business-opportunities/compliance-guides-small-businesses>; Consumer FAQ: Rules for Service Providers in Multiple Tenant Environments: <https://www.fcc.gov/consumers/guides/consumer-faq-rules-service-providers-multiple-tenant-environments>; National Broadband Map Outreach Toolkit: <https://www.fcc.gov/national-broadband-map-outreach-toolkit>; Broadband Data Collection: <https://www.fcc.gov/BroadbandData>; Broadband Data Collection Privacy Act Statement: <https://www.fcc.gov/BroadbandData/privacy>; Broadband Data Collection Resources: <https://www.fcc.gov/BroadbandData/resources>; Broadband Data Collection System: <https://bdc.fcc.gov/>; National Broadband Map: <https://broadbandmap.fcc.gov>; Task Force to Prevent Digital Discrimination (plus 5 translations): <https://www.fcc.gov/task-force-prevent-digital-discrimination>

- Public Safety Guidance – The Commission launched new and updated webpages providing communications-related public safety guidance: Communications Assistance for Law Enforcement Act: <https://www.fcc.gov/public-safety-and-homeland-security/policy-and-licensing-division/general/communications-assistance>; Cybersecurity for Small Businesses: <https://www.fcc.gov/communications-business-opportunities/cybersecurity-small-businesses>; Hearing on Impact to Communications of Hurricanes Fiona and Ian: <https://www.fcc.gov/hearing-impact-communications-hurricanes-fiona-and-ian>; Hurricane Fiona: <https://www.fcc.gov/fiona>; Hurricane Ian: <https://www.fcc.gov/ian>; Hurricane Nicole: <https://www.fcc.gov/nicole>; NM Wildfires May 2022: <https://www.fcc.gov/nm-wildfires-may-2022>; Outage Information Sharing: <https://www.fcc.gov/outage-information-sharing>; Puerto Rico Power Outage - April 2022: <https://www.fcc.gov/PR-Power-Outage-2022>; Wireless Network Resiliency During Disasters: <https://www.fcc.gov/wireless-network-resiliency-during-disasters>
- Mergers and Acquisitions – The Commission established new webpages devoted to mergers and acquisitions: DISH Build-out Monitoring, WT Docket 22-212: <https://www.fcc.gov/transaction/dish-build-out-monitoring>; Standard General and Tegna, MB Docket 22-162: <https://www.fcc.gov/transaction/standard-general-teгна>; T-Mobile Condition Monitoring, WT Docket 22-211: <https://www.fcc.gov/transaction/t-mobile-condition-monitoring>; Verizon – TracFone Condition Monitoring, WT Docket 22- 210: <https://www.fcc.gov/transaction/verizon-tracfone>
- Regulation and Enforcement – The Commission established new and updated webpages devoted to regulation and enforcement: Broadband Consumer Labels: <https://www.fcc.gov/broadbandlabels>; CIS Lease Agreements by Correctional Facility: <https://www.fcc.gov/wireless/bureau-divisions/mobility-division/contraband-wireless-devices/cis-lease-agreements>; FCC-State Robocall Investigation Partnerships: <https://www.fcc.gov/fcc-state-robocall-investigation-partnerships>; Robocall Facilitators Must Cease and Desist: <https://www.fcc.gov/robocall-facilitators-must-cease-and-desist>; Unwanted Communications: Robocalls, Caller ID Spoofing, and Do-Not-Call Registry: <https://www.fcc.gov/enforcement/topics/unwanted-communications>
- Reports and Working Papers – The Commission established new webpages devoted to reports and working papers: Communications Marketplace Report: <https://www.fcc.gov/communications-marketplace-report>; Measurement Error and Misspecification in Demand-Based Diversion Ratios – Working Paper: <https://www.fcc.gov/reports-research/working-papers/measurement-error-and-misspecification-demand-based-diversion-ratios>
- Social Media – The Commission established new webpages for recent news and events: New Events: <https://www.fcc.gov/news-events/events/archived>; New Notes: <https://www.fcc.gov/news-events/notes>. The Commission also participates in several social media platforms to interface with the public on a daily basis. FCC accounts on platforms including LinkedIn, Facebook, Twitter, and YouTube regularly update and provide the public with FCC news and releases: <https://www.fcc.gov/consumers/social-media>, <https://www.fcc.gov/news-events/social-media>.



3. 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.

4. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

The FCC's policy on open data is showcased in an "Open Government at the FCC" webpage. The webpage features the FCC's flagship initiative, "Measuring Broadband America," an ongoing nationwide performance study of broadband service in the United States that developed out of a recommendation by the National Broadband Plan to improve the availability of information for consumers about their broadband service. This program is built on principles of openness and transparency. The FCC has made available to stakeholders and the general public the open source software used on both its fixed and mobile applications, the data collected, and detailed information regarding the FCC's technical methodology for analyzing the collected data. More information about "Measuring Broadband America" is available at:

<https://www.fcc.gov/general/measuring-broadband-america>.

The "Open Government at the FCC" webpage provides further links, including: 1) FCC Open Data, enabling public innovation by publishing data underlying FCC regulatory proceedings and activities with a focus on improving quality, openness, accessibility and utility, including a link to several FCC datasets that can be downloaded; 2) FCC Developers Page, promoting the innovative application of FCC data by connecting developers with the tools they need to unlock government data, including a link to several FCC developer application programming interfaces; 3) FCC Digital Strategy, discussing the agency's participation in federal cross-agency initiatives to increase data usability and consumption; 4) FCC Data and Information Officers, a roster of FCC staff members dedicated to providing data and information; and 5) FCC blog posts on open government. The webpage may be accessed at <https://www.fcc.gov/general/open-government-fcc>.

5. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

Yes. Proactive disclosures at the FCC involve a wide range of staff across its various component Bureaus and Offices. These staff routinely identify records for proactive disclosure consistent with standard FCC procedures and post material proactively beyond the requirements of the statute.

6. Optional -- Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.

One best practice to highlight is the agency's efforts to increase public awareness of available information that the agency proactively discloses. The FCC participates in numerous social media and e-mail subscription services through which, among other things, it publicizes proactive disclosures for public awareness. These include Facebook, Twitter, Instagram, YouTube, and others. For instance, the FCC maintains over fifty RSS feeds, by which users can receive automatic updates covering actions by individual bureaus and offices and numerous types of FCC documents and databases. Users can also receive this information by email subscription.

#### **Section IV: Steps Taken to Greater Use Technology**

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's [FOIA Guidelines](#) emphasize the importance of making FOIA websites easily navigable and complying with the [FOIA.gov](#) interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

Yes. During the reporting period, the agency began planning to transition to ArkCase, a new and more robust FOIA system, and to de-commission its current system, FOIAonline. This change is scheduled to take place on July 1, 2023. More generally, the agency reviews its FOIA-related technological capabilities on an ongoing basis to meet its program objectives. To that end, throughout the reporting period, agency FOIA and IT staff have engaged in substantive discussions regarding current and prospective technological capabilities as applied to FOIA obligations.

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program.

As indicated above, during the reporting period, the agency began planning to transition to ArkCase, a new and more robust FOIA system, and to de-commission its current system, FOIAonline. This change is scheduled to take place on July 1, 2023.

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.

FCC IT staff have access to Microsoft eDiscovery, a search tool for content in other MS programs, such as OneDrive, SharePoint, Teams, and Microsoft 365 Groups, which is used to support the FOIA program in select instances as IT resources permit. To facilitate more widespread usage of eDiscovery, the FCC is considering making eDiscovery available to staff with FOIA responsibilities, and a group of staff participated in pilot testing in August 2022 and training in October 2022. In addition, as noted above, the FCC is scheduled to transition to a new FOIA system during FY 2023 that is expected to have comprehensive document management capability, including automatic conversion to pdf format. Additionally, it is the agency's understanding that the new FOIA system will also support predictive coding and assisted review. Because these initiatives have not yet been implemented or their contours fully defined, it is not possible to estimate the time and financial resources that would be saved.

As previously reported, the agency's FOIA professionals are able to convert documents, emails, and other conventional digital materials to a pdf format automatically using Adobe Acrobat Pro software. This software provides a full range of FOIA processing tools, including redaction marking and application, FOIA exemption labeling, and deduplication using character searches. The software also enables documents to be provided in digital form to requesters without the need to scan or provide paper copies. For very large volume productions, the Commission has made use of file hosting services to provide records to requesters, rather than sending such records over multiple e-mails or on physical media.

4. 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. The agency's FOIA website addresses the elements noted in the OIP 2017 guidance. As previously reported, there is a clear link to the agency's FOIA webpage, <https://www.fcc.gov/foia>, appended at the bottom of all FCC webpages. Additionally, the FOIA webpage can also be accessed directly from the OGC page on the FCC's website. The FOIA webpage includes, as recommended in the OIP guidance, links to: (i) the electronic reading room containing, among other things, links to proactive disclosures; (ii) instructions to the public on how to make a request or to contact the agency about an existing request; and (iii) links to the Commission's Annual FOIA Reports and Chief FOIA Officer Reports, among other reports. The agency's FOIA webpage also includes summary graphs of the annual and quarterly FOIA reports, the agency's FOIA reference guide and regulations, FOIA text, and the Department of Justice FOIA guide.

5. Did all four of your agency's [quarterly reports](#) for Fiscal Year 2022 appear on FOIA.gov?

Yes.

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2023.

Not applicable.

7. 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 2021 Annual FOIA Report and, if available, for your agency's Fiscal Year 2022 Annual FOIA Report.

For the agency's FY 2021 and FY 2022 Annual FOIA Reports, please see <https://www.fcc.gov/reports-research/reports/annual-foia-reports/freedom-information-act-annual-report-fy-2021> and <https://www.fcc.gov/reports-research/reports/annual-foia-reports/freedom-information-act-annual-report-fy-2022>.

8. In February 2019, DOJ and OMB issued joint [Guidance](#) establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

Yes. As required under the FOIA Improvement Act of 2016, in May 2019, the agency submitted to the DOJ its plan to meet the National FOIA Portal's interoperability requirement using FOIAonline. The agency completed implementation of its interoperability plan during the current reporting period.

9. Optional -- Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

One best practice used by the FCC is that the FOIA Service Center meets on a monthly basis with other government users of FOIAonline to share knowledge and strategies for effective use of the program. In addition, for very large volume productions, the Commission has made use of file hosting services to provide records to requesters, rather than sending such records over multiple e-mails or on physical media.

## **Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness in Responding to Requests, and Reduce Backlogs**

The Attorney General's [FOIA Guidelines](#) instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

## **A. Remove Barriers to Access**

1. Has your agency established alternative means of access to first-party requested records outside of the FOIA process?

Yes.

2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.

First-party requests for records may be made under the Privacy Act or the FOIA. For example, a party may request under either statute records of consumer complaints that they filed with the FCC regarding their phone or Internet service. Both FOIA and Privacy Act requests are processed electronically in FOIAonline currently and, once the agency completes the transition from FOIAonline, will be processed in ArkCase.

## **B. Timeliness**

3. For Fiscal Year 2022, 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 2022 Annual FOIA Report.

6.62 days.

4. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2022 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Not applicable.

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

Yes. The agency's multi-track system consists of simple, complex, and expedited tracks.

6. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2022?

Yes. 17.17 working days.

7. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?

Not applicable.

8. Please provide the percentage of requests processed by your agency in Fiscal Year 2022 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100.

81.3% of requests processed by the FCC in FY 2022 were placed in the simple track, or 413 of 508 total requests processed.

9. 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?

Not applicable.

## **C. Backlogs**

### **BACKLOGGED REQUESTS**

10. If your agency had a backlog of requests at the close of Fiscal Year 2022, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

No. The agency reported a backlog of 33 requests at the close of FY 2022. It reported 21 backlogged requests at the end of FY 2021.

11. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2022 than it did during Fiscal Year 2021?

No. The agency processed 537 requests during FY 2021 and 508 requests during FY 2022.

12. If your agency's request backlog increased during Fiscal Year 2022, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming requests
- A loss of staff
- An increase in the complexity of the requests received (if possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase)
- Impact of COVID-19 and workplace and safety precautions
- Any other reasons – please briefly describe or provide examples when possible

The agency's FY 2022 backlog remains relatively low. We attribute the increase mainly to the competing workload priorities confronting component Bureaus and Offices, many of which have lost key staff members, and in some cases to delays associated with inter-agency FOIA consultations. In addition, many of the backlogged FOIA requests present complex issues or involve significant volumes of records for review for review and processing.

13. 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 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A."

The request backlog is 6.31%, or 33 of 523 incoming initial FOIA requests.

### **BACKLOGGED APPEALS**

14. If your agency had a backlog of appeals at the close of Fiscal Year 2022, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

No. The number of backlogged appeals increased from 7 at the end of FY 2021 to 10 at the end of FY 2022.

15. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2022 than it did during Fiscal Year 2021?

No. The number of appeals processed decreased from 17 during FY 2021 to 7 during FY 2022.

16. If your agency's appeal backlog increased during Fiscal Year 2022, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming appeals
- A loss of staff
- An increase in the complexity of the requests received (if possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase)
- Impact of COVID-19 and workplace and safety precautions
- Any other reasons – please briefly describe or provide examples when possible

The agency's FY 2022 backlog of 10 appeals remains relatively low. We attribute the backlog mainly to the complexity attendant to some of the appeals, while others are in ongoing settlement discussions involving voluminous numbers of potentially responsive records. We also note that loss of staff contributed to the accrual of backlogged appeals during FY 2022.

17. 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 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2022 and/or has no appeal backlog, please answer with "N/A."

111.11%. As noted, the appeals that are backlogged often involve complex issues and, in some cases, a high volume of records; while the agency generally endeavors to resolve appeals through settlement, some of the agency's backlogged appeals are unlikely to be resolvable through informal negotiations.

## **D. Backlog Reduction Plans**

18. In the 2022 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1,000 requests in Fiscal Year 2021 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your 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 2022?

Not applicable.

19. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2022, please explain your agency's plan to reduce this backlog during Fiscal Year 2023.

Not applicable.

## **E. Reducing the Age of Requests, Appeals, and Consultations**

### **TEN OLDEST REQUESTS**

20. In Fiscal Year 2022, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2021 Annual FOIA Report

No. Six of the ten oldest requests that were reported pending in the FY 2021 Annual FOIA Report remained pending at the end of FY 2022.

21. 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 2021 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

The agency closed during FY 2022 four of the ten oldest requests that were listed as pending in its FY 2021 Annual FOIA Report.

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

During the reporting period, senior FOIA staff in the OMD and the OGC met with senior Bureau and Office staff to discuss and resolve any backlogged FOIA requests to reduce the number of backlogged requests going forward. Senior agency FOIA staff have also adopted a more proactive approach to resolving backlogged requests in the current fiscal year. We do note, however, that the vast majority of initial FOIA requests continued to be processed within the 20-day FOIA deadline.

## **TEN OLDEST APPEALS**

23. In Fiscal Year 2022, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2021 Annual FOIA Report?

No. There were eight total appeals reported pending in the FCC's Fiscal Year 2021 Annual FOIA Report, two of which the FCC closed during FY 2022.

24. 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 2021 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

The agency closed during FY 2022 two of the ten oldest (eight total) appeals that were listed as pending in its FY 2021 Annual FOIA Report. We also note that four of the agency's 10 oldest backlogged appeals in the FY 2022 Annual FOIA Report were filed in FY 2022.

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

As indicated earlier in this report, the agency's backlogged FOIA appeals generally present complex legal issues. Agency staff have been engaged in active discussion with requesters in an effort to resolve some of these appeals, and continue working to address complex legal issues in order to resolve others. Also, as previously reported, the Commission delegated authority to its Chief FOIA Officer and General Counsel to address appeals in some situations where it is most efficient for such appeals to be handled without review by the full Commission. This authority has been used to accelerate decisionmaking on multiple appeals, and the agency continues to explore how this authority can be used most effectively consistent with governing law. Similarly, the OGC has actively exercised its authority to resolve appeals informally with the consent of the requester.

## **TEN OLDEST CONSULTATIONS**

26. In Fiscal Year 2022, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2021 Annual FOIA Report?

Not applicable. The agency reported no pending consultations at the end of FY 2021.

27. 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 2021 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Not applicable.

#### **ADDITIONAL INFORMATION REGARDING TEN OLDEST**

28. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2023.

The ten oldest requests and appeals from FY 2021 generally involve complex issues or voluminous records. In addition, in contrast to agencies that may resolve appeals at the staff level, appeals of FCC decisions on initial FOIA requests, unless resolved informally or dismissed for procedural reasons, are voted by the full Commission. Notwithstanding these circumstances, as noted above, during FY 2022, the Commission was able to close four of its ten oldest requests and two of its ten oldest, i.e., eight total, appeals, that were reported pending in its FY 2021 Annual FOIA Report. During the reporting period, senior FOIA staff in the OMD and the OGC have engaged with Bureau and Office staff at an increasingly senior level to discuss plans for addressing requests and appeals that are listed at the end of FY 2022 as “ten oldest” or backlogged.

#### **F. Additional Information about FOIA Processing**

29. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency’s overall FOIA request processing and backlog. If possible, please indicate the number and nature of requests subject to litigation, common causes leading to litigation, and any other information to illustrate the impact of litigation on your overall FOIA administration.

Three FOIA requests were the subject of litigation during the reporting period, with one litigation matter commencing during the reporting period. While there is no common thread amongst the litigation matters, two of the matters originated with the same requester and generally cover overlapping subject matter. Generally, extensive FOIA litigation can divert limited FOIA staff time and resources, making it more difficult to address and process incoming FOIA requests. This may result in slower response times overall and can potentially add to the agency’s FOIA backlog.

30. How many requests during Fiscal Year 2022 involved unusual circumstances as defined by the FOIA? (This information is available in your agency’s FY22 raw data).

According to the agency’s FY22 raw data, 61 requests involved unusual circumstances as defined by the FOIA.