



Follow-up to Compliance Assessment of the Freedom of Information Act (FOIA) program at the
Transportation Security Administration (TSA) Department of Homeland Security

Date: May 17, 2016

Date Report Issued: January 11, 2016

TSA Response Date: June 15, 2016

The OPEN Government Act of 2007, which established the Office of Government Information Services (OGIS), codified at 5 U.S.C. § 552(h), mandates the office with reviewing agencies' Freedom of Information Act (FOIA) policies, procedures and compliance. We assessed the FOIA program at the Transportation Security Administration (TSA) and issued a report on January 11, 2016. As part of our assessment program, we follow up with agencies 120 days later to understand what actions the agency took to address our recommendations for improving the administration of FOIA.

Finding 1: Weak management controls are affecting the FOIA process.

Recommendation: Monitor the number of cases closed and volume of pages reviewed by each processor and set data-driven goals to reduce the backlog and increase timeliness.

Agency Response: New individual performance metrics were established and put into place on January 20, 2016. These new metrics include: pages processed on a weekly basis (meet expectations: F-G analysts – 150 pages per day (avg. 750/week), H-I analysts – 250 pages per day (avg. 1,250/week) and achieve excellence: F-G analysts – 225 pages per day (1,125/week), H-I analysts – 375 pages per day (1,875/week); and monthly case closures (meet expectations 20 cases/month and achieve excellence 25 cases/month). FOIA Branch goals include closing 25% of FY16 cases within 20 business days; closing the 10 oldest FOIAs from previous year; and closing all FY11 requests.

In the 16 week period (January 24 – through May 14, 2016) since the new goals have been enacted, the FOIA Branch has averaged 3.21 closures per analyst per week. Analysts are meeting the achieve excellence goals set for pages reviewed and more than 40% of FY16 simple cases have been closed within 20 business days of receipt. In addition, seven of the ten oldest cases have been closed and 66% of FY11 cases have been closed.

At its highest, the TSA backlog was at 1,051 cases; but as of June 1, 2016, the backlog is at 800 cases—a decrease of almost 24%.

A contributing factor to an increase in closure rates has been an increase in staffing levels. Shortly after the initial visit from OGIS, all FTE positions were filled. However, three people have recently resigned. TSA has also funded six not-to-exceed (NTE) positions for a 24-month period. We are currently working through the hiring process to fill the six NTE and three FTE positions.

Recommendation: Develop a standard operating procedure (SOP) for the entire FOIA process.

Agency Response: As part of the Lean Six Sigma review, we are drafting an SOP for FOIA case processing. Included in the draft are instructions to: create new requests; request records from program offices; upload correspondence and documents responsive to requests in the request folder; assign requests for reviews; and close out requests. The SOP also includes a discussion of the roles and responsibilities for FOIA analysts at each pay band level. This document also incorporates the SOPs previously shared with you regarding the triage/intake process and tasking program offices for responsive documents. These portions of the SOP are completed. Additional topics, such as how to submit materials for SSI reviews, 24-hour release notifications, etc., are planned for supplemental releases.

Recommendation: Continue to work with the Office of Chief Counsel (OCC) to reduce the number of requests OCC reviews.

Agency Response: Many of the requests received by TSA contain Sensitive Security Information (SSI), are investigative records, or are made by the media. The FOIA Branch works with OCC to review many of these types of requests, as well as requests processed in response to FOIA appeals. Working with OCC, we have been able to reduce the number of requests sent to OCC for review. For example, we have identified SSI information routinely withheld in records produced from the Redress database and no longer send these requests to OCC for review. The FOIA Branch continues to work with OCC to keep both the number of cases referred to OCC and the days required for their review to a minimum.

Finding 2: Lack of adoption of FOIA tracking system is affecting efficiency and creating duplication of efforts.

Recommendation: Fully implement the tracking and processing system.

Agency Response: In its review, OGIS noted that TSA is not fully using its FOIA processing software to improve FOIA processing or data quality. TSA utilizes FX for all case management to include tracking status of requests, processing responsive documents, conducting first tier (within FOIA program) and second tier (within OCC program) reviews, and serving as the repository of final release records.

Recommendation: Ensure all information in the tracking and processing system is accurate and complete.

Agency Response: During the OGIS review, several instances were noted where the data citing FOIA exemptions used to withhold records from the case file did not match what was entered into the tracking and processing system. TSA uses uploaded template letters when creating final correspondence and manually checks any exemptions used on the letter. This may account for the discrepancies OGIS

discovered. As part of the final review process, the response letter is reviewed to ensure the exemptions cited in the letter match the exemptions indicated on the released pages. A random sampling of closed cases indicates all exemptions applied to redacted documents have been accurately recorded in FX. Also, the FOIA Branch has assigned additional senior analysts to conduct quality reviews of cases to ensure that case data has been correctly entered into FX. These reviews also determine overall quality of case handling and responsive documents.

Recommendation: Continue discussions with SSI office regarding resolving inefficiencies and duplication of efforts.

Agency Response: TSA has entered into discussions with the SSI program office to explore the possibility of SSI conducting reviews using the FX system. A review of the management directive (MD) used by SSI is under way and the FOIA officer is a representative on the review team. Of note, all FOIA analysts are now required to attain SSI certification. This should help the FOIA Branch more readily identify SSI information in documents and, theoretically, result in fewer documents being provided to SSI for review. It should also result in a faster SSI review because analysts will be able to point out the potential data contained in the materials we refer for SSI review.

Recommendation: Work with DHS Privacy Office to find a solution that allows records to be processed and released in their native format.

Agency Response: TSA makes every effort to produce records in native format when possible. However, under the current MD used by the SSI office when conducting document reviews, the documents are required to be in PDF format. Absent a change in the SSI redaction policy, FOIA will continue to produce records containing SSI in PDF format. However, non-SSI documents are provided in requested formats whenever possible.

Recommendation: Continue to refine the online tracking tool so that the estimated date of completion is more accurate.

Agency Response: DHS continues to work with AINS to refine the tracking tool. Our understanding is that updates to the system have been made that result in more accurate delivery dates being provided and more frequent updates to this information are made so that requesters have a more accurate answer to when they can expect a response.

Finding 3: Greater emphasis on customer service and communication is needed.

Recommendation: Proactively communicate with requesters and alert them to the status of their requests.

Agency Response: TSA has developed an employee performance plan metric whereby FOIA analysts will contact the requester upon case assignment to alert the requester that they are actively working on the request to solicit any questions the requester may have, and advise the requester of an

estimated completion date. Currently, this new responsibility has not been implemented, but it is planned for the very near future—when the additional NTE and FTE analysts are onboard.

Recommendation: Follow DOJ guidance and DHS practice on the use of “still interested” letters.

Agency Response: In accordance with DOJ and DHS guidelines, TSA has changed its practice of providing requesters with the issuance of “still interested” letters. TSA’s letters now afford the requester 30 days in which to respond. If a request is closed after the 30-day period, but a requester contacts TSA and indicates that they are still interested in receiving the requested records, TSA re-opens the case and returns it to its original position in the queue.

Recommendation: Add a brief explanation of the exemptions to the FOIA response checklist.

Agency Response: In requests where information has been redacted under the FOIA, TSA currently includes a general explanation of the FOIA and Privacy Act exemptions with the release letters. We have updated the exemption list with examples of the types of information TSA withholds under each exemption.

The OGIS review indicated many requesters who had made inquiries regarding their status on the No-Fly List were confused when they received a Glomar response. The FOIA Branch has worked with the DHS Traveler Redress Inquiry Program office to develop language that briefly describes the federal watchlisting process and offers guidance to requesters about how to apply for redress. TSA FOIA responses no longer include Glomar language.

Recommendation: Add language to the standard email which acknowledges request (highlight the checklist and the need for response, and include contact information for office.)

Agency Response: TSA responds to all incoming FOIA requests with a standard acknowledgement letter that includes the TSA case number assigned to the request, indicates if any additional information is needed (identity affirmation, description of records sought, time frame for records sought, etc.), and includes contact information for the FOIA Branch (telephone number and e-mail address). If additional information is needed to perfect the request, the requester is asked to respond within 30 days and directed to contact the FOIA Branch for clarification, if needed.