



United States International Trade Commission

# 2014 CHIEF FOIA OFFICER REPORT



CHIEF FOIA OFFICER:  
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## INTRODUCTION

The United States International Trade Commission (USITC or Commission) was established in 1916. It is an independent, nonpartisan federal agency whose mission is to: (1) administer U.S. trade remedy laws within its mandate in a fair and objective manner; (2) provide the President, the United States Trade Representative (USTR), and Congress with independent, quality analysis, information, and support on matters relating to tariffs and international trade and competitiveness; and (3) maintain the Harmonized Tariff Schedule of the United States. In so doing, the Commission serves the public by implementing U.S. law and contributing to the development of sound and informed U.S. trade policy.

The USITC fulfills its mission and serves the nation through five major operations. These are:

- **Import injury investigations:** involves determining whether certain unfairly traded imports (antidumping and countervailing duty investigations) and increased imports (safeguard investigations) injure or threaten to injure U.S. industries;
- **Intellectual property-based import investigations:** involves directing actions, subject to Presidential disapproval, against certain unfair practices in import trade, such as patent and trademark infringement;
- **Industry and economic analysis:** involves conducting objective analyses of major trade-related issues; estimating the probable economic effects of trade agreements; and analyzing the competitiveness of specific industries;
- **Tariff and trade information services:** provides reliable and timely trade information and analysis for the Commission, the Congress, the executive branch, and the general public; and
- **Trade policy support:** involves direct technical support by USITC staff to the USTR, congressional committees and Members of Congress, interagency committees, and U.S. delegations to multilateral trade organizations, such as the World Trade Organization.<sup>1</sup>

The USITC's FOIA program is administered by the Chief FOIA Officer with the assistance of the FOIA Liaison. As a small agency, the USITC maintains staff commensurate with the agency's needs to effectively implement its FOIA program.

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<sup>1</sup> This description is based on the Commission's Strategic Plan for FY 2009-2014. The agency plans to issue a new Strategic Plan in the near future.

## **SECTION I: STEPS TAKEN TO APPLY THE PRESUMPTION OF OPENNESS**

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.

### **FOIA TRAINING**

**1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?**

Answer: Agency-wide training on information security includes FOIA awareness and responsibilities. Agency staff is reminded of their responsibilities to perform thorough and expeditious searches of all applicable records when asked to research a FOIA request.

**2. If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.**

Answer: Agency records management training and information security training, provided by the Office of the Chief Information Officer, covers topics including how to appropriately mark, retain and organize records subject to FOIA. These two annual training sessions are mandatory for all agency personnel.

**Did your FOIA professionals attend any FOIA training during the reporting period such as that provided by the Department of Justice?**

Answer: During calendar year 2013, FOIA staff attended the Department of Justice's training session on new guidelines and FOIA reporting (November) to continue handling requirements within the Open Government Act.

**3. Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period.**

Answer: Approximately 100% of agency FOIA professionals received FOIA training this period; fifty percent of staff attended training focusing solely on FOIA issues.

4. OIP has issued guidance that **every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year**. Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year.

Answer: Due to the low volume of FOIA requests received annually, the agency has only two FOIA professionals. Our continued plan to ensure that FOIA professionals have the appropriate training is to utilize outside sources. FOIA professionals will attend training provided by the Department of Justice (DOJ) and other related training offered by the American Society of Access Professionals (ASAP).

## OUTREACH

5. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement?

Answer: No. We are a small agency and we receive a small number of FOIA requests.

## DISCRETIONARY DISCLOSURES

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

6. Does your agency have a formal process in place to review records for discretionary release? If so, please briefly describe this process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases.

Answer: The agency has no formal process in place but consideration is given with each FOIA request to assure the requester receives the requested information that may be releasable after records are reviewed.

7. During the reporting period did your agency make any discretionary releases of otherwise exempt information?

Answer: We rarely deny requests outright and we supply as much information as possible in response to FOIA requests, however we have received requests for information subject to FOIA exemptions. During the time period covered by this report, we did not make discretionary releases.

**8. What exemptions would have covered the information that was released as a matter of discretion?**

Answer: We have not made discretionary releases of information.

**9. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.**

Answer: N/A

**10. If your agency was not able to make any discretionary releases of information, please explain why.**

Answer: The only information that was withheld during this time period was subject to FOIA exemptions, and either disclosure was prohibited or it was reasonably foreseen that disclosure would harm an interest protected by an exemption.

**OTHER INITIATIVES**

**11. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014.**

Answer: Yes, all of the reports for each quarter were submitted to our agency's web team for transmittal to the Department of Justice to post to their web site location. In addition, all reports were submitted timely in accordance with the dates given by the Department of Justice.

**Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please provide links in your description.**

Answer: Only two requests were denied in full due to exemptions. The Commission's practice was already consistent with the Administration's openness initiative when it began. The FOIA Office continually reviews its processes for searching for records, compiling data, and disclosing information to ensure its compliance with openness guidelines.

## **SECTION II: STEPS TAKEN TO ENSURE THAT YOUR AGENCY HAS AN EFFECTIVE SYSTEM IN PLACE FOR RESPONDING TO REQUESTS**

As the Attorney General emphasized in his FOIA Guidelines, “[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests.” It is essential that agencies effectively manage their FOIA program.

Describe here the steps your agency has taken to ensure that your management of your FOIA program is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

### **PERSONNEL**

**1. Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series?**

Answer: No. We have discussed this with our Human Resources Department and based on the collateral duties of the FOIA Liaison a decision was made not to convert the position to the 0306 series.

**2. If not, what proportion of personnel has been converted to the new job series?**

Answer: N/A.

**3. If not, what is your plan to ensure that all FOIA professionals’ position descriptions are converted?**

Answer: N/A.

### **PROCESSING PROCEDURES**

**4. For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.**

Answer: Yes, we had one expedited request in FY 2013, which was adjudicated within one day.

- 5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.**

Answer: No, our agency received two consultations between FY 2012 and 2013; in light of the relatively small number of consultation, we haven't had the need to take further action in this area. However we always make it a practice to ensure that our responses to all requests are handled in the most efficient and effective way possible.

## **REQUESTER SERVICES**

- 6. Do you use e-mail or other electronic means to communicate with requesters when feasible?**

Answer: Yes, when requesters give their e-mail information we provide a receipt via e-mail that we received their request. We also use e-mail as an opportunity to communicate back and forth with requesters during the course of processing the FOIA request and to respond to any general concerns or feedback relating to the request.

- 7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?**

Answer: The agency did not have any administrative appeals in FY 2012 and FY 2013. However, in all future appeals, we are including a paragraph in our response letters concerning mediation services offered by OGIS.

- 8. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc.**

Answer: Agency FOIA staff meets at least quarterly to review the current year FOIA files. We review our FOIA checklist to ensure that the all appropriate documents are contained within each file as well as recorded accurately, and check to make sure that all internal procedures have been followed.

## SECTION III: STEPS TAKEN TO INCREASE PROACTIVE DISCLOSURES

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Describe here the steps your agency has taken both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2013 to March 2014). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

### POSTED MATERIAL

#### 1. Do your FOIA professionals have a system in place to identify records for proactive disclosures?

Answer: The Commission continues to provide large amounts of information to the public via its website. Notably, the Commission maintains the Electronic Document Information System (EDIS). EDIS is a repository for documents filed in import injury investigations, intellectual property-based import investigations, and other proceedings before the Commission. Any member of the public may sign up for access to this system without charge. EDIS contains public documents of interest to the general public and lessens the need to formally request such documents through FOIA.

#### If so, describe the system that is in place.

Answer: The USITC website contains links to the data noted below.

- (1) Federal Register notices (since March 2013, published over 350 notices in the Federal Register and posted over 140 notices),
- (2) Publications (made over 110 additional publications available online),
- (3) Statistical data regarding investigations before the Commission (for example, last fiscal year instituted 39 new Section 337 investigations),
- (4) Electronic Document Information System (EDIS) (posted more than 24,000 documents),
- (5) Numerous press releases (over 130 press releases issued and posted on the agency's website), and
- (6) The Harmonized Tariff System (HTS) (received approximately 4.65 million requests for tariff information annually, with the website receiving 6.29 million hits annually).

**2. Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.**

The Office of Unfair Import Investigations of the USITC provides statistical data related to Section 337 investigations conducted by the Commission which most often involve claims regarding intellectual property rights, including allegations of patent infringement and trademark infringement by imported goods. This data may be found at [http://www.usitc.gov/press\\_room/337\\_stats.htm](http://www.usitc.gov/press_room/337_stats.htm).

Below is an example of the material:

**Section 337 Statistical Information**

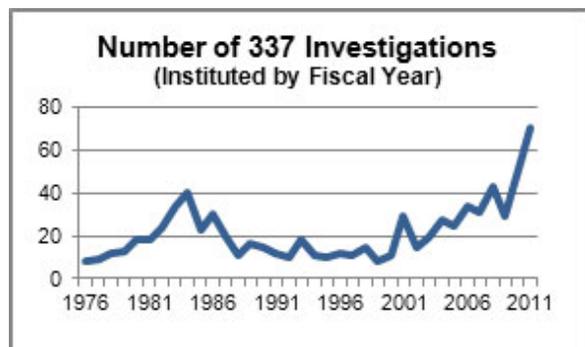
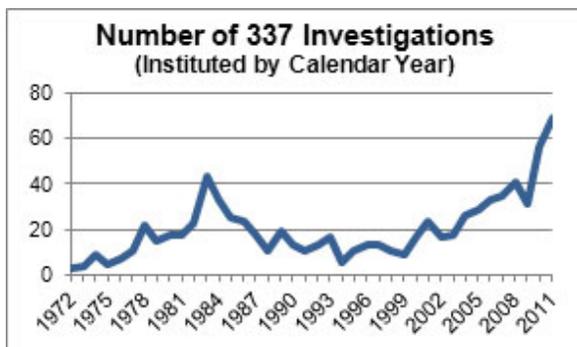
**Current statistics:**

Number of Investigations (based on new complaints) instituted so far in:

- **Calendar Year 2013:** (1/1/2013 - present): 41 (as of 11/20/2013)
- **Fiscal Year 2014:** (10/1/2013 - present): 7 (as of 11/20/2013)
- **Fiscal Year 2013:** (10/1/2012 - present): 39 (as of 9/30/2013)
- **For a list of currently pending Section 337 matters**
- **Information on Complaints Filed, But Not Yet Instituted**

**Current statistics:**

- *Number of Investigations Instituted by Calendar Year*
- *Number of Investigations Instituted by Fiscal Year*



## **MAKING POSTED MATERIAL MORE USEFUL**

- 3. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of posted material, improving search capabilities on the site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.?**

Answer: We perform routine user surveys and respond to inquiries from the public on a regular basis. Commission staff regularly meets with customer groups, such as organizations that practice before the Commission, and solicits feedback from them. Generally the Commission rates well in surveys as to responsiveness and the information provided. For example, the agency received feedback regarding the desire to obtain more data involving intellectual property-based import investigations. The agency is in the process of improving the intellectual property-based import investigations database to provide more useful data to the public.

**If so, describe the system that is in place.**

Answer: N/A.

- 4. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized?**

Answer: The Commission updated its website to a more user friendly and visual appealing platform. Utilizing a module format, the website rotates various articles on its main page with accompanying photo(s), to highlight issues of interest to the public. Social media was not utilized.

- 5. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.**

Answer: We continually work to balance the need to provide a resource of historical data and information on the agency website with the challenges of records retention and data storage, especially with budgetary constraints.

- 6. Describe any other steps taken to increase proactive disclosures at your agency.**

Answer: The agency is working on developing platforms to make more investigative data available on its website. We hope to release a more robust and interactive public database for Section 337 investigative data during fiscal year 2014.

## SECTION IV: STEPS TAKEN TO GREATER UTILIZE TECHNOLOGY

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. Over the past several years agencies have reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2014, as we have done over the past years, the questions have been further refined and now also address different, more innovative aspects of technology use.

### ONLINE TRACKING OF FOIA REQUESTS

#### 1. Can a FOIA requester track the status of his/her request electronically?

Answer: No. We receive a small number of FOIA requests and our contacts with requestors are via telephone or email regarding the status of their requests. Since requestors receive direct contact with our office, we've received positive feedback that personal interaction with the FOIA Office staff is helpful.

#### 2. If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?

Answer: N/A

#### 3. Describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.

Answer: N/A

#### 4. In particular, does your agency tracking system provide the requester with an estimated date of completion for his/her request?

Answer: N/A

#### 5. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability? If not, please explain why.

Answer: Currently due to budget constraints and given the low number of FOIA requests the Commission has historically received (approximately less than 75 per reporting year) justification

is lacking for the resource allocation necessary to develop a tracking system. However the agency continues to review the FOIA webpage to determine improvements that will assist the public.

### **USE OF TECHNOLOGY TO FACILITATE PROCESSING OF REQUESTS**

- 6. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?**

Answer: No. Our technology has been sufficient to facilitate overall FOIA operations.

- 7. If so, describe the technological improvements being made.**

Answer: N/A

- 8. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program?**

Answer: N/A

## **SECTION V: STEPS TAKEN TO IMPROVE TIMELINESS IN RESPONDING TO REQUESTS AND REDUCING BACKLOGS**

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations. For the figures required in this Section, please use those contained in the specified sections of your agency's *2013 Annual FOIA Report* and, when applicable, your agency's *2012 Annual FOIA Report*.

### **SIMPLE TRACK REQUESTS**

**1. Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.**

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

Answer: The Commission uses separate tracking for simple requests.

b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?

Answer: Yes. Our average number of days to process simple requests was 10 days.

c. If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?

Answer: N/A

## **BACKLOGS AND "TEN OLDEST" REQUESTS, APPEALS AND CONSULTATIONS**

2. Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C. (5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests –Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Years 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.

### **BACKLOGS**

- a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012?

Answer: The agency had no backlog of requests at the close of Fiscal Year 2013.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?

Answer: N/A

### **TEN OLDEST REQUESTS**

- c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?

Answer: Yes, we only had one request pending at the end of FY 2012 and it was closed in FY 2013.

- d. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed two of them; you should note that you closed two out of seven "oldest" requests.

Answer: N/A

### TEN OLDEST APPEALS

- e. In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?

Answer: N/A

- f. If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C. (5) of your Fiscal Year 2012 Annual FOIA Report

Answer: N/A

### TEN OLDEST CONSULTATIONS

- g. In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012?

Answer: N/A

- h. If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report.

Answer: N/A

### REASONS FOR ANY BACKLOGS

- 3. If you answered “no” to any of the questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:

**REQUEST AND/OR APPEAL BACKLOG:**

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals?

Answer: N/A

- b. Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff?

Answer: N/A

- c. Was the lack of a reduction in the request and/or appeal backlog caused by an increase in the complexity of the requests received?

Answer: N/A

- d. What other causes, if any, contributed to the lack of a decrease in the request and/or appeal backlog?

Answer: N/A

**“TEN OLDEST” NOT CLOSED**

- e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012.

Answer: There were no foreseen obstacles that could be noted with closing the one oldest request. The one request has already been closed.

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

Answer: N/A

## **PLANS FOR CLOSING OF TEN OLDEST PENDING REQUESTS, APPEALS, AND CONSULTATIONS AND REDUCING BACKLOGS**

Given the importance of these milestones, it is critical that Chief FOIA Officers assess the causes for not achieving success and create plans to address them.

- 4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2014.**

Answer: We only had one pending request and consultation for FY 2013. We have already closed both the one pending request and consultation.

- 5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency’s plan for achieving backlog reduction in the year ahead.**

Answer: N/A

## **INTERIM RESPONSES**

OIP has issued *guidance* encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information.

- 6. Does your agency have a system in place to provide interim responses to requesters when appropriate?**

Answer: We have procedures in place to provide interim responses to requestors.

- 7. If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.**

Answer: N/A

## USE OF FOIA'S LAW ENFORCEMENT "EXCLUSIONS"

In order to increase transparency regarding the use of the FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to "treat the records as not subject to the requirements of [the FOIA]," 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

### 1. Did your agency invoke a statutory exclusion during Fiscal Year 2013?

Answer: No

### 2. If so, what was the total number of times exclusions were invoked?

Answer: N/A

## SPOTLIGHT ON SUCCESS

Out of all the activities undertaken by your agency since March 2013 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas. As noted above, these agency success stories will be highlighted during Sunshine Week by OIP. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The *success story* is designed to be a quick summary of a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

**Answer: During Fiscal Year 2013, we had two FOIA requests relating to the same subject matter. First, I would like to highlight the diligent research of our IT team in the Office of the Chief Information Officer in assisting with searching through voluminous documents on our EDIS filing system. This assistance, searching the back-up of our database utilizing a "code" search, saved an enormous amount of effort over manually performing an EDIS search of the thousands of documents related to this FOIA request.**

**We worked diligently with the requester and parties from the relevant investigation in determining whether the documents could be released and ensuring that any information that fell into FOIA exemptions (specifically exemptions 3 and 4) was properly redacted. Responsive documents were released in interim stages as they became available after staff received approval for release from the parties to stay in compliance with timing under FOIA.**



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