

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



2023 CHIEF FREEDOM OF INFORMATION ACT
OFFICER ANNUAL REPORT

Agency Received More than 50 Requests in FY2022

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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 300 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, a Deputy FOIA Officer/attorney who acts as the FOIA Public Liaison, and a FOIA program attorney. 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 private or 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 FY2022 decreased but the requests were more complex. We anticipate a steady volume of similarly complex requests in FY2023.

Due to USTR's global presence, unique international mission, and the high level of coordination with third parties, the FOIA Office faces significant 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: FOIA Leadership and Applying the Presumption of Openness

A. Leadership Support for FOIA

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.

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?

Answer: A key element of USTR’s responsibility for developing and coordinating U.S. trade policy and enforcing trade laws and agreements is outreach and communication to key stakeholders and the public, both for purposes of developing policy in an open and transparent manner and for ensuring public support for Administration trade policy goals. USTR’s FY2022 – FY2026 Strategic Plan identifies timely responses to FOIA requests as a critical strategy to ensure that the U.S. trade agenda and the policies necessary to fulfill it are broadly understood.

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 USTR provide such confirmation in its response letters?

Answer: Yes.

5. In some circumstances, agencies may respond to a requester using a Glomar response, *i.e.*, that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interested protected by a FOIA exemption.

Answer: In FY2022, USTR did not issue any Glomar responses.

6. Describe any other initiatives undertaken by USTR to ensure that it is applying the presumption of openness.

Answer: The USTR FOIA Office asks program offices that review records responsive to a request to document in writing how the release of certain material would cause USTR foreseeable harm. The USTR FOIA Office summarizes this information in its response letters.

Section II: 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. 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. 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. The FOIA staff also provides one-on-one refresher training to program offices involved in processing an open request.

2. Did USTR's FOIA professionals attend any substantive FOIA training or conference during the reporting period such as that provided by the Department of Justice?

Answer: Yes.

3. 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 *Virtual FOIA Summit for Agency FOIA Professionals*, *Virtual FOIA Exemption 1 and 7 Training* and *Virtual Exemption 4 and Exemption 5 Training* offered by the Department of Justice.

4. Please provide an estimate of the percentage of USTR's FOIA professionals who attended substantive FOIA training during this reporting period.

Answer: 100 percent.

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 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.

6. 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 your agency provides FOIA training or briefings to non-FOIA staff; and if senior leaders received a briefing on your agency's FOIA resources, 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 FY2022, the USTR FOIA Office provided ongoing advice and counsel concerning obligations under the FOIA to USTR staff either in response to questions or in the process of responding to a particular FOIA request.

B. Outreach

- 7. Did USTR FOIA professionals engage in any outreach or dialogue, outside of the standard request process, with the requester community or open government groups regarding FOIA administration? 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 the requester community to explain how our eDiscovery platform works and how to request USTR records controlled by the National Archives and Records Administration (NARA). We also direct them to publicly available information in the FOIA Library and on USTR.gov, and provide assistance on using other research tools such as the NARA Library, GSA Federal Advisory Committee Act database, and Regulations.gov.

- 8. As part of the standard request process, do USTR 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.**

Answer: Yes. The FOIA staff often interacts with requesters, the majority of whom are representatives of the media or open government groups, to clarify or narrow overly broad requests and gather missing or incomplete information.

- 9. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from USTR's FOIA Public Liaison during FY2022.**

Answer: In FY2022, requesters sought assistance on about 60 occasions.

C. Other Initiatives

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

Answer: In September 2021, USTR onboarded a new full time hire to the administrative legal team to fill a vacant FOIA program manager/attorney position. USTR does not anticipate making any additional staffing changes at this time.

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

Answer: Because USTR is a small agency with a very specific mission, the FOIA Office uses simple tracking methods to monitor its workload and program performance. Our FOIA spreadsheet

tracks upcoming due dates and where a request is in the process, *e.g.*, search requested, assigned to FOIA official, under program office review, etc.

12. Describe any other initiatives USTR has undertaken to ensure fair and effective FOIA administration.

Answer: The USTR FOIA Office is committed to backlogging five percent or less of the FOIA requests received during the fiscal year. In FY2022, USTR's backlog was 1.49 percent (1 backlogged request/67 requests received in FY2022).

Section III: 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. We monitor our FOIA log to ensure that frequently requested records are promptly posted on the USTR website.

2. Provide examples of, and include links to, any material USTR has proactively disclosed during FY2022, including records that have been requested and released three or more times.

Answer: Information related to ongoing trade negotiations, *e.g.*, Indo-Pacific Economic Framework (IPEF) Negotiations: <https://ustr.gov/about-us/reading-room/freedom-information-act-foia/foia-library>

Frequently requested records, *e.g.*, FOIA logs and Congressional correspondence: <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>

Blogs and Op-Eds: <https://ustr.gov/about-us/policy-offices/press-office/blogs-and-op-eds>

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

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

USTR reports including the National Trade Estimate, the Special 301 report, the Trade Policy Agenda and Annual Report: <https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications>

Solicitations for and public comments received posted on Regulations.gov and the USTR public docket on the web portal at <https://comments.USTR.gov>

- 3. 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.

- 4. 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.

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

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

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 uses to support the FOIA program.**

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

- 3. Does USTR currently use any technology to automate record processing? For example, does USTR 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.**

Answer: USTR uses a centralized eDiscovery platform that simultaneously searches potential record holders' email and files and de-duplicates results. We use Adobe Pro software to apply redactions.

- 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 USTR reviewed its FOIA website(s) during FY2022 to ensure it addresses the elements noted in the guidance?**

Answer: Yes.

- 5. Did all four of USTR's quarterly reports for FY2022 appear on USTR's website and on FOIA.gov?**

Answer: Yes.

- 6. If USTR did not successfully post all quarterly reports, please explain why and provide USTR's plan for ensuring that such reporting is successful in FY2023.**

Answer: 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 USTR's FY2021 Annual FOIA Report, and if available, for USTR's FY2022 Annual Report.**

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

- 8. In February 2019, DOJ and OMB issued joint guidance establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Is USTR in compliance with the guidance?**

Answer: Yes.

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

A. *Remove Barriers to Access*

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

Answer: No.

2. If yes, please provide examples. If no, please indicate why not.

Answer: A separate process is unnecessary because USTR rarely receives first-party requested records.

B. Timeliness

3. For FY2022, what was the average number of days USTR reported for adjudicating requests for expedited processing?

Answer: Four.

4. 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.

5. Does USTR utilize a separate track for simple requests?

Answer: Yes.

6. If so, for USTR overall in FY2022, was the average number of days to process simple requests 20 working days or fewer?

Answer: No, it was 23.12 days.

7. If not, did the simple track average processing time decrease compared to FY2021?

Answer: Yes, from 24 to 23.12 (or by .88) days.

8. Provide the percentage of requests USTR processed in FY2022 that were placed in your simple track.

Answer: 86.57 percent.

9. 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.

C. Backlogs

BACKLOGGED REQUESTS

10. If USTR had a backlog of requests at the close of FY2022, did that backlog decrease as compared with the backlog reported at the end of FY2021?

Answer: Yes. USTR's backlog decreased from five requests at the end of FY2021, to one request at the close of FY2022. USTR closed the backlogged request by the end of November.

11. If not, did USTR process more requests during FY2022 than it did during FY2021?

Answer: Not applicable.

12. If USTR's request backlog increased during FY2022, please explain why and describe the causes that contributed to USTR not being able to reduce its backlog.

Answer: Not applicable.

13. If USTR 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 FY2022.

Answer: 1.49 percent.

BACKLOGGED APPEALS

14. If USTR had a backlog of appeals at the close of FY2022, did that backlog decrease as compared with the backlog reported at the end of FY2021?

Answer: Not applicable.

15. If not, did USTR process more appeals during FY2022 than it did during FY2021?

Answer: Not applicable.

16. If USTR's appeal backlog increased during FY2022, please explain why and describe the causes that contributed to USTR's not being able to reduce its backlog.

Answer: Not applicable.

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 USTR in FY2022.

Answer: Not applicable.

D. Backlog Reduction Plans

18. In the 2022 guidelines for Chief FOIA Officer Reports, OIP asked any agency with a backlog of over 1000 requests in FY2021 to provide a plan for achieving backlog reduction in the year ahead. Did USTR implement a backlog reduction plan last year?

Answer: Not applicable.

19. If USTR had a backlog of more than 1,000 requests in FY2022, what is USTR's plan to reduce this backlog during FY2023?

Answer: Not applicable.

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

TEN OLDEST REQUESTS

20. In FY2022, did USTR close the ten oldest pending perfected requests that were reported pending in your FY2021 Annual FOIA Report?

Answer: Yes.

21. If no, please provide the number of these requests USTR was able to close by the end of FY2022. If USTR had fewer than ten total oldest requests to close, please indicate that.

Answer: USTR closed the nine oldest requests that were reported pending in our FY2021 Annual FOIA Report.

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

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

TEN OLDEST APPEALS

23. In FY2022, did USTR close the ten oldest appeals that were reported pending in your FY2021 Annual FOIA Report?

Answer: USTR did not have any appeals pending in our FY2021 Annual FOIA Report.

24. If no, provide the number of these appeals USTR was able to close by the end of FY2022. If you had fewer than ten total oldest appeals to close, please indicate that.

Answer: USTR did not have any appeals pending in our FY2021 Annual FOIA Report.

25. 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

26. In FY2022, did USTR close the ten oldest consultations that were reported pending in your FY2021 Annual FOIA Report?

Answer: USTR did not have any consultations pending in our FY2021 Annual FOIA Report.

27. If no, provide the number of these consultations USTR was able to close by the end of FY2022. If USTR had fewer than ten total oldest consultations to close, please indicate that.

Answer: USTR did not have any consultations pending in our FY2021 Annual FOIA Report.

ADDITIONAL INFORMATION REGARDING TEN OLDEST

28. If USTR did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how USTR intends to close those ten oldest requests, appeals, and consultations during FY2023.

Answer: Not applicable.

F. Additional Information about FOIA Processing

29. Were any requests at USTR the subject of FOIA litigation during the reporting period? If so, please describe the impact on USTR'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.

Answer: No.

30. How many requests during FY2022 involved unusual circumstances as defined by the FOIA?

Answer: 29.