

**CHIEF FOIA OFFICER'S REPORT**  
**OFFICE OF THE U.S. TRADE REPRESENTATIVE**

**March 15, 2010**

**I. Steps Taken to Apply the Presumption of Openness**

**1. Description of Steps the Agency has taken to ensure that the presumption of openness applies.**

- a) The Chief FOIA Officer announced the receipt of the President's memorandum in the Senior Staff meeting and explained in detail the change in policy. On receipt of the President's memorandum, USTR applied the presumption of openness to all FOIAs received to date. The three employees directly responsible for FOIA (the Chief FOIA Officer, the FOIA specialist, and the FOIA Attorney) reviewed all pending FOIAs individually to ensure that the presumption was applied to all FOIA requests. This decision required that every document be reviewed individually with the responding office to ensure that any exemption claimed was reexamined in light of the President's message. We completed 7 FOIA requests in the period between January 21 and March 19, 2009. Of these, three FOIA requests were full disclosures, including documents related to the settlement of a sensitive countervailing duty case and the ethics agreements signed by all Presidential nominees for positions requiring Senate confirmation. One FOIA was withdrawn by the petitioner, after receiving a full briefing of the subject matter, the proposed Anti-Counterfeiting Trade Agreement (ACTA). In three of the cases, the Agency had no records.
- b) On receipt of the President's memorandum, there was one Appeal pending, which was reexamined in light of the memorandum. With the presumption of openness applied, the Appeals committee voluntarily released three documents in part that contained sensitive opening remarks, and summaries of the Korea Free Trade Area meetings. The documents previously had been denied under the Bush Administration's policies.
- c) On receipt of the President's memorandum, USTR also asked for a stay in its two pending lawsuits in order to review its prior withholdings to insure that they were consistent with the new policy. In both cases, we determined that additional documents could be released, notwithstanding our legal right to withhold them. In one suit USTR, for the first time, released an interagency policy document, protected

- under the B5 exemption. In a second suit, USTR determined that 52 documents, previously withheld pursuant to B5, could be released to the requestor.
- d) On receipt of the Attorney General's guidelines, the Chief FOIA Officer again briefed the USTR Senior Staff at length. USTR's FOIA Attorney sent an e-mail to every USTR employee on March 23, 2009 forwarding the Attorney General's FOIA guidelines received March 19, 2009. The e-mail advised of the new regulations affecting public release, including that USTR was asked to "use our discretion to release as much as possible even if we may withhold it legally" and reminding the staff that "FOIA is everyone's responsibility." The attorney fielded questions from the staff and planned a training session discussed below in part (h).
  - e) As a result of the Holder guidelines, USTR instituted the policy of having a FOIA staff member personally review every individual exemption for openness with the responding office in every FOIA request.
  - f) During this time period (March 23, 2009 to March 1, 2010), the Agency received 69 FOIAs and closed 40. Of the 40 FOIAs, there were no records available for 11 and two were withdrawn. Of the 27 remaining FOIAs, USTR made 13 full disclosures and 9 partial disclosures. Among the most important disclosures were the calendars of the U.S. Trade Representative, over 221 documents on the Meritorious Initiative on Softwood Lumber and a Matrix of Environment Chapter Obligation that listed all provisions of this part of the Peruvian Free Trade Area and the sections of Peruvian legislation that implemented the agreement.
  - g) In the same time period (March 23, 2009 to March 1, 2010), USTR received 2 Appeals. In the first case, the request was answered in full. In the second case, pertaining to ongoing WTO negotiations on Financial Services, the original FOIA was prepared under the Holder guidelines. Of the 48 documents found, 26 were released in full, and 10 documents were released in part. The Appeal upheld partial release of the 10 documents.
  - h) To be sure that the Holder guidelines were well understood, USTR contacted the Justice Department to arrange for a training session. Each office designated at least one individual to attend the training and to brief their office mates. The Justice Department provided two attorneys who spent two hours with the staff, providing special handouts and answering questions. The General Counsel of the Agency reinforced the importance of the training and the importance of the Holder guidelines with the following message to the participants: "I want to thank you for attending the

FOIA workshop yesterday hosted by USTR's FOIA Office and the Department of Justice OIP. I cannot emphasize enough the importance of the FOIA when conducting our work and when we receive a request. The Administration, starting with the President, has made the issue of openness and transparency in government, including FOIA, a top priority. I encourage you to review the FOIA and its exceptions and to utilize our experts in the FOIA Office here at USTR. We stand ready to assist in any way that we can."

- 2. Report whether your agency shows an increase in the number of requests where records have been released in full or where records have been released in part when compared with those numbers in the previous year's Annual FOIA Report (See Table 1).**

## **II. Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests.**

- a) Detailed discussion of the President's FOIA Memorandum and the Attorney General's FOIA guidelines in Senior Staff ensured the support of the USTR, the Deputies and the General Counsel and the Assistant USTRs for this initiative. As FOIA responsibility is shared in the agency, commitment of all the Senior Staff to a new openness has been very important.
- b) The USTR FOIA specialist started scanning all FOIA requests into the e-mail system and assigning them to Assistant USTRs within two days, and often immediately.
- c) USTR FOIA staff instituted a process of contacting requestors with the relevant USTR staff present to achieve a precise understanding of the scope of the request. If the request was overly broad, USTR sought to narrow the request to match the requestor's interest, and therefore respond with more accurate information in a timelier manner.
- d) USTR FOIA staff met weekly to derive plans to follow up on every request.
- e) In March 2009, USTR named a new full-time FOIA attorney to review requests and the progress of processing the request. The lawyer, who had previously served as the Executive Secretary of the Agency, was familiar with all aspects of trade and all Agency personnel, making FOIA follow-up easier. The FOIA lawyer received extensive training in FOIA through attendance at three Justice Department courses.

- f) A joint meeting was held between the Chief FOIA Officer and the AUSTR for Administration and their staffs to explore how IT support could be incorporated into the agency. We have obtained a 30-day trial of the “Software as a Service (SaaS)” Public Records Tracker and two of the FOIA staff attended a web training session. If the trial is successful, USTR will subscribe to the service.
- g) The USTR FOIA Office obtained the approval of the Chief of Staff to move tracking of outstanding FOIAs to the Front Office Executive Secretary. Starting April 1, 2010, all outstanding FOIAs will be entered into the electronic correspondence system which is circulated weekly to all AUSTRs. Under this system, it will be easier to track the progress of each FOIA request and follow-up on overdue FOIAs in a timelier fashion.

### **III. Steps Taken to Increase Proactive Disclosures**

Since the President and Attorney General’s memoranda, the Agency has increased the information posted online in the following ways:

- a) USTR completely overhauled its website to make greater amounts of information more readily available and accessible.
- b) USTR posted Federal Register notices online soliciting public comment and notifying of public hearings.
- c) USTR used regulations.gov for its Federal Register Notices which allowed others to see public comments, more easily than coming to a Reading Room at USTR.
- d) USTR added 165 updates to the new USTR blog and instituted an “Ask the Ambassador” program on the website allowing for public inquiries. More than 181,000 people have visited USTR.gov since its relaunch on June 1, 2009. The new USTR.gov has received over 960,470 page views, with a 60% increase in new visitors since June, 2009.
- e) USTR identified and took the following steps in 2009 to keep the public informed about the ACTA negotiations, the subject of many FOIA requests:
  - established for the first time a dedicated ACTA web page on the USTR website;
  - issued and updated the very first public summary of issues under negotiation;
  - released, for the first time, agendas to the public on the ACTA web page before each meeting; and

- strengthened our educational efforts online by providing links on the ACTA webpage to valuable and relevant portions of past free trade agreements for review by those interested in understanding the U.S. approach to possible legal framework provisions of the ACTA.

#### **IV. Steps Taken to Greater Utilize Technology**

- 1) USTR currently receives requests electronically. The e-mail address of the Chief FOIA officer and the FOIA specialist are on the USTR FOIA website.
- 2) Same as above
- 3) USTR does not currently track requests electronically, but will adopt a partial tracking system when the overdue FOIAs are inserted into the electronic tracking system for correspondence.
- 4) USTR expects to subscribe to the Public Records Tracker System, if the trial is successful.
- 5) USTR uses scanning to process requests and internal e-mail to reach the action officers.
- 6) USTR expects to subscribe to the Public Records Tracker System, if the trial is successful.
- 7) The Agency FOIA report is compiled by hand.
- 8) USTR expects to subscribe to the Public Records Tracker System, if the trial is successful.

#### **V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests**

1. In FY 2008, our backlog was 18 FOIAs as of the end of the reporting period. This number increased at the end of FY 2009 reporting period to 24. As of this report, nine (9) of the twenty-four (24) pending requests that were reported in our 2009 Annual FOIA Report have been closed. USTR currently has fifteen (15) backlogged requests as outlined in the table below. There are no backlogged appeals. Our backlog as of the date of this report is less than the backlog in FY 2008. As of FY 2008 and FY 2009, the same FOIA dated June 3, 2006 was the oldest FOIA.
2. Not applicable
3. In order to improve timeliness in responding to requests and to administrative appeals, USTR has done the following:

- a) Used the FOIA staff to actively assist policy offices in their searches.
- b) Met weekly to discuss outstanding FOIAs and backlog and derive plans to follow-up on each request.
- c) Enlisted the Executive Secretary to send out the FOIA request list along with other assignments on a weekly basis.

Date request was received	Age of request (Number of Days)
6/3/2006	1367
3/9/2007	1088
6/18/2009	256
7/9/2009	235
7/29/2009	215
7/29/2009	215
8/7/2009	206
8/19/2009	194
9/14/2009	168
9/14/2009	168
9/14/2009	168
9/21/2009	161
9/21/2009	161
9/21/2009	161
9/25/2009	157

**TABLE 1**

**COMPARISON OF FY 2008 AND FY 2009 ANNUAL FOIA REPORTS**

FY 2008	FY 2009
Number of FOIAs received .....53	Number of FOIAs received.....54
Number of full grants.....26	Number of full grants.....19
Number of partial grants/ partial denials.....15	Number of partial grants/ partial denials.....11
Number of full denials.....1	Number of full denials.....2
Number of full denials based on reasons other than exemptions:	Number of full denials based on reasons other than exemptions:
No records.....9	No records.....12
Request withdrawn.....2	Request withdrawn.....8
	Fee related.....2
Pending.....18	Pending.....24
Number of times exemption applied	Number of times exemption applied
(B)(1).....1	(B)(1).....2
(B)(2).....3	(B)(2).....0
(B)(3).....0	(B)(3).....0
(B)(4).....5	(B)(4).....1
(B)(5).....9	(B)(5).....6
(B)(6).....7	(B)(6).....6

