

Chief FOIA Officer Report for
U.S. Office of Government Ethics
March 2011

The Office of Government Ethics (OGE) is a small agency that provides advice and guidance to departments and agencies and their employees on Government ethics matters. As part of our outreach and guidance to the ethics community and the general public, each year OGE posts dozens of advisory letters in a redacted form (with identities deleted) on our website. OGE also publishes informational memoranda as well as ethics training and educational material, brochures, videos and posters for the executive branch on our website. In addition, OGE and other executive branch agencies maintain a separate public financial disclosure system for Public Financial Disclosure Reports, SF 278, filed by high-level executive branch officials. Copies of these reports are available from OGE directly by filing the appropriate access form, Request to Inspect or Receive Copies of SF 278 Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Record, OGE Form 201. These records and other “covered records” are available, not under the Freedom of Information Act (FOIA), but the Ethics in Government Act of 1978 (5 U.S.C. appendix, § 105). In 2010, OGE made over 500 Public Financial Disclosure Reports available upon request.

OGE continues to have a low volume of FOIA requests, which may be due in part to the fact that OGE releases so many documents under the Ethics in Government Act and makes so many other documents available on its website. However, the agency has seen a significant increase in FOIA requests over the last two years. Prior to 2009, in a typical FOIA year, OGE would receive approximately 40 FOIA requests. However, in 2009, OGE received 78 FOIA requests and in 2010, OGE received 89 FOIA requests. OGE responds to these requests generally within the statutory 20-day time limit, and OGE does not have a backlog of FOIA requests.

Part I. Steps Taken to Apply the Presumption of Openness

- 1a. Describe how the President’s FOIA Memorandum and the Attorney General’s FOIA Guidelines have been publicized throughout your agency.

A copy of the President’s FOIA Memorandum and the Attorney General’s FOIA Guidelines were quickly distributed to senior officials at OGE, including the Director, General Counsel, Deputy General Counsel, other managers and staff members responsible for processing FOIA requests, as well as OGE’s press liaison.

- 1b. What training has been attended and/or conducted on the new FOIA Guidelines?

OGE’s FOIA personnel attended a three-day FOIA training offered by the American Association of Access Professionals in June 2010. In addition, OGE’s Principal FOIA Officer attended the Dispute Resolution Skills Training for FOIA Public Liaisons, which was conducted by the Office of Government Information Services on October 28, 2010.

In 2009, OGE revised its annual FOIA training to specifically include information about the new directives from the President and Attorney General. This revised training was provided to all OGE offices during the summer and fall of 2009.

The OGE FOIA training will be revised again in early 2011 to include information on records management and the Privacy Act. The training will discuss issues that have arisen under the new presumption of openness guidelines, encourage all program offices to begin writing material that can be immediately released on the OGE website, and provide examples of records that are being proactively released as well as examples of discretionary releases under FOIA.

- 1c. How has your agency created or modified your internal guidance to reflect the presumption of openness?

OGE has made several changes to reflect the presumption of openness guidelines, including encouraging all program offices to begin drafting agency materials in ways that they can be made immediately available on the OGE website. In addition, OGE is in the process of redesigning its website to include many documents such as Ethics Program Reviews that will be available to the public without requiring the submission of FOIA requests. Finally, all records that are located in response to a FOIA request are being reviewed for the possibility of a discretionary release.

- 1d. To what extent has your agency made discretionary releases of otherwise exempt information?

OGE has adopted the policy that, whenever possible, all responsive FOIA records that could technically be withheld should be reviewed a second time for possible discretionary release. Some examples of the discretionary releases made by OGE last year include, a 1999 letter written to the Office of Legal Counsel at the Department of Justice concerning the application of a criminal statute to employees of a particular agency; numerous e-mails and draft documents between OGE and certain named individuals at the White House; and portions of Ethics Program Reviews that discussed specific recommendations.

- 1e. What exemptions would have covered the information that was released as a matter of discretion?

OGE released material that could have been withheld under FOIA Exemptions (b)(2) and (b)(5).

- 1f. How does your agency review records to determine whether discretionary releases are possible?

In determining whether to make a discretionary release, OGE has developed a practice of considering the following factors: the date of the document, the identity of the parties

involved, whether the parties are current Federal government employees, and whether the issues involved have been resolved or the recommendations taken.

- 1g. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

To ensure that the ethics laws and policies are open and transparent to Federal government employees and the general public, OGE is redesigning its website to improve its search function and to make additional documents available to the public. This project will include an inventory of the agency's information and how to make that information more readily available without a FOIA request. OGE anticipates that the redesigned website will be operational in the fall of 2011.

2. Report the extent to which the numbers of requests where records have been released in full and the numbers of requests where records have been released in part has changed from those numbers as reported in your previous year's Annual FOIA Report.

In 2010, OGE's release of documents, in full or in part, increased from the prior year. In 2009, OGE processed 73 FOIA requests. In response to the 73 requests, OGE released 28 records in full and 10 records in part. In 2010, OGE processed 87 FOIA requests. In response to the 87 requests, OGE released 26 records in full and 16 records in part.

Part II. Steps Taken to Ensure that Your Agency has an Effective System In Place for Responding to Requests

- a. Do FOIA professionals within your agency have sufficient IT support?

Yes, the FOIA professionals within OGE have sufficient IT support. OGE is a small agency, which allows the FOIA staff to communicate directly with the IT staff regarding the needs of the FOIA program. For example, when working on the 2010 FOIA Report to Justice, the Principle FOIA Officer needed assistance to convert the Report into the required Justice format. After discussing the issue with the IT staff, the IT staff worked directly with Justice to convert the report into the requested format.

- b. Describe how your agency's FOIA professionals interact with your Open Government Team.

OGE's Alternate FOIA Officer is a member of the Open Government Team, which allows OGE to have a consistent approach when dealing with transparency and openness issues. For example, as the Open Government Team reviews various categories of records to determine whether they should be placed on the newly-redesigned OGE website, the Alternate FOIA Officer is able to provide valuable assistance in determining which documents could be immediately posted because they were previously reviewed in response to a FOIA request and which documents would require additional review.

- c. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to responding to FOIA requests.

Although OGE does not have a backlog, in March 2010, OGE reviewed its system for processing FOIA requests and determined that while the system is adequate and functioning efficiently, additional staff resources would be beneficial. OGE is in the process of hiring a new staff member whose duties will include processing basic FOIA requests as well as addressing various administrative FOIA matters.

- d. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.

The FOIA staff has developed a plan for creating an internal FOIA procedures guide. In addition to information about OGE's FOIA process, the guide will be automated so it can be easily searched, will include links to the Department of Justice website, and copies of other relevant FOIA material.

Part III. Steps Taken to Increase Proactive Disclosures

- a. Has your agency added new material to your agency website since last year?

Yes.

- b. What types of records have been posted?

OGE has added several new documents under the "Frequently Requested Documents" section, including eight ethics program review reports. OGE has also posted its 2010 Chief FOIA Officer Report as well as the OGE 2010 Annual FOIA Report. In addition, OGE posts informational memoranda and guidance as well as ethics training material to the OGE website.

- c. Give examples of the types of records your agency now posts that used to be available only by making a FOIA request for them.

In the past, OGE would post material to the "Frequently Requested Documents" section only after receiving three FOIA requests for the same document. We are now posting all ethics program review reports when they have been released after the first FOIA request. Currently, OGE is working on posting approximately 100 ethics program review reports.

- d. What system do you have in place to routinely identify records that are appropriate for posting?

OGE's FOIA staff reviews all responsive records to determine whether the records will add to the understanding of the Federal ethics program as well as determining whether OGE will receive subsequent requests for the same records.

- e. How do you utilize social media in disseminating information?

In 2010, OGE began using social media for ethics education and training. OGE created nine interactive web-based training tutorials on core ethics subjects for the benefit of agency ethics officials throughout the executive branch. In addition, OGE launched a youtube.com webpage (www.youtube.com/user/USOGE?feature=mhum) on which to post some of our video based training.

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

OGE is in the process of redesigning its website, so the agency is determining what information should be included in the newly-designed website. Such records may include all Ethics Program Reviews once they have been issued by OGE's Program Review Division. In addition, OGE may automatically post the reports on Government officials acceptance of travel and related expenses from Non-Federal sources (31 U.S.C. § 1353 reports). In accordance with the statute, OGE is responsible for making all executive branch 1353 travel reports publicly available.

Part IV. Steps Taken to Greater Utilize Technology

1. Electronic receipt of FOIA requests:

- a. What portion of the components within your agency which receive FOIA requests have the capability to receive such requests electronically?

OGE is a small agency and only the Office of the General Counsel and Legal Policy, which is where OGE's FOIA program is located, officially receives FOIA requests. This FOIA Office has the capability to receive electronic FOIA requests.

- b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

OGE, which has only approximately 75 employees, has determined that because of the size of its FOIA program, it is not necessary at this time to increase the number of components within the agency receiving electronic FOIA requests.

- c. What methods does your agency use to receive requests electronically?

FOIA requests may be sent to OGE by fax or e-mail. OGE has created an electronic FOIA request form that may be accessed on the FOIA section of OGE's website. The form may be faxed, e-mailed or sent through the OGE website. In addition, a requester

may simply send a FOIA request to the OGE webmaster and that request will be forwarded to the OGE FOIA office.

2. Electronic tracking of FOIA requests:

- a. What proportion of components within your agency which receive FOIA requests have the capability to track such requests electronically?

OGE, which has only approximately 75 employees, has one component that receives FOIA requests. That component is able to track the requests electronically.

- b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

OGE, which has only approximately 75 employees, has determined that because of the size of its FOIA program, it is not necessary at this time to increase the number of components tracking FOIA requests.

- c. What methods does your agency use to track requests electronically?

OGE, which has only approximately 75 employees, has determined that because of the size of its FOIA program, generic spreadsheets and word processing software are sufficient to track the FOIA requests electronically.

3. Electronically processing of FOIA requests:

- a. What proportion of components within your agency which receive FOIA requests have the capability to process such requests electronically?

The only office within OGE, which has only approximately 75 employees, that receives FOIA requests can process FOIA requests electronically.

- b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

OGE, which has only approximately 75 employees, has determined that because of the size of its FOIA program, it is not necessary at this time to increase the number of offices that are able to process FOIA requests electronically.

- c. What methods does your agency use to process requests electronically?

Generally, OGE, which has only approximately 75 employees, uses e-mail to process FOIA requests. This includes initiating the search for responsive documents, collecting any electronic records, drafting responses and, in certain cases, electronically responding to the request.

4. Electronic preparation of your Annual FOIA Report:
 - a. What type of technology does your agency use to prepare your agency Annual FOIA reports, i.e., specify whether the technology is FOIA-specific or a generic data-processing system?

OGE, which has only approximately 75 employees, uses generic data-processing systems to prepare the Annual FOIA Report.

- b. If you are not satisfied with your existing system to prepare your Annual FOIA Report, describe the steps you have taken to increase your use of technology for next year.

Overall, OGE is satisfied with the existing system used to prepare the Annual FOIA Report. However, we are always reviewing our processes to find more efficient ways to produce better results. One of the assignments for the new staff member joining the FOIA team will be to review the process for preparing OGE's Annual FOIA Report and to make recommendations.

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

1. If your agency has a backlog, report here whether that backlog is decreasing.

OGE does not have a backlog.

Generally, OGE is able to respond to all FOIA requests and administrative appeals within the 20 working day deadline. However, over the past two years, the number and complexity of the FOIA requests received by OGE has increased. Therefore, OGE will be creating more uniform processes such as an internal FOIA guide and FOIA letter templates, to meet the increasing FOIA demands.

2. If there has not been a reduction in the backlog as measured by either of these metrics (number of cases or age of the oldest case), describe why that has occurred.

OGE does not have a backlog.

3. Describe the steps your agency is taking to reduce any backlogs and to improve timeliness in responding to requests and administrative appeals.

OGE does not have a backlog.

- a. Does your agency routinely set goals and monitor the progress of your FOIA caseload?

In March 2009, OGE began reviewing all FOIA processes. The overall goal is to respond to all FOIA requests within the statutory timeframe. However, we are also reviewing all documents to determine if they are suitable for discretionary release and proactive disclosure.

b. Has your agency increased its FOIA staffing?

OGE will be hiring an additional staff member whose assignments will include FOIA.

c. Has your agency made IT improvements to increase timeliness?

Yes. OGE has increased the number of FOIA responses that are sent electronically.

d. Has your agency Chief FOIA Officer been involved in overseeing your agency's capacity to process requests?

Yes. OGE's Chief FOIA Officer is an active participant in the agency's FOIA program. He has worked on increasing the number of staff working on FOIA matters, and he participates in the review of responsive documents.

Spotlight on Success: Out of all the activities undertaken by your agency in this last year to increase transparency, describe here one success story that you would like to highlight as emblematic of your efforts.

In August 2010, OGE's FOIA program began working with the agency's IT staff to start posting over one hundred OGE Ethics Program Reviews on the OGE website.

These Ethics Program Reviews are written reports of OGE's on-site review of the effectiveness of an agency's ethics program. Since OGE's creation, the agency has conducted hundreds of these reviews, and has shared the written reports with the officials at the agency being reviewed. Many of these written reports will now be accessible to other agencies and the general public on OGE's website.