



OFFICE of GOVERNMENT INFORMATION SERVICES

November 29, 2016—sent via email

Franklin C. Jones
Executive Director
Privacy and Diversity Office
U.S. Customs and Border Protection
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Washington, DC 20002

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Dear Mr. Jones:

This letter is in reference to your September 30, 2016 response to Office of Government Information Services (OGIS) recommendations for improving Customs and Border Protection (CBP) administration of the Freedom of Information Act (FOIA).

We appreciate your thorough response to our March 2016 recommendations and thank you again for participating in OGIS's agency compliance assessment program. CBP has taken a number of important steps to strengthen its FOIA program and improve compliance with the statute. We have reviewed your responses and, as indicated in the attached form, consider all 15 of OGIS's recommendations for the CBP FOIA program to be closed.

If you have any questions, please do not hesitate to contact Kirsten Mitchell at 202-741-5775 or at kirsten.mitchell@nara.gov.

Sincerely,

NIKKI GRAMIAN
Acting Director

cc: Jonathan Cantor, Acting Chief FOIA Officer, Department of Homeland Security (DHS)

James Holzer, Deputy Chief FOIA Officer, DHS
Sabrina Burroughs, FOIA Officer/Public Liaison, CBP



Enclosure

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Customs and Border Protection: January 2016		
Recommendation	Agency Response: September 2016	Status
<p>Continue managing resources by developing a method for monitoring the number of pages processed and ensuring timelier processing of complex requests.</p>	<p>U.S. Customs and Border Protection's (CBP) Freedom of Information Act (FOIA) office discussed this issue with the FOIAonline systems administrator from the Environmental Protection Agency (EPA). The EPA advised CBP that FOIAonline system cannot be programed to produce page counts based on the system's current functionality. However, EPA will add this feature to their enhancement tracker and discuss how best to implement with the FOIAonline consortium members to determine when it can be implemented system-wide.</p> <ul style="list-style-type: none"> • With regard to the processing of complex requests, CBP has identified one major barrier to timely processing of complex cases. Based on our analysis, complex requests are remaining in the office search stage of our process well beyond the specified research timeframes. To conduct searches in a timelier manner CBP developed and disseminated a report of all overdue searches pending in each CBP management office. The report was followed by asking each of the Executive Assistant Commissioners to ensure that their respective offices complete all record searches in a timely manner. • This approach ensures and provides visibility of the FOIA program at the most senior levels of the organization. 	<p>CLOSED</p>
<p>Discuss with the Privacy and Diversity Office options for managing both the backlog and incoming requests and ensuring proper staffing levels in the coming years.</p>	<p>Regarding CBP's FOIA backlog, significant progress has been made on managing the FOIA backlog by streamlining the FOIA intake process. It is worth noting that as of this writing, CBP's FOIA office is presently closing more FOIA requests per day than are received each day. In support of our efforts to eliminate the backlog, staff from offices across CBP have been trained to conduct record searches. In limited instances, individuals have been detailed to the FOIA Office to process specific FOIA requests. In addition, CBP supplements the full-time FOIA staff with 26 student interns through the Pathways program and we are teaching them how to process FOIA requests.</p> <p>With regard to ensuring proper staffing levels in coming years, as indicated, the FOIA Office is supported by full-time temporary duty staff from various CBP offices who work on high-volume requests as needed. Moving forward, based on the number of FOIA requests received, CBP will supplement the FOIA staff as necessary to ensure that all requests are processed in a timely manner.</p>	<p>CLOSED</p>

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<p>Continue beyond FY 2016 the inter-agency agreement in which USCIS processes CBP records contained in Alien, or A-, Files.</p>	<p>The Service Level Agreement with USCIS was renewed for FY 2016 and CBP will consider continuing this agreement, pending funding availability in FY 2017.</p>	<p>CLOSED</p>
<p>Ensure all requests for fee waivers and expedited processing are in accordance with DHS regulations.</p>	<p>CBP ensures that all fee waivers and expedited processing requests are addressed within one business day of receipt through a review and triage process. Expedited processing is rarely granted because most requests received each day do not meet the criteria established in the DHS FOIA regulations. However, fee waivers are frequently granted to members of the media, special interest groups with significant publishing portfolios, or requesters who make acceptable legal arguments for these waivers.</p>	<p>CLOSED</p>
<p>Continue to streamline FOIA processes and add quality control measures to further improve the program (check all requests for duplicates at the triage stage, evaluate processes for emerging bottlenecks, and continue to redirect resources as necessary).</p>	<p>With regard to our efforts to streamline the FOIA process, CBP has continued to develop and improve our intake review and triage process to ensure that all incoming requests are properly identified and assigned for research, usually within one business day. To reduce the amount of time required to search for data contained in CBP's automated databases, we are in the process of developing an automated search tool to respond to requests for travel related records, which account for approximately 85% of all requests received by CBP each year.</p> <p>With regard to our efforts to eliminate "bottlenecks", during the triage stage of the intake process, FOIA staff actively checks for duplicate requests. If duplicate requests are found, the requests are consolidated and an electronic notice is issued to the requester. In fact, as of today, our records show that 1,840 duplicate requests were received during the triage process during FY 2016. In addition, we continuously ask the FOIA Office full-time staff, as well as student interns, to offer suggestions to improve/streamline the process to avoid and eliminate bottlenecks in the process.</p>	<p>CLOSED</p>

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<p>Develop a strategy to improve communication and promote cross-training between CBP FOIA and the Appeals offices.</p>	<p>To support our communication efforts, the full-time FOIA Office staff who process Non-Traveler (complex) FOIAs, frequently have an open e-mail and telephonic dialogue with the FOIA Appeals staff. In fact, on numerous occasions, FOIA Office staff has reached out to the FOIA Appeals Office to request legal opinions on specific FOIA requests before processing or denying them. CBP will continue to explore ways to improve communications and develop cross training between the FOIA Office and the FOIA Appeals Office in the future.</p>	<p>CLOSED</p>
<p>Develop a training schedule to ensure the staff has appropriate training as they gain additional responsibilities.</p>	<p>At a minimum, CBP's goal is to provide at least 16 hours of classroom training to full-time FOIA staff members each year. This goal was achieved during FY 2016. In addition, CBP provides on-going training as needed to the full-time staff, student interns and employees detailed to the FOIA office. Training for complex FOIA issues, as well as additional responsibilities-related training, is provided on a one-on-one basis to the staff by either a FOIA supervisor or a subject matter expert. Additionally, new duties are explained and demonstrated by working closely with senior staff employees who have experience with that type of FOIA case work.</p>	<p>CLOSED</p>
<p>Add the FOIA learning modules released by the Department of Justice in March 2015 to the CBP's online employee training hub.</p>	<p>CBP is awaiting the release of these FOIA learning modules from DHS.</p>	<p>CLOSED</p>
<p>Look at how records can be processed and released in their native formats when requested and incorporate any new processes into standard operating procedures.</p>	<p>As a general rule, records are produced in their native formats, as the PDF file is the default output when printing records from CBP's records systems. This issue has come up on certain Non-Traveler requests, whereas CBP has produced PDF versions of Excel spreadsheets. This is done for Law Enforcement purposes to protect factual information and techniques from being modified in a dishonest manner.</p>	<p>CLOSED</p>

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<p>Explain on the CBP FOIA webpage how users can use the FOIAonline search tool and the advantages of creating an account on FOIAonline to request CBP records.</p>	<p>CBP is in the process of updating our website to provide instructions to requesters regarding FOIAonline. However, it is important to note that based on statistics provided by the EPA, around 80% of all requests are being received through FOIAonline. In addition, we currently have a link to the search page from our FAQs and our CBP.gov/foia page.</p>	<p>CLOSED</p>
<p>Use the "FOIA" metadata tag for records released under FOIA.</p>	<p>Releasable information is accessible through FOIAonline. We will work with EPA to use the "FOIA" metadata on all data released through FOIAonline.</p>	<p>CLOSED</p>
<p>Create a system to ensure that released records that are of interest to the public are placed in the public repository.</p>	<p>Records released on Non-Traveler requests are evaluated for inclusion into CBP's Reading Room. Currently, the reading room is an open request in FOIAonline where documents are uploaded with tags, including "FOIA" as well as tags that match the contents of the document. In addition, the CBP FOIA office proactively posts frequently requested records that are requested three or more times.</p>	<p>CLOSED</p>

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<p>Edit template letters to include an explanation of deficiencies that cause a request not be processed, information about the search, information about exemptions, including what they mean, and a page count of material released or withheld.</p>	<p>CBP FOIA's template letter for an "improper FOIA request" contains bullet points which advise the requester of potential reasons why a request may have been deemed improper. Staff are asked to either highlight the applicable bullet, or remove the other bullets so as to make the response more clear. Response letters already contain a hyperlink to an explanation of all FOIA exemptions. CBP's Non-Traveler letters do include page counts, but is not often included on standard traveler responses. We will revisit this recommendation to add the page count to all letters.</p>	<p>CLOSED</p>
<p>Review CBP forms and templates for plain language</p>	<p>CBP has modified our templates in accordance with the recommendations from the Department of Justice Office of Information Policy.</p>	<p>CLOSED</p>
<p>Consider adding to helpspanish.cbp.gov webpage information about the FOIA program in Spanish.</p>	<p>CBP will coordinate with the appropriate CBP office to include information about FOIA in multiple languages, including Spanish, to our FOIA website.</p>	<p>CLOSED</p>