
UNITED STATES OFFICE OF
GOVERNMENT ETHICS



Preventing Conflicts of Interest
in the Executive Branch

2015 Chief FOIA Officer Report

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About the U.S. Office of Government Ethics

The U.S. Office of Government Ethics, established by the Ethics in Government Act of 1978, provides overall leadership and oversight of the executive branch ethics program designed to prevent and resolve conflicts of interest. OGE's mission is part of the very foundation of public service. The first principle in the Fourteen Principles of Ethical Conduct is, "[p]ublic service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain." Public servants are expected to make impartial decisions based on the interests of the public when performing their job duties. The executive branch ethics program ensures that employees fulfill this great trust. OGE works with a community of ethics practitioners in more than 130 agencies to implement that program.

To carry out its leadership and oversight responsibilities, OGE promulgates and maintains enforceable standards of ethical conduct for approximately 2.7 million civilian employees in over 130 executive branch agencies and the White House; oversees a financial disclosure system that reaches more than 27,000 public and more than 370,000 confidential financial disclosure report filers; ensures that executive branch ethics programs are in compliance with applicable ethics laws and regulations; provides education and training to the more than 5,500 ethics officials executive branch-wide; conducts outreach to the general public, the private sector, and civil society; and provides technical assistance to state, local, and foreign governments and international organizations.

As part of OGE's outreach and guidance to the ethics community and the general public, each year OGE posts legal advisories, informational memoranda, ethics training resources, and educational material on the OGE website. OGE continues to leverage technology to improve transparency in the executive branch ethics program and to provide more records to the public in an easily accessible fashion. In part, due to the fact that OGE proactively releases documents under EIGA and makes other documents available on the OGE website, OGE continues to have a low volume of FOIA requests. These requests are generally responded to within the statutory 20-day time limit.

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.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

FOIA Training:

1. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any FOIA training or conference during the reporting period such as that provided by the Department of Justice?

Yes, OGE's FOIA professionals attended several outside FOIA training offerings from DOJ's Office of Information Policy (OIP). In addition, OGE's FOIA professionals attended courses on how to determine what ethics information is subject to release under FOIA at OGE's 2014 National Government Ethics Summit.

2. Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during the reporting period.

Approximately 83% (five out of six) of OGE's FOIA professionals attended substantive FOIA training during this reporting period.

3. In the 2014 [Chief FOIA Officer Report Guidelines](#), OIP asked agencies to provide a plan for ensuring that core, substantive FOIA training is offered to all agency FOIA professionals at least once each year. Please provide the status of your agency's implementation of this plan.

In the spirit of the Attorney General's emphasis that "FOIA is everyone's responsibility," OGE is still planning to provide all OGE employees with an opportunity to take advantage of DOJ's upcoming "e-Learning" initiative when it becomes available. In particular, OGE's FOIA professionals will be required to take the e-Learning module that is targeted at FOIA professionals. OGE's FOIA professionals have also been encouraged to take advantage of the many FOIA training opportunities available around the government, including FOIA training opportunities at OGE's 2014 National Government Ethics Summit.

Discretionary Disclosures:

4. Does your agency have a distinct process or system in place to review records for discretionary release?

Yes, OGE has a distinct step in the FOIA processing procedures that directs FOIA professionals to determine whether to make a discretionary release of the withheld record or portion of the withheld record by applying the “foreseeable harm” standard.

5. During the reporting period, did your agency make any discretionary releases of information?

Yes, OGE made discretionary releases of information during the reporting period.

6. What exemption(s) would have covered the material released as a matter of discretion?

OGE released material that could have been withheld under FOIA Exemption (b)(5).

7. Provide a narrative description, as well as some specific examples, of the types of information that your agency released as a matter of discretion during the reporting year.

OGE released as a matter of discretion numerous emails between OGE and members of the White House staff regarding ethics, conflicts of interest, and financial disclosure matters and policy. In addition, OGE released as a matter of discretion various documents in draft form.

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

N/A

Other Initiatives:

9. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

A proper understanding of the FOIA and the Attorney General's FOIA Guidelines is the first step toward applying the presumption of openness. Accordingly, OGE made significant efforts this past year to provide substantive FOIA training to both OGE personnel and agency ethics officials across the government during OGE's 2014 National Government Ethics Summit. Specifically, OGE offered courses on how to determine what ethics information is subject to release under FOIA. Materials from the training sessions were also made available for future use in OGE's [Summit Guide](#).

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.

Please answer the following questions to describe the steps your agency has taken to ensure that your management of your FOIA program is effective and efficient. You should also include any additional information that that describes your agency's efforts in this area.

Processing Procedures:

1. For Fiscal Year 2014, what was the average number of days your agency reported for adjudicating requests for expedited processing?

OGE did not adjudicate any requests for expedited processing during Fiscal Year 2014 because OGE responded to the record requests within 10 calendar days.

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

N/A

Requester Services:

3. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at the National Archives and Records Administration?

Yes, OGE notifies requesters of the mediation services offered by OGIS at NARA in FOIA appeal response letters.

4. When assessing fees, does your agency provide a breakdown of how FOIA fees were calculated and assessed to the FOIA requester? For example, does your agency explain the amount of fees attributable to search, review, and duplication?

OGE did not assess any fees during Fiscal Year 2014. However, OGE's FOIA processing procedures direct FOIA processions to provide a breakdown of how FOIA fees are calculated and assessed to the FOIA requester by explaining the amount of fees attributable to search, review, and duplication.

5. If estimated fees estimates are particularly high, does your agency provide an explanation for the estimate to the requester?

OGE did not assess any fees during Fiscal Year 2014. However, pursuant to OGE’s FOIA regulations at 5 C.F.R. § 2604.504(a), OGE provides a notice of anticipated fees if OGE estimates that fees may amount to more than \$25.00. Moreover, OGE’s “Fee Notification” response letter template directs FOIA professionals to provide a breakdown of how the fee estimate is calculated by explaining the estimated amount of fees attributable to search, review, and duplication.

Other Initiatives:

6. If there are 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., please describe them here.

In 2014, OGE began implementing a new electronic records system to replace its traditional paper records system. Agency records are now scanned, uploaded, categorized, and converted into searchable text, which can be searched through an online application. The search function available in OGE’s “Electronic Records Room” has significantly improved FOIA search processes. In addition, OGE continues to increase efficiency by conducting self-assessments of and, where necessary, making adjustments to OGE’s FOIA response letter templates and FOIA processing procedures.

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.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

Posting Material:

1. Does your agency have a distinct process or system in place to identify records for proactive disclosure?

Yes. OGE's FOIA Office is uniquely situated to gain a sense of the types of materials the public is seeking. As a result, OGE has included a distinct step in its FOIA processing procedures that directs FOIA professionals to determine whether it is likely there will be future interest in a record. If so, OGE's FOIA processing procedures direct FOIA professionals to proactively disclose the record on OGE's website.

2. Does your process or system involve any collaboration with agency staff outside the FOIA office? If so, describe this interaction.

Yes. OGE's Presidential Nominations Branch, which is responsible for the implementation of the nominee financial disclosure program, incorporates OGE's FOIA professionals into its processes for posting documents related to the financial disclosures of Presidential appointees confirmed by the Senate (PAS). In particular, financial disclosure report reviewers are required to consult with the OGE FOIA Officer if there are any questions about the proactive release of a nominee's ethics agreement.

3. Describe your agency's process or system for identifying "frequently requested" records that should be posted online.

OGE has included a distinct step in its FOIA processing procedures that directs FOIA professionals to determine whether a record has been subject to previous FOIA requests, and to flag that record for proactive disclosure in OGE's FOIA log.

4. Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.

The following materials were proactively disclosed on OGE's website during the past reporting year:

- **OGE Advisories:** OGE posted all [written guidance](#) to executive branch ethics officials and employees, including legal, education, and program advisories.
- **Ethics Program Review Reports:** OGE conducts reviews of agency ethics programs and issues recommendations to improve the ethics program if deficiencies are found. To confirm that the agency has acted on OGE's recommendations, OGE also conducts a follow-up review six months from the date of the report. OGE posted all [program review reports](#) and follow-up reports to its website.
- **Ethics Pledge Report and Related Waivers:** On January 21, 2009, President Obama signed [Executive Order 13490](#), which created new commitments for [political appointees](#) entering government service. This Executive Order requires every full-time, political appointee appointed on or after January 20, 2009, to sign an Ethics Pledge. The Executive Order also requires OGE to publish an [annual report](#) on the administration of the pledge. In addition to posting this annual report, OGE posted [waivers](#) of the Ethics Pledge received by appointees.
- **Public Financial Disclosures & Ethics Agreements:** OGE has an automated online process for providing public access to [public financial disclosure reports](#) (OGE Forms 278 and 278-T) for Presidential appointees confirmed by the Senate (PAS). OGE also posted the [ethics agreements](#) of PAS employees, which describe the steps an appointee will take to avoid any actual or apparent conflicts of interest.
- **Travel Reports:** Agencies are required to submit to OGE semiannual reports of payments for travel, subsistence, and related expenses received from non-federal sources in connection with the attendance of employees at certain meetings or similar functions. OGE posted these [travel reports](#) on its website.

Other Initiatives:

5. If there are any other steps your agency has taken to increase proactive disclosures, please describe them here.

In 2014, OGE began an inventory of all information sets created, collected, or maintained at OGE that are not currently publicly available on its website. Through this inventory process, OGE identified additional information sets. For example, OGE identified the Annual Agency Questionnaire (Questionnaire) as a high-value information set. The Questionnaire asks agency ethics offices for information about ethics officials and the administration of agency ethics programs, as well as core elements of the ethics program that assist in the identification and resolution of potential conflicts of interest. The compiled data provides valuable insights about the executive branch ethics program. In 2015, OGE plans to post each agency response to its website and provide an online summary of the combined data from the agency questionnaires in a visual format.

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.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that that describes your agency's efforts in this area.

Making Material Posted Online More Useful:

1. 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?

Yes, OGE is taking steps to make the posted information more useful to the public.

2. If yes, please provide examples of such improvements.

In the past two years, OGE has implemented a new strategy for communicating with the public through Director's Notes posted on the homepage of OGE's website, www.oge.gov. The Director's Notes provide a public-friendly explanation of OGE's role in the executive branch ethics program, ethics rules and regulations, OGE's programs and initiatives, and current ethics issues. In 2014, OGE published 19 Director's Notes on important topics, such as the purpose of financial disclosure, OGE's oversight role, and the value of OGE's Conflict of Interest Prosecution Survey. In addition, OGE created a space on its homepage, called OGE Highlights, to provide current news and information about OGE and the executive branch ethics program in an easy to understand manner.

OGE also uses social media to broaden its reach to key external stakeholders and make the information posted more useful to these stakeholders. Specifically, OGE uses its [Twitter](#) account to direct the public to detailed information on its website and to provide an additional way to access OGE's latest publications. OGE also uses its Twitter account to provide information regarding changes in executive branch ethics laws, regulations, and programs. In addition, OGE has expanded its use of social media by creating new [Google+](#) and [YouTube](#) pages. OGE uses these accounts to live stream ethics education offerings to ethics officials and to live-stream events such as the [National Government Ethics Summit](#).

3. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?

No, OGE has not encountered challenges that make it difficult to post records.

4. If so, please briefly explain what those challenges are.

N/A

Other Initiatives:

5. Did your agency successfully post all four quarterly reports for Fiscal Year 2014?

Yes, OGE successfully posted all of the required quarterly FOIA reports for Fiscal Year 2014.

6. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2015.

N/A

7. Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible?

Yes, OGE uses e-mail to communicate with requesters when feasible.

8. If your agency does not communicate electronically with requesters as a default, are there any limitations or restrictions for the use of such means? If yes, does your agency inform requesters about such limitations?

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 your Chief FOIA Officer Report 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.

Simple Track:

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

No. Because of the size of its FOIA program, OGE processes both simple and complex requests in a single track.

2. If so, for your agency overall in Fiscal Year 2014, was the average number of days to process simple requests twenty working days or fewer?

N/A

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2014 that were placed in your simple track.

N/A

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

Yes, the average number of days to process non-expedited requests was 20 working days or fewer. For Fiscal Year 2014, the average number of days to process non-expedited requests was approximately 14.7 days.

Backlogged Requests:

5. If your agency had a backlog of requests at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013?

In Fiscal Year 2013, OGE had one backlogged request. At the close of Fiscal Year 2014, OGE had one backlogged request. As a result, OGE's backlog did not decrease as compared with Fiscal Year 2013.

6. If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2014.

Approximately 3.6% (one out of 28) of requests make up the backlog out of the total number of requests received by OGE in Fiscal Year 2014.

Backlogged Appeals:

7. If your agency had a backlog of appeals at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013?

OGE's backlog of appeals remained constant at 0 between Fiscal Year 2013 and Fiscal Year 2014.

8. 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 your agency in Fiscal Year 2014. If your agency did not receive any appeals in Fiscal Year 2014 and/or has no appeal backlog, please answer with "N/A."

N/A

Ten Oldest Requests:

9. In Fiscal Year 2014, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

In Fiscal Year 2014, OGE closed four of the five oldest requests that were reported pending in OGE's Fiscal Year 2013 Annual FOIA Report.

10. 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 2013 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

OGE had less than 10 total oldest requests to close. In Fiscal Year 2014, OGE closed four of the five oldest requests that were reporting pending in OGE's Fiscal Year 2013 Annual FOIA Report.

11. Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?

None of the requests were closed because the request was withdrawn by the requester.

Ten Oldest Appeals:

12. In Fiscal Year 2014, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

OGE did not have any pending administrative appeals at the end of Fiscal Year 2013.

13. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2013 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A

Ten Oldest Consultations

14. In Fiscal Year 2014, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

OGE did not have any pending consultations at the end of Fiscal Year 2013.

15. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2013 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

N/A

Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans:

16. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2013.

OGE was unable to close its one oldest request due to the complexity of the request.

17. If your agency was unable to close any of its ten oldest requests 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.

N/A

18. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2015.

At the close of Fiscal Year 2014, OGE had a single backlogged request. OGE will continue to provide substantive interim responses to the requester until the request is finally completed.

Use of FOIA's Law Enforcement "Exclusions"

1. Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2014?

No, OGE did not invoke a statutory exclusion during Fiscal Year 2014.

2. If so, please provide the total number of times exclusions were invoked.

N/A