

Executive Office of the President
Office of the United States Trade Representative



2022 CHIEF FREEDOM OF INFORMATION ACT
OFFICER ANNUAL REPORT

Agency Received More than 50 Requests in FY2021

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Introduction

The Office of the United States Trade Representative (USTR), the second largest component in the Executive Office of the President (EOP), is responsible for developing and coordinating U.S. international trade, commodity and direct investment policy, and overseeing trade negotiations with other countries. The head of USTR is the U.S. Trade Representative, a Cabinet member who serves as the President's principal trade advisor, negotiator, and spokesperson on trade issues. USTR has approximately 280 employees assigned to regional and functional offices in its headquarters in Washington DC. USTR also has offices in Beijing China, Brussels Belgium, and Geneva Switzerland. The Geneva office represents the United States before the World Trade Organization.

The USTR Freedom of Information Act (FOIA) Office generally consists of three people - a Chief FOIA Officer and two FOIA program managers/attorneys, one of whom acts as the FOIA Public Liaison. One of the program manager/attorney positions was vacant until a new hire onboarded in mid-September 2021. The FOIA requests USTR receives vary in size and complexity from narrow requests for a single or a few documents to voluminous and complex requests that require broad searches and line-by-line review of thousands of pages of text and emails. Many of USTR's documents contain sensitive national security information that is classified pursuant to Executive Order 13526. Before making a release determination, the FOIA Office often coordinates with other Federal agencies, foreign governments, and commercial entities whose information may be contained in USTR records. If a request involves a voluminous amount of material or searches in multiple locations, USTR may provide interim responses, releasing the records on a rolling basis. The annual number of FOIA requests USTR received in FY2021 decreased but the requests were more complex. We anticipate a steady volume of similarly complex requests in FY2022.

Due to USTR's global presence, unique international mission, and the high level of coordination with third parties, the FOIA Office faces great challenges in achieving full compliance with the FOIA's time limits. USTR is committed to achieving the fullest possible compliance with a strong focus on maintaining open dialogue with requesters and leveraging technology to improve internal processes.

Section I: Steps Taken to Apply the Presumption of Openness

A. FOIA Leadership

- 1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at the Assistant Secretary or equivalent level. Is USTR's Chief FOIA Officer at or above this level?**

Answer: Yes. The FOIA Office is part of the Office of General Counsel, and the Chief FOIA Officer is the Chief Counsel for Administrative Law who reports directly to the General Counsel. This is a senior position with the authority to make recommendations on any adjustments to agency practices, policies, personnel, and funding that may be necessary to improve FOIA implementation.

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

Answer: Janice Kaye, Chief Counsel for Administrative Law.

B. FOIA Training:

3. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. Please describe the efforts USTR has undertaken to ensure proper FOIA training is made available and used by agency personnel.

Answer: We require all incoming USTR employees, political appointees, detailees, presidential management fellows, contractors and consultants to review comprehensive FOIA training within three months of their start date. In the maximum telework environment, the FOIA staff distributes a virtual presentation that employees certify completing by answering a series of questions. FOIA staff review responses and provide corrections or explanations as needed. This year, we reminded all employees of the FOIA obligations after introduction of a new messaging tool. The FOIA staff also provides one-on-one refresher training to program offices involved in processing an open request.

4. Did USTR's FOIA professionals or the personnel at USTR who have FOIA responsibilities attend any substantive FOIA training or conference during the reporting period such as that provided by the Department of Justice?

Answer: Yes.

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

Answer: USTR FOIA staff attended the *Artificial Intelligence for FOIA Professionals*, the *Advanced FOIA Seminar* and *Virtual Exemption 4 and Exemption 5 Training* offered by the Department of Justice.

6. Please provide an estimate of the percentage of USTR's FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

Answer: 100 percent.

7. 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 USTR's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

Answer: USTR is in full compliance with this OIP guidance.

8. Did the personnel at USTR who have FOIA responsibilities attend training in federal records management during this reporting period?

Answer: Yes. The FOIA staff helped create agency wide records management training.

C. Outreach

9. 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 USTR's FOIA administration.

Answer: Yes. The FOIA staff routinely engages with requesters, the majority of whom are representatives of the media or open government groups. For example, we often contact requesters to clarify or narrow overly broad requests, gather missing or incomplete information, explain how our eDiscovery platform works, and how to request USTR records that the National Archives and Records Administration controls.

D. Other Initiatives

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

Answer: USTR requires all new employees, political appointees, detailees, presidential management fellows, contractors and consultants to attend introductory FOIA training, which provides an overview of the process, including working with requesters, conducting effective searches, and applying FOIA exemptions in a careful manner that balances the presumption of openness against the foreseeable risks of disclosing exempt information. We provide this training to employees at all levels, including senior leadership. In FY2021, the USTR FOIA Office provided ongoing advice and counsel concerning obligations under the FOIA to USTR staff by phone or in virtual meetings either in response to questions or in the process of responding to a particular FOIA request.

Section II: Steps Taken to Ensure that USTR Has an Effective System In Place for Responding to Requests

1. For FY2021, what was the average number of days USTR reported for adjudicating requests for expedited processing?

Answer: Eight.

- 2. If USTR's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps USTR will take to ensure that it adjudicates requests for expedited processing within ten calendar days or less.**

Answer: Not applicable.

- 3. Has USTR updated its FOIA regulations in accordance with the FOIA Improvement Act of 2016? If not, what is USTR's plan to update its regulations?**

Answer: USTR published a comprehensive update of its FOIA regulation (15 C.F.R. part 2004) in December 2016 (81 FR 90715).

- 4. Does USTR have up-to-date standard operating procedures for FOIA administration?**

Answer: Yes.

- 5. If not, please provide a timeline for when USTR plans to develop or update standard operating procedures.**

Answer: Not applicable.

- 6. Has USTR established alternative means of access to first-party requested records outside of the FOIA process?**

Answer: No.

- 7. If yes, please provide examples. If no, please explain if such opportunities exist at USTR and whether there are any challenges in establishing alternative means of access.**

Answer: USTR has not received first-party requested records outside of the FOIA process.

- 8. During the reporting period, did USTR conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report or raw data, using active workflows and track management, reviewing and updating processing procedures, etc. In addition, please specifically highlight any data analysis methods or technologies used to assess USTR's FOIA program.**

Answer: Because the USTR FOIA Office is small, staff are in constant contact with each other. This allows us to evaluate processing procedures and make quick, effective

adjustments as needed. Our small size made use of data analysis methods or technologies unnecessary.

9. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the FOIA Public Liaison. Provide an estimate of the number of times requesters sought assistance from USTR's FOIA Public Liaison during FY2021.

Answer: In FY2021, requesters sought assistance on about 68 occasions.

10. Has USTR reviewed its FOIA-related staffing capabilities to identify resources needed to respond to current and anticipated FOIA demands?

Answer: Yes. In mid-September 2021, USTR hired a program manager/attorney to fill a position that had been vacant.

Section III: Steps Taken to Increase Proactive Disclosures

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

Answer: The FOIA office monitors press clips and communications from the Office of Public Affairs to identify appropriate materials for proactive disclosures.

2. Provide examples of any material USTR has proactively disclosed during the past reporting year, including records that have been requested and released three or more times.

Answer: Information related to ongoing trade negotiations, *e.g.*, U.S.-Kenya Trade Agreement Negotiations: <https://ustr.gov/countries-regions/africa/kenya/us-kenya-trade-agreement-negotiations>

Frequently requested records, *e.g.*, FOIA logs: <https://ustr.gov/about-us/reading-room/freedom-information-act-foia/electronic-reading-room/frequently-requested-reco>

Calendars of the U.S. Trade Representative and Chief of Staff: <https://ustr.gov/about-us/reading-room/freedom-information-act-foia/foia-library/frequently-requested-records/calendar-logs>

Information on USTR's monitoring and enforcement actions, *e.g.*, Section 201 and 301 investigations, dispute settlement matters, subsidies enforcement: <https://ustr.gov/issue-areas/enforcement>

Speeches and public remarks: <https://ustr.gov/about-us/policy-offices/press-office/press-releases>

Fact sheets on a variety of trade issues: <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets>

3. Does USTR disseminate common types of material outside of FOIA, including in online databases where the public may access them? If yes, please provide examples and, if applicable, statutory authority.

Answer: USTR produces reports throughout the year including the National Trade Estimate report, the Special 301 report, the Trade Policy Agenda and Annual Report, and posts them on the USTR website: <https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications>. USTR also solicits and posts public comments on Regulations.gov and the USTR public docket on the web portal at <https://comments.USTR.gov>.

4. Beyond posting new material, is USTR taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access USTR's website?

Answer: Yes.

5. If yes, please provide examples of such improvements. In particular, please describe steps USTR is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible.

Answer: USTR has centralized the information related to key initiatives such as the Section 301 investigations and updates these webpages in real-time. The webpages include links to other sources for information, such as relevant Federal Register notices and public dockets. USTR utilizes machine-readable formats such as XML and PDF when posting documents to the website.

6. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office? If so, describe this interaction.

Answer: The FOIA office works closely with regional and program offices to identify and post on the USTR website appropriate materials for proactive disclosures.

Section IV: Steps Taken to Greater Utilize Technology

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

Answer: Yes. The FOIA Office conducts a majority of searches using a centralized eDiscovery platform to allow us simultaneously to search potential record holders' email and files and to de-duplicate results. Because the USTR FOIA Office is small, we use simple tracking methods to monitor program performance.

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

Answer: None. The centralized eDiscovery platform currently in use meets our needs.

- 3. Has USTR reviewed its FOIA website during the reporting period to ensure it addresses the elements noted in OIP's 2017 guidance?**

Answer: Yes.

- 4. Did all four of USTR's quarterly reports for FY2021 appear on USTR's website and on FOIA.gov?**

Answer: Yes.

- 5. If USTR did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide USTR's plan for ensuring that such reporting is successful in FY2022.**

Answer: Not applicable.

- 6. 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 USTR's FY2020 Annual FOIA Report, and if available, for USTR's FY2021 Annual Report.**

Answer: <https://ustr.gov/about-us/reading-room/freedom-information-act-foia/annual-foia-reports>

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs

A. Simple Track

- 1. Does USTR utilize a separate track for simple requests?**

Answer: Yes.

- 2. If so, for USTR overall in FY2021, was the average number of days to process simple requests 20 working days or fewer?**

Answer: No, it was 24 days.

- 3. Provide the percentage of requests USTR processed in FY2021 that were placed in your simple track.**

Answer: 76.28 percent.

- 4. If USTR does not track simple requests separately, was the average number of days to process all non-expedited requests 20 working days or fewer?**

Answer: Not applicable.

B. Backlogs

BACKLOGGED REQUESTS

- 5. If USTR had a backlog of requests at the close of FY2021, did that backlog decrease as compared with the backlog reported at the end of FY2020?**

Answer: No, USTR's backlog increased from two requests at the end of FY2020, to five requests at the close of FY2021. However, USTR closed three of the backlogged requests by the beginning of November.

- 6. If not, did USTR process more requests during FY2021 than it did during FY2020?**

Answer: No.

- 7. If USTR's request backlog increased during FY2021, please explain why and describe the causes that contributed to USTR 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.**

Answer: The complexity of the FOIA requests in FY 2021 increased in both scope and length. For example, requesters sought records related to ongoing negotiations in China, Section 201 investigations into imported solar cells, initiatives in Africa, and communications with multiple Foreign Government officials. USTR also saw an increase in requests for records dating back to January 20, 2017.

- 8. If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests received by USTR in FY2021.**

Answer: Five percent.

BACKLOGGED APPEALS

9. If USTR had a backlog of appeals at the close of FY2021, did that backlog decrease as compared with the backlog reported at the end of FY2020?

Answer: Not applicable.

10. If not, did USTR process more appeals during FY2021 than it did during FY2020?

Answer: Not applicable.

11. If USTR's appeal backlog increased during FY2021, please explain why and describe the causes that contributed to USTR's not being able to reduce its backlog.

Answer: Not applicable.

12. If you had an appeal backlog, please report the percentage of appeals that make up the backlog out of the total number of appeals received by USTR in FY2021.

Answer: Not applicable.

C. Backlog Reduction Plans

13. In the 2021 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in FY2020 was asked to provide a plan for achieving backlog reduction in the year ahead. Did USTR implement a backlog reduction plan last year? If so, describe USTR's efforts in implementing this plan and note if USTR was able to achieve backlog reduction in FY2021.

Answer: Not applicable.

14. If USTR had a backlog of more than 1,000 requests in FY2021, what is USTR's plan to reduce this backlog during FY2022?

Answer: Not applicable.

D. Status of Ten Oldest Requests, Appeals, and Consultations

TEN OLDEST REQUESTS

15. In FY 2021, did USTR close the ten oldest pending perfected requests that were reported pending in your FY2020 Annual FOIA Report?

Answer: Yes.

16. If no, please provide the number of these requests USTR was able to close by the end of the fiscal year. If you had fewer than ten total oldest requests to close, please indicate that.

Answer: USTR closed the ten oldest requests that were reported pending in our FY2020 Annual FOIA Report.

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

Answer: For complex requests, we targeted a final response date that did not exceed the average response time for complex requests in the prior fiscal year, *i.e.*, 106 days. For all requests, we submitted search requests to our eDiscovery team within one to two business days of receipt.

TEN OLDEST APPEALS

18. In FY2021, did USTR close the ten oldest appeals that were reported pending in your FY2020 Annual FOIA Report?

Answer: USTR did not have any appeals pending in our FY2020 Annual FOIA Report.

19. If no, provide the number of these appeals USTR was able to close by the end of the fiscal year. If you had fewer than ten total oldest appeals to close, please indicate that.

Answer: USTR did not have any appeals pending in our FY2020 Annual FOIA Report.

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

Answer: Not applicable.

TEN OLDEST CONSULTATIONS

21. In FY2021, did USTR close the ten oldest consultations that were reported pending in your FY2020 Annual FOIA Report?

Answer: USTR did not have any consultations pending in our FY2020 Annual FOIA Report.

22. If no, provide the number of these consultations USTR was able to close by the end of the fiscal year. If you had fewer than ten total oldest consultations to close, please indicate that.

Answer: USTR did not have any consultations pending in our FY2020 Annual FOIA Report.

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

23. Briefly explain any obstacles USTR faced in closing its ten oldest requests, appeals, and consultations from FY2020.

Answer: Not applicable.

24. If USTR was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date USTR initially received the request, the date USTR sent the consultation, and the date when you last contacted the agency where the consultation was pending.

Answer: Not applicable.

25. If USTR did not close its ten oldest pending requests, appeals or consultations, please provide a plan describing how USTR intends to close those “ten oldest” requests, appeals, and consultations during FY2022.

Answer: Not applicable.

F. Success Stories

Describe at least one success story emblematic of USTR’s efforts out of all the activities undertaken since March 2021 to increase transparency and improve FOIA administration.

USTR FOIA staff trained every incoming USTR employee, political appointee, detailee, presidential management fellow, contractor and consultant within three months of their start date by creating a virtual, on demand option in response to maximum telework schedules.

Although the open FOIA program manager/attorney position was unfilled until the start of FY2022, we closed 95 percent of requests received in FY2021 and lowered our response time for complex requests from 106 to 71 days. We accomplished this by assigning similar FOIA requests to the same attorney for the initial FOIA staff review and designating one attorney as the liaison with USTR program offices and external stakeholders.