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## **OFFICE OF GOVERNMENT INFORMATION SERVICES**

### **COMPLIANCE REVIEW OF**

### **UNITED STATES SECRET SERVICE**

### **FREEDOM OF INFORMATION ACT PROGRAM**

### **MANAGEMENT CONTROLS, TECHNOLOGY SUPPORT, AND IMPROVED COMMUNICATION NEEDED**

#### **A Message from the Director**

OGIS periodically conducts independent, systematic reviews of agencies to evaluate their compliance with the Freedom of Information Act (FOIA). See 5 U.S.C. §§ 552(h)(2)(A) and (B). These reviews assess the agency's FOIA operations, programs, and policies, and may include aspects such as program design, implementation, and results. An OGIS review may result in a report that we provide to the agency and release publicly, and may include recommended improvements and administrative actions. This assessment of the FOIA program at the United States Secret Service (USSS) is in line with this purpose.

This report addresses the USSS's compliance with FOIA and is based on direct observation of the USSS's FOIA case files, analysis of applicable data and documents, a survey of FOIA staff and interviews with agency employees and officials. This report is the fifth of six reviews we are conducting of components of the Department of Homeland Security (DHS). At the completion of our reviews, we will also release a final report to DHS with findings and recommendations.

We developed the recommendations herein to the best knowledge available to our office, and we discussed the recommendations in draft with those responsible for the program. We hope this report and our recommendations will assist USSS in its continued efforts to fulfill its FOIA responsibilities. We will follow up with appropriate individuals about the status of these recommendations in 120 days.

NIKKI GRAMIAN  
Acting Director

## **Executive Summary**

### ***What OGIS Found***

In recent years, the United States Secret Service (USSS) increased the size of its Freedom of Information Act (FOIA) staff and recently approved funding to address persistent problems faced by FOIA processors using the agency's proprietary FOIA tracking and processing system. The FOIA program appears to have a strong working relationship with the agency's Office of Chief Counsel (OCC), which processes the agency's FOIA appeals, and the two offices have worked together to improve the agency's initial search for records.

The USSS FOIA backlog is relatively small compared to other DHS components: between Fiscal Year (FY) 2009 and FY 2015 USSS's backlog accounted for between 5 percent of DHS's overall backlog in FY 2010 to less than 1 percent of DHS's overall backlog in FY 2014. In FY 2015, USSS's backlog of 791 requests accounted for about 2 percent of DHS's total backlog of 35,374 requests. However, during the last few reporting periods USSS has recorded possessing most of the oldest pending requests among DHS components, including seven of the 10 oldest requests pending across DHS during FY 2015. In FY 2015, USSS also reported the second highest average processing time for complex requests among all DHS components. The 247 working days on average reported by USSS to process a complex request is more than twice as long as the average processing time for a complex request reported by DHS overall: 108 working days.

OGIS's three primary findings are:

- The USSS FOIA program needs a robust strategy to reduce the backlog;
- USSS FOIA program has invested in technology, but key systems are not fully operational; and
- USSS does not proactively communicate with FOIA requesters.

### ***What OGIS Recommends***

We recommend that the USSS FOIA program take several steps to improve its responsiveness to requesters. In particular, we recommend that the FOIA branch institute strong management controls so that the Director of Disclosure can better oversee the program and that it develop a data-driven plan to reduce the USSS FOIA backlog. We also recommend that USSS provide the FOIA program with additional IT support, and that the USSS FOIA program provide requesters with additional information to improve their understanding of the FOIA process.

## **Introduction**

The Freedom of Information Act (FOIA)<sup>1</sup> directs the Office of Government Information Services (OGIS) to review agency FOIA policies, procedures and compliance, 5 U.S.C. §§ 552(h)(2)(A) and (B). OGIS compliance assessments are independent and systematic evaluations of an agency's compliance with the FOIA, and include the design, implementation, and results of an agency's FOIA operations, programs, and policies. The assessments provide 1) factual and analytical information; 2) review compliance with the law, regulation, and policy; and 3) share best practices. The assessments also include recommendations for improvement.

We conduct compliance assessments of individual agency FOIA programs by visiting agencies and reviewing regulations, internal guidance for processing requests, agency request and appeal files, annual reports to the U.S. Department of Justice (DOJ), and litigation, among other sources. Our mandate is to determine compliance with FOIA.<sup>2</sup>

OGIS's formal assessment program identifies weaknesses in FOIA programs and provides recommendations to correct deficiencies. The assessment process involves five steps: 1) use last year's FOIA data as a starting point; 2) inventory FOIA program activity; 3) flag areas of potential noncompliance or risk; 4) consider outside factors that may contribute to noncompliance; and 5) reporting.

## **Background**

The United States Secret Service (USSS) has two missions: protective and investigative. The USSS provides "physical protection ... to the nation's highest elected leaders, visiting foreign dignitaries, facilities and major events."<sup>3</sup> The USSS also safeguards "the payment and financial systems of the United States from a wide range of financial and computer-based crimes."<sup>4</sup> USSS's FOIA and Privacy Branch is part of the Liaison Division of the Office of Government and Public Affairs. USSS's Disclosure and Privacy Officer reports to the Special Agent in Charge of the Liaison Division.

According to an organization chart provided to us by the Director of Disclosure, the USSS FOIA branch employs 20 staff: one Director, two supervisory FOIA processors, 16 non-supervisory FOIA processors; and one assistant who handles intake responsibilities.<sup>5</sup> All of the staff in the FOIA branch are Government Information Specialists, the Office of Personnel Management occupational series 0306. On the General Schedule (GS) grading system that determines most Federal salary ranges, the Director of Disclosure is a GS-15, the two Supervisory Government Information Specialists are GS-14s, the FOIA processors are GS-12/13s and the Government Information Assistant is a GS-5/6/7/8. USSS also has program officials who act as points of contact for the FOIA program and are responsible for searching

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<sup>1</sup> Freedom of Information Act, 5 U.S.C. § 552.

<sup>2</sup> 5 U.S.C. §§ 552(h)(2)(A) and (B).

<sup>3</sup> "U.S. Secret Service, The Protective Mission," accessed April 7, 2016, <http://www.secretservice.gov/protection/>.

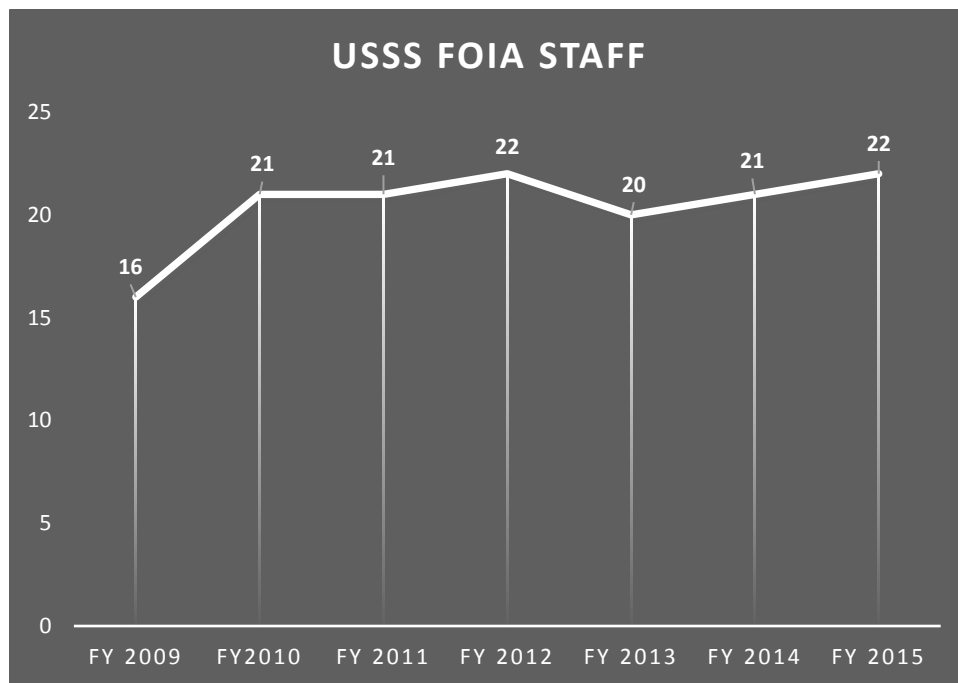
<sup>4</sup> "U.S. Secret Service, The Investigative Mission," accessed April 7, 2016, <http://www.secretservice.gov/investigation/>.

<sup>5</sup> At the time of our review, two members of the staff were on extended leave.

for and retrieving responsive records. In FY 2015, USSS reported that the amount of time these points of contact dedicated to FOIA duties were the equivalent of two full-time employees.

An OGIS survey of the USSS FOIA staff found that seven of 11 respondents have worked for USSS for 10 years or more, and all 11 respondents have worked in FOIA at least five years, with six of the 11 having 10 or more years of FOIA experience.

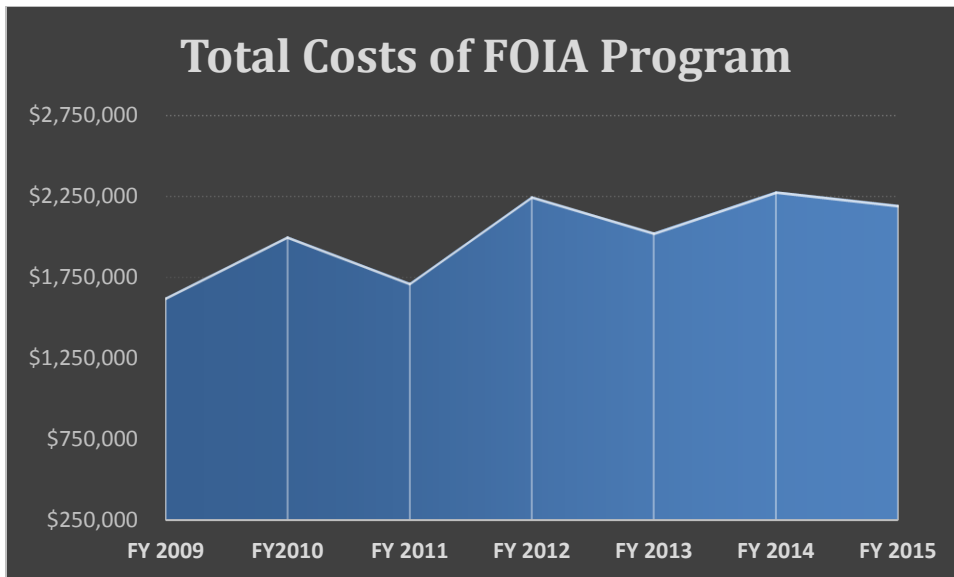
Figure 1, USSS FOIA Staff<sup>6</sup>



At the time of our review, the FOIA office had three vacancies, according to the Director of Disclosure. The FOIA office also had an intern assisting the Intake Section with administrative responsibilities; the USSS FOIA program has had detailees work on backlog reduction efforts, but does not use contractors. In FY 2015, USSS reported in its Annual FOIA Report a FOIA budget totaling about \$2.1 million, including litigation-related expenses. Litigation-related spending reported in Annual FOIA Reports represents staff time spent on litigation-related issues; this figure does not include any attorney's fees awarded to the plaintiff, or the value of any settlements that the agency reached with a litigant.

<sup>6</sup> Report on USSS FOIA Administration FY 2009-FY 2015, accessed May 5, 2016, [www.foia.gov](http://www.foia.gov).

Figure 2, Costs of the USSS FOIA Program<sup>7</sup>



The USSS FOIA program is centralized, and program offices conduct searches. Requests can be sent to USSS by mail, via email to a dedicated USSS FOIA email account or submitted online using the DHS online submission form, or using the DHS FOIA app on a mobile phone. A proprietary FOIA tracking and processing system manages the requests.

USSS has two processing queues: “no records” responses for requests for investigatory records about a person for which there are no records, and all other requests. (For the purposes of reporting, the FOIA branch reports all requests processed in 20 or fewer working days to be simple and those processed in more than 20 working days to be complex.) Once the FOIA program receives records from program offices, the request is placed in the queue for assignment. The Director of Disclosure generally assigns processors about 10 cases at any one time. Each step in the process is documented in the agency’s FOIA processing and tracking system, and in the paper record.

USSS regularly contacts requesters at points in the FOIA process to update them on the status of requests, including acknowledging receipt of the request and notifying the requester that the search has been completed and assigned to a processor. The Director of Disclosure informed us that once a case has been assigned, processors are also expected to contact the requester to provide status updates. During our case review, we noted that USSS processors provided status updates when contacted by the requester and that some requesters did receive periodic updates and inquiries as to whether they were still interested in their request.

Before sending responsive records to the requester, the program office that maintains the records reviews the response. Senior members of the FOIA staff also review the response before it is issued.

<sup>7</sup> Report on USSS FOIA Administration FY 2009-FY 2015, accessed May 5, 2016, [www.foia.gov](http://www.foia.gov).

The Director of Disclosure informed us that most of the requests received by the USSS FOIA program seek records about the requester; this includes requests for investigatory records and for employment-related records. In FY 2015, USSS released completely unredacted records in response to 29 requests, and released partially redacted records in response to 401 requests, and denied access to all responsive records in response to 40 requests. When USSS withholds records in part or in full, it most frequently cites FOIA exemptions 6, 7(C) and 7(E).<sup>8</sup> Exemptions 6 and 7(C) protect personal information, the release of which would invade the privacy interests of individuals, the latter specifically in law enforcement records. Exemption 7(E) protects information in law enforcement records that, if released, “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.”

## **What We Reviewed**

This report is the result of direct observations of initial request and appeal case files; a review of DHS FOIA regulations, the USSS FOIA website, and other written material such as USSS’s Standard Operating Procedures (SOPs) and FOIA Reports to the Attorney General of the United States; interviews with USSS FOIA officials and staff; results of an online staff survey; and agency FOIA litigation since 2009.

USSS provided us with a spreadsheet of FOIA request and appeal files closed in FY 2015. OGIS reviewed a random sample that included 261 FOIA requests and six FOIA appeals.<sup>9</sup> This methodology allowed OGIS to generalize to the population of the 1,328 FOIA requests processed in FY 2015.

### **Finding 1: Leadership Support, Insufficient Management Controls to Reduce Backlog**

*The USSS FOIA has received increased staffing and support from leadership and the Office of Chief Counsel, but management control are needed to reduce the FOIA backlog and shrink processing time for complex requests. The backlog at USSS has grown since 2009 and USSS continues to have many of the oldest pending requests among all DHS components. We recommend several possible methods for USSS to decrease the FOIA backlog and improve the timeliness of its responses.*

## **Requests, Backlog & Delay**

In FY 2015, USSS reported a FOIA backlog of 791 requests, the sixth largest backlog of all of the components of DHS. Overall, however, the backlog at USSS accounted for only 2 percent of DHS’s FY 2015 backlog of 35,374 requests. From FY 2009 to FY 2015, the backlog at USSS increased by almost

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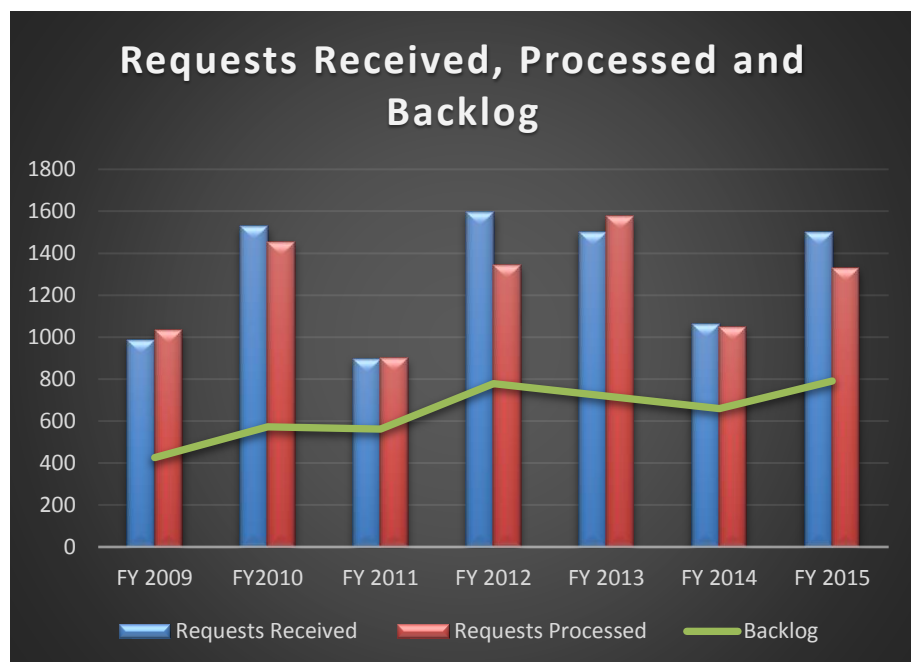
<sup>8</sup> USSS, in FY 2015, cited Exemption 6 282 times; Exemption 7(C) 280 times, and Exemption 7(E) 310 times, according to the 2016 DHS Annual FOIA Report on FY 2015 submitted to the Department of Justice.

<sup>9</sup> The random sample provided us with 305 FOIA files: 278 requests and 27 appeals. We reviewed 261 of the FOIA request files because 11 of the requests are in litigation with the same requester and the Director of Disclosure informed us six of the files are in storage at a Federal Records Center. Twenty-one of the 27 appeals are in litigation with the same requester mentioned previously, leaving us with six appeals files to review.

86 percent from 426 requests to 791 requests. Over the same period, the number of requests USSS received rose by about 52 percent and the number of requests processed grew by about 29 percent.

During FY 2015, the FOIA branch closed approximately 26 cases per week. Assuming that USSS receives the same number of requests during FY 2016 as it did during the previous fiscal year, the USSS FOIA branch will need to close about 15 percent more cases per week in order to reduce the backlog by 10 percent (equivalent to about 30 cases closed per week); in order to eliminate the USSS FOIA backlog, the FOIA branch would need to close almost 70 percent more cases per week than it closed in FY 2015 (equivalent to about 44 cases closed per week).

Figure 3: USSS Requests Received, Requests Processed, and Backlog<sup>10</sup>



Although it is not included in USSS's FOIA SOPs, we learned during our interviews that USSS has a system to ensure that requests that do not have any responsive records are quickly closed; the Director of Disclosure also said that the branch has focused on finding requests for records that have already been released or are for similar records. These steps prevent relatively simple requests from being added to the USSS backlog.

According to the Director of Disclosure, USSS leadership approved overtime in the summer of 2015 to allow the FOIA program to reduce its backlog. Data provided by the Director of Disclosure show that during the period with approved overtime, the USSS FOIA staff closed 301 cases, focusing on closing relatively simple requests for the first four weeks and on complex cases more than two years old during the last four weeks. The Director of Disclosure noted, however, that only a few staff participated in the

<sup>10</sup> Report on USSS FOIA Requests FY 2009-FY 2015, accessed May 5, 2016, [www.foia.gov](http://www.foia.gov).



initiative and that technical issues with the USSS FOIA tracking and processing system (which will be discussed in detail later in this report) limited the effectiveness of the effort.

Of particular concern is the age of requests in the USSS backlog. During the last three years, a majority of the oldest requests pending at all of DHS belong to USSS. In FY 2013, all of DHS's 10 oldest requests were pending at USSS; after reducing the number of DHS's oldest requests that were pending at USSS in FY 2014, USSS reported having nine of DHS's 10 oldest requests in FY 2015. According to the Director of Disclosure, many of the oldest requests pending at USSS either contain classified information that must be reviewed for possible declassification before response and White House security related information or are in litigation.

Table 1: Oldest Pending Requests at DHS that Belong to USSS<sup>11</sup>

Fiscal Year	Number of DHS's 10 Oldest Requests that Belong to USSS
FY 2013	10
FY 2014	9
FY 2015	7

The Director of Disclosure informed us that the oldest requests pending at USSS are all for voluminous material. She also pointed to a change in the USSS declassification policy that requires the Director of the Secret Service to approve all declassification decisions; previously, these decisions could be made at the Assistant Director level.

In FY 2015 USSS also reported the second highest average processing time for complex requests of all DHS components: 247 working days, more than twice as long as the average processing time for a complex request reported by DHS overall: 108 working days.

## **Managing Resources**

### ***Staffing***

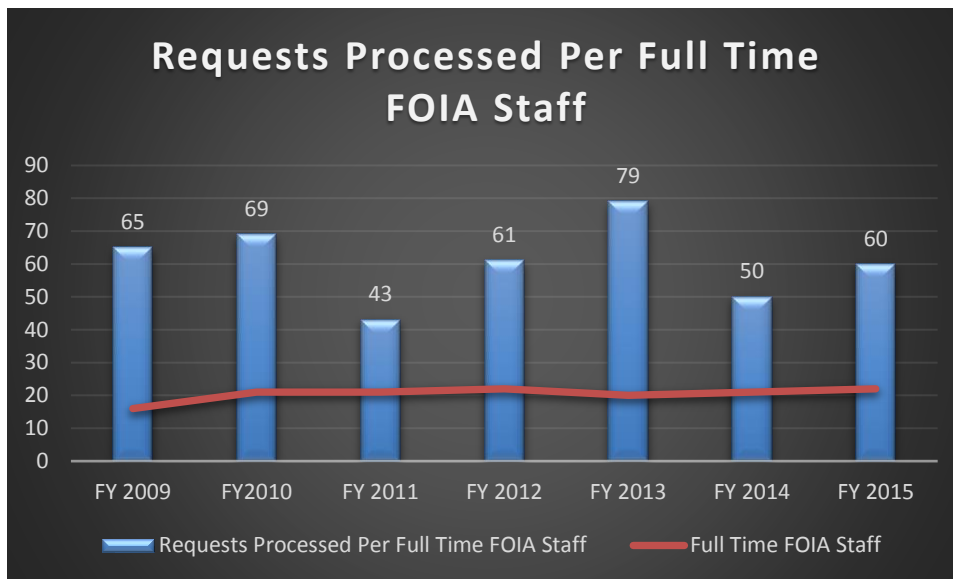
USSS has increased the number of full time staff in the FOIA program since 2009, when it reported employing 12 full time FOIA employees. At the time of our review, the Director of Disclosure reported that the USSS FOIA branch included 15 active full time employees.<sup>12</sup> The Director of Disclosure could not tell us when the branch's three vacant positions would be filled, but reported that USSS is generally able to quickly fill vacancies in the FOIA branch.

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<sup>11</sup> Report on USSS and DHS Backlogs, FY 2013-FY 2015, accessed May 5, 2016, [www.foia.gov](http://www.foia.gov).

<sup>12</sup> As previously noted, two employees were on extended leave at the time of our review.

Figure 4: USSS Requests Processed and Full Time FOIA Staff<sup>13</sup>



The Director of Disclosure informed us that earlier this year she submitted a Resource Allocation Plan seeking approval to add eight new positions in the FOIA branch, along with technology purchases and additional office space.

### ***Management Controls***

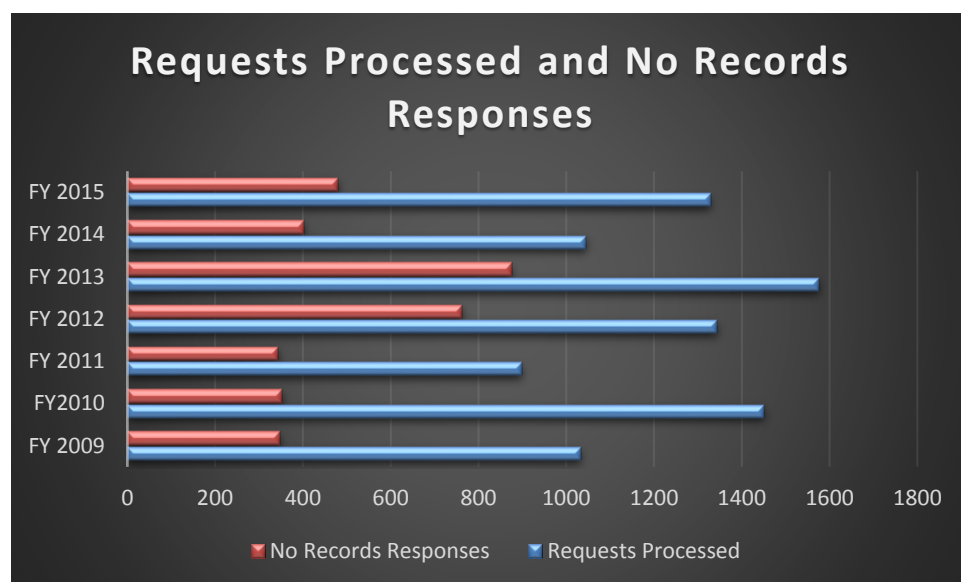
The Director of Disclosure informed us that she verbally briefs USSS leadership on the status of the FOIA program as requested. The FOIA branch each month provides USSS leadership with numbers of cases opened, number of cases closed and number of pages processed. The USSS FOIA branch also regularly reports these statistics as required to the DHS Privacy Office, the Director of Disclosure informed us. As required by DHS Privacy Office’s policy regarding “significant requests,” the USSS FOIA branch informs the DHS Privacy Office when it receives media requests; however, USSS does not appear to follow the part of the DHS Privacy Office’s policy on “significant requests” that requires components to alert the DHS Privacy Office 24 hours before it responds to significant requests.

According to the Director of Disclosure, at the time of our review the branch did not set individual goals or branch-wide goals for case closures. During our discussion of metrics, the Director of Disclosure noted that not all FOIA cases are the same, and that a request that has only a few responsive pages can take a long time to process if the material is classified or otherwise sensitive. The Director of Disclosure also said that the branch has contacted the FOIA managers at Immigration and Customs Enforcement (ICE), another DHS component, to learn more about how ICE uses metrics to measure employee performance goals.

<sup>13</sup> Report on USSS FOIA Requests and Administration FY 2009-FY 2015, accessed May 5, 2016, [www.foia.gov](http://www.foia.gov).

Our review of FOIA case files and interviews of the FOIA staff show that USSS has set up a process to quickly process requests that have no responsive records. The number of no records responses reported by USSS has increased since 2009; on average, USSS issued a little more than 500 “no records” responses per fiscal year between FY 2009 and FY 2014—accounting for 41 percent of the requests that USSS processed on average over the same period. Many of the no records responses we observed were for requests from individuals seeking records about themselves. Aside from the process to quickly respond to these types of requests, it does not appear that the USSS FOIA branch further separates requests into different tracks. For reporting purposes, USSS refers to cases closed within 20 days as simple and all others as complex.

Figure 5: USSS Requests Processed and No Records Responses<sup>14</sup>

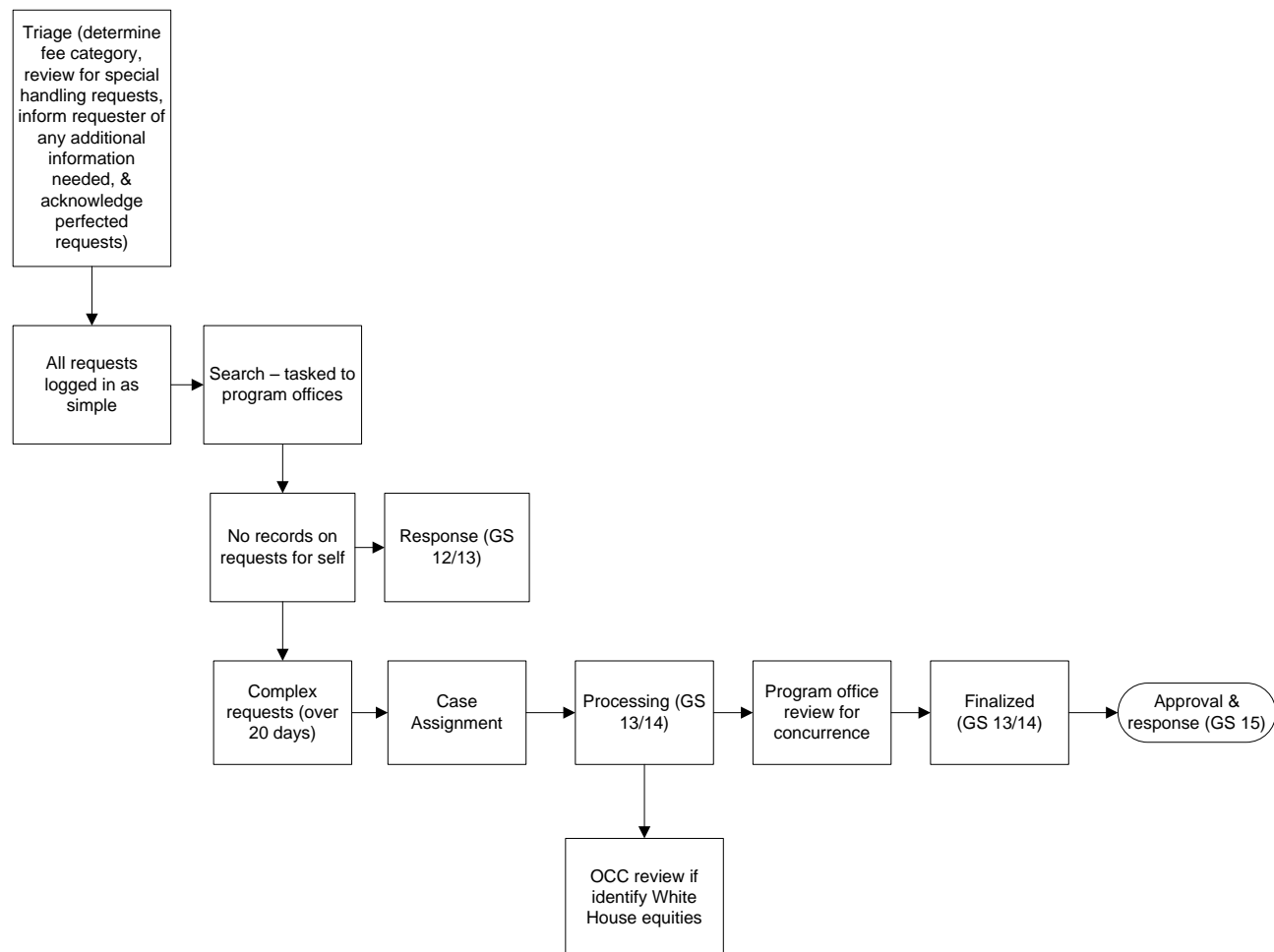


The USSS FOIA branch has developed SOPs that cover most of the FOIA process. During our review, we noted that the USSS SOPs do not include the program’s process for responding to no records requests in a timelier manner. Comprehensive SOPs help ensure that requests are handled consistently, and that all employees are aware of the steps they are expected to take in order to successfully complete their assigned tasks. According to the Director of Disclosure, the program’s SOPs are updated regularly but do not reflect new guidance from OIP.

<sup>14</sup> Report on USSS FOIA Disposition FY 2009-FY 2015, accessed May 5, 2016, [www.foia.gov](http://www.foia.gov).

## Intake, Triage, Search, Processing and Release

Figure 6: USSS FOIA Process



The Government Information Assistant triages incoming requests by checking whether the requester is in the FOIA tracking and processing system and whether the request is a duplicate. Non-duplicate requests are entered in to the FOIA tracking and processing system, which automatically generates a unique case number and an acknowledgement letter, created using a DHS-approved template letter uploaded by USSS and generally sent via email.

The triage process for requests from individuals seeking records about themselves differs slightly. The FOIA Branch has limited access to the USSS investigations database, which allows the Government Information Assistant to check whether there are records associated with a particular name; the FOIA Branch does not have access to the records themselves. If there are no matches in the investigation system, the Government Information Assistant flags the request for the program office to search for responsive records. These requesters are not sent acknowledgement letters immediately because the

FOIA branch generally receives a final response from the program office within a few days confirming that there are no records. In these no records cases, a final response, which also acknowledges receipt of the request, is sent to the requester within the 20-business-day statutory response time.

An OGIS survey of USSS FOIA staff found that while six of 11 respondents said the program offices were “very cooperative” with search and record production, three respondents said the officers were “somewhat uncooperative;” two respondents said the offices were “somewhat cooperative.”

The Government Information Assistant also checks all requests to see if the requester has asked for expedited processing or a fee waiver. The Director of Disclosure informed us that USSS policy is that, when appropriate, the agency holds requests for fee waivers in abeyance until records are reviewed and it can be determined whether fees will be assessed. The Government Information Assistant informs the Director of Disclosure of all requests for expedited processing, and the Director of Disclosure makes the final decision regarding whether the request meets the standards for expedited processing laid out in the DHS FOIA regulation. Between FY 2009 and FY 2015, USSS granted expedited processing to 16 requests.

Except for the limited access that FOIA branch has to the USSS investigations database, the FOIA branch does not have access to other program office databases or files. The Director of Disclosure informed us that this is because USSS deals with Law Enforcement Sensitive (LES) information compiled for law enforcement purposes and concerning the White House security and other related matters. Program offices are expected to respond to search requests within five working days. Most programs respond within that time, the Director of Disclosure informed us; if a program office does not respond to several search requests from the FOIA branch, the Director of Disclosure discusses the search request with the Office of Chief Counsel (OCC), which then follows up with the program office.

After reviewing the request, the FOIA branch determines which program offices should be directed to search for responsive records. The Director of Disclosure told us that the FOIA branch recently collaborated with OCC to develop a new form that helps document searches conducted by program staff. OCC’s Senior Counsel informed us that the appeals staff have observed that initial searches requested by the FOIA branch are often too broad, resulting in records that are outside the scope of the request or in records that the requester does not want, or too narrow, resulting in no records responses that often are later reversed on appeal.

Once records are returned to the FOIA branch, the request is returned to the request queue for assignment. Requests are generally handled on a first-in, first-out basis with each processor assigned about 10 cases at a time. Certain kinds of requests are assigned to processors with subject matter expertise, the Director of Disclosure informed us.

If a request involves responsive records submitted to USSS by a company, USSS notifies the company and provides it with 10 days to object to the release of any trade secrets or confidential business information. The FOIA branch follows up with the company by phone and email if the company has not responded by the deadline.

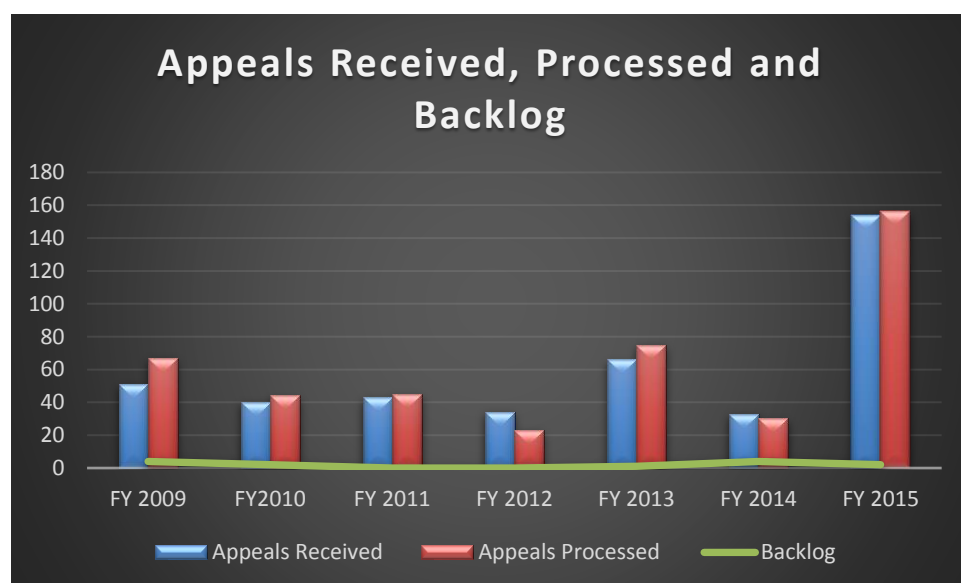
Before release, the FOIA branch provides the program office with a copy of the processed records for final approval; program offices generally respond to the package within three days, the Director of Disclosure informed us. The Director of Disclosure or a supervisory Government Information Specialist reviews before response; occasionally this last review will be completed by a senior non-supervisory Government Information Specialist.

If responsive records include information about the White House security and other related matters, OCC reviews the records and, if necessary, coordinates White House Counsel review of the responsive records before the records are released. OCC also reviews any records that are being released in litigation.

## Appeals

The USSS FOIA branch receives all FOIA appeals and forwards them along with the administrative record to the OCC for review. The Chief Counsel reviews them and passes them to the Senior Counsel who assigns them to one of 12 to 15 attorneys who are assigned FOIA appeals; junior attorneys generally handle appeals while senior attorneys handle FOIA litigation. The Senior Counsel also informed us that attorneys are usually assigned only one FOIA case at any time.

Figure 7, USSS Appeals Received and Processed<sup>15</sup>



The USSS Chief Counsel reviews a monthly report tracking the status of the office's FOIA appeals, the Senior Counsel informed us. At the time of our review, the OCC's average processing time for FOIA appeals was about 30 working days, the Senior Counsel said.

In FY 2015, the number of appeals received by USSS jumped by almost 250 percent compared to the average number of appeals filed with USSS during the six previous reporting periods—from an average of about 45 appeals per fiscal year to 156 appeals in FY 2016. The Senior Counsel informed us and

<sup>15</sup> Report on USSS FOIA Appeals FY 2009- FY 2015, accessed May 5, 2016, [www.foia.gov](http://www.foia.gov).

information on FOIA litigation against the agency and our review of the FY 2015 FOIA appeal logs confirm that the rise in appeals is due primarily to one requester; of the 37 appeals included in our random sample of USSS FOIA case files, 31 were filed by this particular requester. Most of the appeals by this requester are now in litigation.

As previously discussed, OCC noted a need to improve the FOIA branch's instructions to program offices regarding search. In five of the six appeal case files that we reviewed, the appeals process yielded additional records. OCC is sometimes able to locate additional documents because some of its attorneys are former field agents who better understand what records the agency has and how they are kept, according to the Senior Counsel. Both the OCC and the Director of Disclosure told us that they have discussed how to improve the initial searches.

Generally, OCC sends back to the FOIA branch any records that require further processing. However, the Senior Counsel told us that OCC has an informal agreement with the FOIA branch that OCC will process records if it does not involve a large amount of records. If OCC receives an appeal because the FOIA branch has not met the statutory timelines under FOIA, it may return the request to the FOIA branch for processing.

If a court orders records to be processed during litigation, generally one person in the FOIA branch and/or OCC is tasked with processing, according to the Director of Disclosure; additional people may be asked to process records if there are voluminous pages of responsive materials to be processed within a short time frame.

The program office where the records originated reviews the appeal response, which are then approved by the Senior Counsel and the Chief Counsel and signed by the USSS Deputy Director.

Appeals responses from USSS do not include language informing requesters of the availability of mediation services from OGIS to resolve disputes as a non-exclusive alternative to litigation.

## **Training**

The Director of Disclosure informed us that all members of the staff receive yearly training through an in-house training session led by one of the staff members with expertise in teaching FOIA. This staff member also trains new special agent and Uniformed Division officer recruits on FOIA. The USSS FOIA branch also has money in its budget set aside for training and staff can apply for paid training from outside vendors.

## **Recommendations**

Recommendation 1: We recommend that USSS adopt management controls that allow the FOIA branch and agency leadership to better understand the FOIA staff's current productivity and the resources necessary to begin reducing the agency's FOIA backlog. Practices that we have observed work well for other agencies include:

- tracking weekly case closures and numbers of pages processed for individual processors and the branch; also tracking whether the requests closed by processors are no records responses, full

releases, partial releases, or full denials helps FOIA management better understand the effort required to close particular types of requests;

- Using metrics in employee performance goals; and
- Directing staff to spend a certain number of days per week processing older complex cases to prevent the age of the backlog from growing.

Recommendation 2: We recommend that USSS update its SOPs to reflect its modified process for responding to no records requests in a more timely fashion.

Recommendation 3: We recommend that USSS create a formal backlog reduction plan that expands on the work USSS is doing to keep requests out of the backlog by using multi-track processing for other relatively simple requests and focusing on responding to older requests. In creating this plan, the USSS FOIA branch could set data-driven goals for closing cases that will result in USSS achieving its backlog reduction goals. For example, as we explained previously, assuming USSS receives a similar number of FOIA requests in FY 2016, the agency will need to close about 30 cases per week to achieve a 10-percent reduction in the backlog.

Recommendation 4: We recommend that the FOIA branch continue to work with OCC to improve the quality of initial searches. One option is to set up a mentoring program between OCC and FOIA staff or to create more informal occasions for the staff to discuss their work.

Recommendation 5: We recommend that appeals staff inform requesters of OGIS's availability to provide mediation services to resolve disputes in its final letter to requesters, as is recommended by OIP guidance,<sup>16</sup> and DHS's proposed regulations.<sup>17</sup> (The FOIA Improvement Act of 2016, signed into law on June 30, 2016, after OGIS's review of the USSS FOIA program, requires agencies to inform requesters at several points in the FOIA process of the availability OGIS and an agency's FOIA Public Liaison to provide dispute resolution services.)

## **Finding 2: Investing in Improvements to Technology, Not Fully Operational**

*The USSS FOIA tracking and processing system is not fully operational. The lack of a robust tracking and processing system slows the FOIA program's productivity and requires the program to spend additional funds on on-site support from the contractor. While USSS is spending money to address the current problem with the system and updating the agency's website to make it more user-friendly and functional, greater technical infrastructure and support would avoid future issues.*

### **FOIA Tracking and Processing System**

At the time of our review, some USSS FOIA processors were not able to use key functions of the component's commercial FOIA tracking and processing system. In particular, some processors were not able to use the system to redact and process records, or to correspond with requesters. According to a

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<sup>16</sup> "Notifying Requesters of the Mediation Services Offered by OGIS." Last modified June 16, 2015, <http://www.justice.gov/oip/blog/foia-post-2010-oip-guidance-notifying-requesters-mediation-services-offered-ogis>.

<sup>17</sup> 5 U.S.C. § 552(6)(D)(i) & (ii) and DHS Freedom of Information Act and Privacy Act Procedures; Interim Final Rule, 6 CFR § 5.5(b), accessed July 9, 2015, [http://www.dhs.gov/xlibrary/assets/FOIA\\_FedReg\\_Notice.pdf](http://www.dhs.gov/xlibrary/assets/FOIA_FedReg_Notice.pdf). (Note that DHS on July 29, 2015, published in the Federal Register a Notice of Proposed Rulemaking, Freedom of Information Act Regulations.)



FOIA/PA Program White Paper dated January 13, 2016, and provided to OGIS, the system “has not operated, to its full capacity, in years.”<sup>18</sup>

The USSS began using the FOIA processing and tracking system on October 1, 2012, according to the white paper. The system being used by USSS includes 13 best practices recommended by the Department of Commerce, the Environmental Protection Agency, and the National Archives and Records Administration to enhance FOIA processing and address Section 508 requirements.<sup>19</sup> The agency spent \$250,000 to implement the system, according to the agency’s Director of Disclosure,<sup>20</sup> and a \$14,000 annual software maintenance agreement with the commercial vendor includes software upgrades and telephone help desk support. Before purchasing the commercial FOIA tracking and processing system, the USSS FOIA program used separate commercially available products to track and help process requests. When fully functioning, the comprehensive tracking and processing system used by the USSS FOIA program has the ability to streamline the reporting process and provide management with tools to track the staff’s productivity. The USSS declined to join DHS’s department-wide FOIA tracking and processing system as recommended by the Government Accountability Office because the agency did not want other DHS components to have access to law enforcement sensitive (LES) information, according to the Director of Disclosure.<sup>21</sup>

The ongoing issues with USSS’s FOIA tracking and processing system have reduced the staff’s productivity and required the program to request additional funds for on-site support from the contractor, the Director of Disclosure informed us. Some of the staff who are not able to use the system to process the records have resorted to using a copy machine and tape to redact information from records in cases where the agency located a small number of responsive pages; we found one example of this in our review of FOIA request files. Staff members who cannot use the system have access to one shared work station that has a license for the commercial product that USSS previously used to process records for release under FOIA.

Staff members who are not able to use all of the functions of USSS’s processing and tracking system also must take additional steps to enter information about the final results of the request, including any exemptions claimed or reasons for administratively closing the request. The Director of Disclosure did not supply data about the effect of the problem, but the white paper states that, “the resulting system instability has caused slowed productivity, decreased efficiency and has vastly impeded the Program efforts to address the backlog of FOIA/PA requests within this agency.”

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<sup>18</sup> “FOIA/PA Program FOIAXpress White Paper January 13, 2016.”

<sup>19</sup> DHS GAO Report- GAO-15-82, Freedom of Information Act, DHS Should Take Steps to Improve Cost Reporting and Eliminate Duplicate Processing, November 2014, page 28, accessed May 20, 2016, <http://www.gao.gov/products/GAO-15-82>.

<sup>20</sup> USSS has a contract for FOIA tracking with the same vendor that provides the contract for DHS’s enterprise-wide system, which 12 components use.

<sup>21</sup> DHS GAO Report- GAO-15-82.

While upgrades to the USSS network appear to have addressed some of the problems with the tracking and processing system, it remains only partially operational. To address the remaining issues with the system, the Director of Disclosure asked for and received funding for onsite support from a contractor. USSS modified the existing \$14,000 annual software maintenance agreement to include 416 hours of on-site IT support costing \$55,340. At the time of our assessment, the request for funding had been approved and a statement of work was being developed for submission to USSS' Procurement Office.

According to the white paper, the problems with the USSS tracking and processing system are because for several years the vendor's application software upgrades were incompatible with software hosted on USSS systems and infrastructure. The vendor was not able to service the system due to the agency's inability to download upgrades. The information technology (IT) specialist for the Liaison Division, which includes the FOIA and Privacy Act Branch, notified the Information Resources Management Division (IRMD) on numerous occasions with no resolution, according to the white paper.

## **Website**

The Director of Disclosure informed us that the FOIA branch updated its webpage in August and September 2015 to make it more user-friendly and informative. To complete this update, the FOIA branch worked with an IT specialist for the Liaison Division. At the time of our review, the webpages did not include any broken links and included contact information for the FOIA Requester Service Center and FOIA Public Liaison. The webpages also included links to several resources that might be useful for requesters, including the DHS FOIA regulation, [foia.gov](http://foia.gov) and the Department of Justice's Guide to the FOIA, a guide to the Privacy Act, and a link to OGIS.

The IT specialist for the Liaison Division posts records to the USSS FOIA Reading Room. The FOIA branch does not have a formalized system for tracking records that are frequently requested. At the time of our review, the USSS FOIA Reading Room included a large number of records related to two high-profile issues: the investigations of Aaron Swartz, the late computer programmer and political activist, and Occupy Wall Street, a protest movement pertaining to social and economic inequity. The Reading Room also included annual FOIA logs. None of the sample of records that we downloaded from the USSS FOIA Reading Room included a FOIA tag in its metadata, as suggested by guidance from the Office of Information Policy (OIP).<sup>22</sup>

The USSS webpages do not make it clear how requesters can track their requests. According to the Director of Disclosure, requesters should call the Requester Service Center to track and obtain the status of their requests. The Director of Disclosure informed us that USSS was not participating in the DHS enterprise-wide online status update system.

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<sup>22</sup> Using Metadata in FOIA Documents Posted Online to Lay the Foundation for Building a Government-Wide FOIA Library," last modified July 16, 2015, <http://www.justice.gov/oip/blog/foia-guidance-11> -

## **Recommendations**

Recommendation 6: In addition to on-site support from the vendor to address the immediate problem with the tracking and processing system, the white paper lays out other solutions, including steps that will require additional support and coordination with IRMD. We recommend that the Director of Disclosure work with the Special Agent in Charge of the Liaison Division and the Director of Government and Public Affairs, which oversee the FOIA and Privacy Act Branch, to ensure that the FOIA branch has sufficient IT support.

Recommendation 7: We recommend that USSS improve requesters' ability to track requests by updating its webpage to direct users to call the Requester Service Center to track requests and discussing how it can regularly and securely provide data about the status of USSS FOIA requests to the DHS Privacy Office. USSS might be able to regularly export tracking data, allowing the branch to participate in the DHS enterprise-wide online status update tool without potentially compromising any sensitive systems or information.

### **Finding 3: Delay in Communicating with Requesters, Additional Information Needed in Responses**

*USSS does not regularly communicate with requesters. USSS's failure to respond in a timely matter was a factor in 83 percent of the FOIA lawsuits filed against the agency since 2009. To improve its communication with requesters, USSS should proactively provide requesters with additional information about when the agency expects to complete processing their requests, and better inform requesters about the FOIA process and USSS's decisions.*

## **Customer Service and Still Interested Letters**

During our review of request and appeal files, we noted that the FOIA branch received letters about one month after they were mailed. The Director of Disclosure explained that security precautions delay the process. All incoming USSS mail is screened at a central location before being routed to a particular office. The agency receives very few requests via mail, and as previously noted, the Government Information Assistant informed us that she generally calls requesters who mail their requests to ask for an email address. However, 45 of the 261 FOIA request files we reviewed were mailed referrals from the U.S. Citizenship and Immigration Services (USCIS), another DHS component, which processes a large volume of immigration-related records. USCIS referred records to USSS for processing and direct response to requesters after finding them to be responsive to USCIS FOIA requests. These referrals also took about a month to reach USSS.

Lack of response was a factor in 83 percent of the FOIA lawsuits filed against USSS since 2009;<sup>23</sup> USSS reported \$1.8 million in litigation-related expenses between FY 2009 and FY 2015.<sup>24</sup> We note that among the older case files we reviewed, USSS informed requesters by letter when the search for records was complete and that the case was awaiting assignment. We also observed in the FOIA request files that there are significant periods of time in which requesters do not receive any kind of an update on their request from USSS, unless the requester asked for an estimated date of completion.

The Director of Disclosure informed us that one member of the USSS FOIA staff is responsible for answering all calls to the number listed as the Requester Service Center. We were not provided with any information about the volume of calls made to this line. When a requester asks the FOIA branch for an estimated date of completion, it gives the requester an estimate based on the average processing time for complex cases that USSS reported in its most recent Annual FOIA Report.

The Director of Disclosure told us that after requests have been in the queue for one year, USSS regularly sends requesters letters asking if they are still interested in receiving the records. These letters require that the requester let the FOIA branch know within 30 days that they are still interested or the request will be closed administratively. The Director of Disclosure told us that the FOIA branch attempts to follow up with requesters who do not respond within 30 days by calling them before closing the request.

The FOIA branch does not track how many of these letters it sends, the Director of Disclosure told us. In our review of FOIA case files, we saw one example in which a requester wrote the agency six times inquiring about the status of the request before the USSS sent the requester a still interested letter. Our review of case files also showed that USSS used still interested letters to close several of its oldest requests, and that requesters who responded affirmatively to still interested letters received similar still interested letters about one year later.

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<sup>23</sup> *Comer v. Federal Bureau of Investigation et al*, 1:2009-cv-2455, D.D.C.; *Judicial Watch v. USSS*, 1:2009-cv-02312, D.D.C.; *Davis v. Federal Bureau of Investigation et al*, 1:2010-cv-00098, D.D.C.; *Ruston v. USSS*, 1:2010-cv-0869, D.D.C.; *Carlson v. USSS*, 3:2010-cv-01052, N.D.Cal; *Higgins v. US Department of Justice et al*, 1:2010-cv-01485, D.D.C.; *James v. USSS et al*, 1:2010-cv-01675, D.D.C.; *Baker v. U.S. Department of Homeland Security*, 3:2011-cv-00588, M.D. Pa; *Bonilla v. US Department of Justice et al*, 1:2011-cv-20450, S.D.Fla.; *Judicial Watch v. US Air Force et al*, 1:2012-cv-00866, D.D.C.; *Love v. USSS et al*, 1:2012-cv-01046, D.D.C.; *Judicial Watch v. USSS*, 1:2012-cv-01562, D.D.C.; *Walsh et al v. Jones et al*, 1:2013-cv-00844, D.D.C.; *Judicial Watch v. USSS*, 1:2013-cv-00647, D.D.C.; *Judicial Watch v. USSS*, 1:2013-cv-00950, D.D.C.; *Judicial Watch v. USSS*, 1:2014-cv-00046, D.D.C.; *Lindsey v. Department of Defense et al*, 4:2014-cv-00178, W.D. Mo.; *Salomone v. Mills et al*, 1:2014-cv-00602, N.D.Ga.; *Judicial Watch v. USSS*, 1:2014-cv-01732, D.D.C.; *Salomone v. Mills et al*, 1:2014-cv-03248, N.D.Ga; *McAtee v. US Department of Homeland Security, USSS*, 9:2015-cv-00084, D.Mont.; *Judicial Watch v. USSS*, 1:2015-cv-00673, D.D.C.; *Litman v. US Department of Homeland Security et al*, 3:2015-cv-00760, N.D.Tex.

<sup>24</sup> Report on USSS FOIA Costs FY 2009-FY 2015, accessed May 5, 2016, [www.foia.gov](http://www.foia.gov).

## Plain Language

The USSS FOIA branch relies on DHS-approved template letters to correspond with requesters. Letters from both the FOIA branch and OCC in response to request and appeals, respectively, do not explain the methods USSS used to search its files or why a certain exemption is claimed: initial responses and responses to appeals include a list of FOIA and Privacy Act exemptions at the bottom of the page with the box checked next to any exemption claimed by the agency; this letter is also accompanied by a one page enclosure that gives a brief explanation of all of the exemptions. USSS's initial and appeals responses also informs requesters of the number of pages withheld in full, but fails to note the number of total pages located or released; if the agency can easily track the total number of pages processed, providing the requester with those numbers could help ensure that the agency accounts for all processed records.

## Recommendations

Recommendation 8: To reduce the delay in responding to requests that are referred by USCIS, we recommend that USSS discuss with USCIS a more efficient way to send referred requests, possibly electronically.

Recommendation 9: We recommend that USSS regularly provide requesters with information about where the request is in the agency's queue or an estimated date of completion, particularly for the oldest cases.

Recommendation 10: We recommend that USSS limit its use of still interested letters to bring its practice in line with current guidance from DOJ on the use of "still interested" letters;<sup>25</sup> in particular, we recommend that USSS limit the number of times it sends still interested letters to requesters.

Recommendation 11: To better improve requester understanding of the FOIA process, we also recommend that USSS work with OCC to develop template letters that provide an explanation for why certain material is covered by an exemption, particularly for exemptions that USSS frequently cites.

Recommendation 12: Once USSS's FOIA tracking and processing system is fully functional and can track the number of pages processed, we recommend that USSS include this total in its responses in the interest of improving accountability and communication with requesters.

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<sup>25</sup> "OIP Releases New Guidance for Agency Still-interested Inquiries," last modified July 5, 2015, <http://www.justice.gov/oip/blog/oip-releases-new-guidance-agency-still-interested-inquiries>.

## **Checklist of OGIS Recommendations for USSS'S FOIA Program Management**

### **Management**

- ☐ Adopt management controls and continue working towards using metrics in employee performance goals
- ☐ Create a formal data-driven backlog reduction plan
- ☐ Direct appeals staff to include information about mediation services offered by the Office of Government Information Services (OGIS) in its final appeal response letters
- ☐ Continue to work with the Office of Chief Counsel to improve the quality of initial searches
- ☐ Update USSS Standard Operating Procedures to reflect process for responding to first-party requests with no responsive records

### **Technology**

- ☐ Ensure the FOIA branch has sufficient IT support
- ☐ Improve ability to check the status of requests by updating the FOIA web page to direct requesters to the Requester Service Center to track requests and discussing how to regularly and securely provide data about the status of USSS FOIA requests to the DHS Privacy Office

### **Communication**

- ☐ Discuss improving the efficiency of referrals from U.S. Citizenship and Immigration Services to USSS
- ☐ Regularly communicate with requesters about the status of requests, particularly regarding the oldest cases
- ☐ Limit the use of “still interested” letters in accordance with Office of Information Policy guidance
- ☐ Develop template letters that provide an explanation for why certain material is covered by an exemption
- ☐ Include the total number of pages released in final responses once FOIA tracking and processing system is fully functional

### **Scope and methodology**<sup>26</sup>

OGIS Review Team Lead Kirsten Mitchell along with Team members Amy Bennett and Kate Gastner assessed USSS's FOIA program. This report is the result of direct observation of USSS's initial FOIA request and appeal case files; results of an online OGIS survey completed by USSS FOIA processors and managers; and analysis of applicable data and documents including DHS FOIA regulations, the agency's FOIA website and other written material, and agency FOIA litigation interviews with USSS FOIA officials and staff. On February 24, 2016, we interviewed the Director of Disclosure and Senior Counsel. USSS granted us access to its paper case files and allowed us to shadow the assistant who handles intake responsibilities and view the system the agency uses to track and process requests and appeals. Before our visit, USSS provided us with a list of its FOIA cases closed in FY 2015. We chose a randomized generalizable sample from the 305 FOIA files USSS provided us: 278 requests and 27 appeals. We reviewed 261 of the FOIA request files because 11 of the requests are in litigation with the same requester and the Director of Disclosure informed us six of the files are in storage at a Federal Records Center. Twenty-one of the 27 appeals are in litigation with the same requester mentioned previously, leaving us with six appeals files to review. We finished reviewing the case files on April 18, 2016, and based our findings on OGIS's Elements of an Effective FOIA Program, based on

- the FOIA statute;
- Office of Management and Budget Guidelines for Fees;
- Presidential Memorandums;
- Attorney General Memorandums;
- Guidance from the Department of Justice's Office of Information Policy, including DOJ's Guide to the Freedom of Information Act;
- OGIS Best Practices; and
- Inconsistencies and non-compliance observed during OGIS's mediation services.

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<sup>26</sup> Please direct questions to OGIS at [ogis@nara.gov](mailto:ogis@nara.gov) or 202-741-5770.