



NATIONAL ARCHIVES

FISCAL YEAR 2023

Chief FOIA Officer Report

SECTION I: FOIA LEADERSHIP AND APPLYING THE PRESUMPTION OF OPENNESS

The guiding principle underlying the Attorney General's FOIA Guidelines is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

A. Leadership Support for FOIA

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. See 5 U.S.C. § 552(j)(1) (2018). Is your agency's Chief FOIA Officer at or above this level?

Answer: **Yes**

2. Please provide the name and title of your agency's Chief FOIA Officer.

Answer: **Gary M. Stern, General Counsel**

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

Answer: **The National Archives and Records Administration's (NARA) recent [Strategic Plan 2022-2026](#) states in section 1.4: "By FY 2026, 95 percent of customer requests will be ready within the promised time. NARA strives to promote public access by providing consistent, reliable, and reputable service in response to customer requests. NARA provides service to a variety of public and federal agency customers. This objective is a weighted average of NARA's average response time when: furnishing items in public research rooms, responding to reference requests by email and mail, providing veterans and their families with copies of military separation documents (DD-214), and responding to Freedom of Information Act (FOIA) requests from the public."**

B. Presumption of Openness

4. The Attorney General's 2022 FOIA Guidelines provides that "agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions." Does your agency provide such confirmation in its response letters?

Answer: **Yes, although not in all of NARA's FOIA program offices.**

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an

interested protected by a FOIA exemption. This is commonly referred to as a Glomar response. With respect to these responses, please answer the below questions:

a. In addition to tracking the asserted exemption, does your agency specifically track whether a request involved a Glomar response?

Answer: NARA does not track Glomar responses in a formal manner. Due to the infrequent use of the Glomar NARA notes the use in the case file only.

b. If yes, please provide:

i. the number of times your agency issued a full or partial Glomar response (separate full and partial if possible);

Answer: 0

ii. the number of times a Glomar response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).

Answer: N/A

c. If your agency does not track the use of Glomar responses, what would your agency need to do to track in the future? If possible, please describe the resources and time involved.

Answer: NARA is currently investigating a FOIA tracking system that utilizes modular FOIA components. This application would be used across the agency and would capture such data.

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

Answer: Through its core statutory mission, NARA proactively makes the vast majority of its archival records available to the public without the need to file a FOIA request. Furthermore, due to the age of most of the records in the National Archives, NARA routinely makes discretionary releases in the processing of access requests to our archival holdings. NARA's holdings are described and digitized content accessed in the National Archives Catalog (see <http://www.archives.gov/research/catalog/>).

SECTION II: ENSURING FAIR AND EFFECTIVE FOIA ADMINISTRATION

The Attorney General's FOIA Guidelines provide that "[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of FOIA obligations by the entire agency workforce." The Guidelines reinforce longstanding guidance to "work with FOIA

requesters in a spirit of cooperation.” The Attorney General also “urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency’s FOIA administration” as part of ensuring fair and effective FOIA administration.

A. FOIA Training

1. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

Answer: Annual training is provided as part of the mandatory training for all NARA staff. Furthermore, FOIA personnel are strongly encouraged to attend OIP and Non Government Organizations training offerings through the Chief FOIA Officers’s Council.

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

Answer: Yes

3. If yes, please provide a brief description of the type of training attended or conducted and the topics covered.

Answer:

- **DOJ, OIP B6 and B7 training.**
- **DOJ, OIP Virtual Best Practices for FOIA Programs in the Intelligence Community.**
- **FOIA at the Presidential Libraries (at NARA).**
- **Annual National Training Conference – American Society of Access Professionals (ASAP): The program combines “nuts & bolts” training topics with the thought-provoking and practical issues associated with FOIA and Privacy Act processing and requesting as well as records management. A special feature of the program is breakout sessions for individual agencies that give participants a unique opportunity for questions and answers as they pertain to their own agency policies.**
- **FOIA, Appeals & Litigation at NARA.**
- **FOIA Professionals Continuing Education: Advanced training on specific components of the FOIA, new court decisions, and successful implementation of other agency best practices.**

- **FOIA Litigation Seminar: Guidance on successful litigation strategy, advanced litigation considerations, and details on the preparation of Vaughn Indices and declarations.**

4. Please provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

Answer: **95%.**

5. OIP has directed agencies to “take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year.” If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency’s plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

Answer: **N/A, NARA exceeded 80%.**

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and if senior leaders at your agency received a briefing on your agency’s FOIA resources, obligations and expectations during the FOIA process?

Answer: **As noted above, NARA requires an annual mandatory training for all employees, including senior leadership, that contains a FOIA/Privacy Act component. The component focuses on the requirements of NARA employees to search for responsive records across the various records media that are used (ex. Paper, email, voicemail, spreadsheets, etc.)**

B. Outreach

7. Did your FOIA professionals engage in any outreach or dialogue, outside of the standard request process, with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency’s FOIA administration.

Answer: **Yes. The Archivist of the United States (“Archivist”) asked the Freedom of Information Act (“FOIA”) Advisory Committee (“Committee”) in May 2020 to obtain advice on improvements to the FOIA and study the current FOIA landscape across the Executive Branch. The Committee is subject to the Federal Advisory Committee Act, and allows the public an opportunity to ask questions and provide comments. (See <https://www.archives.gov/ogis/foia-advisory-committee>)**

The Archivist, the General Counsel/Chief FOIA Officer, and other NARA senior officials have regular meetings and conversations with representatives of the requester community to discuss issues related to access to records at the National Archives, including access through the FOIA.

8. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue, and, if applicable, any specific examples.

Answer: Yes. For all FOIA requests in a complex queue, NARA's FOIA professionals reach out to the requester in order to focus the request in order to process efficiently, removing any unwanted records. This communication has been via phone, email and letter.

9. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during Fiscal Year 2022 (please provide a total number or an estimate of the number).

Answer: Approximately 130 times.

C. Other Initiatives

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

Answer: Yes. NARA's Management Team has considered proposals for increased resources for FOIA technology and staff.

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

Answer: Each FOIA Program Office tracks its requests within each queue, and uses that information to make appropriate adjustments.

12. Optional -- If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.

Answer: When NARA receives a significant number of requests in response to a newsworthy event, we make every effort to categorize the requests and responsive records for efficient processing.

SECTION III: PROACTIVE DISCLOSURES

The Attorney General’s FOIA Guidelines emphasize that “proactive disclosure of information is . . . fundamental to the faithful application of the FOIA.” The Guidelines direct agencies to post “records online quickly and systematically in advance of any public request” and reiterate that agencies should post records “in the most useful, searchable, and open formats possible.”

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

Answer: Releasing records to the public is NARA’s core mission. NARA is working to post 500 million digital records on its online Catalog by 2026. NARA also posts records of high public interest on its FOIA Reading Room page, such as records related to the request for Presidential Records by the House Select Committee to Investigate the January 6th Attack on the United States Capitol, records related to Presidential Records Act (PRA) questions under the Trump Administration, and records related to the return of Biden Vice-Presidential Records Covered by the Presidential Records Act (PRA).

2. Provide examples of any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

Answer: Records responsive to FOIA requests related to Former President Trump's return of 15 boxes of records from Mar-a-Lago (see <https://www.archives.gov/foia/15-boxes>); records related to the return of Biden Vice-Presidential Records Covered by the Presidential Records Act (see <https://www.archives.gov/foia/biden-vp-records-covered-by-pra>); records related to the request for Presidential Records by the House Select Committee to Investigate the January 6th Attack on the United States Capitol (see <https://www.archives.gov/foia/january-6-committee>); and records related to the Equal Rights Amendment (see <https://www.archives.gov/foia/records-related-equal-rights-amendment>).

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?

Answer: Yes. NARA publishes electronic finding aids and summary descriptions on various series in our holdings. The finding aids and descriptions are made available on www.archives.gov with references to available documents. The goal of this effort is to provide more context to released materials and provide immediate access to records not available yet in the National Archives Catalog.

4. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

Answer: NARA's 5th National Action Plan for Open Government (2022 - 2024) lays out many of our agency's steps of improvement. (See <https://www.archives.gov/files/open/2022-24-nara-nap.pdf>.)

5. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

Answer: Yes. The majority of records that are disclosed proactively at NARA are from the archival holdings of the Offices of Research Services, Legislative Archives, and the Presidential Libraries. Each of these offices posts records through the [National Archives Catalog](#), and on their respective webpages.

6. Optional -- Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.

Answer: Through its core statutory mission, NARA proactively makes the vast majority of its archival records available to the public without the need to file a FOIA request. Furthermore, due to the age of most of the records in the National Archives, NARA routinely makes discretionary releases in the processing of access requests to our archival holdings. NARA's holdings are described and digitized content is accessible in the National Archives Catalog (see <http://www.archives.gov/research/catalog/>).

Releasing records to the public is part of NARA's core mission, and we have made digitizing our paper records a key strategic goal. However, due to the massive volume of our archival records, NARA cannot digitize everything by itself. Therefore, in accordance with NARA's Digitization Strategy, NARA is digitizing our holdings using a five-prong approach: Partnerships, Crowd Sourced Digitization, Agency Transfers, Culture of Digitization, and NARA Digitization Projects. (See <http://www.archives.gov/digitization/pdf/digitization-strategy-20152024.pdf>.)

SECTION IV: STEPS TAKE TO GREATER UTILIZE TECHNOLOGY

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's FOIA Guidelines emphasize the importance of making FOIA websites easily navigable and complying with the FOIA.gov interoperability requirements. Please answer the following questions to describe how

your agency is using technology to improve its FOIA administration and the public's access to information.

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

Answer: NARA has reviewed our current technical capabilities and identified needs. As part of our efforts to maximize our use of existing technologies, we continue to explore ways to improve systems used for FOIA processing, including a FOIA tracking and processing system that can be utilized by five distinct FOIA Program Offices. We are exploring AI technology that can be used to identify personally identifiable information during FOIA document review.

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program.

Answer: NARA did not employ new technology.

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.

Answer: We are currently in discussions and conducting research in the development of an auto-redact tool.

4. OIP issued guidance in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

Answer: Yes. NARA's web team developed new web pages to manage and promote the release of content responsive to several high-profile FOIA cases. Our staff participated in the government's Center for Plain Language recommendations and guidance to produce content following the center's recommendations. Our content producers created new pages and organized the release of time-sensitive content made available to several media and other stakeholders. Staff updated the agency's FOIA electronic reading room page layouts for easier navigation and to announce important changes to our FOIA submission process.

5. Did all four of your agency's quarterly reports for Fiscal Year 2022 appear on FOIA.gov?

Answer: Yes. The quarterly reports were posted before this report was published.

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2023.

Answer: NARA faced a number of technical anomalies that inadvertently delayed the posting of the Quarterly Reports in a timely manner. The Office of General Counsel has initiated a calendar notification process so future Quarterly Reports will be posted in a timely manner.

7. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2021 Annual FOIA Report and, if available, for your agency's Fiscal Year 2022 Annual FOIA Report.

Answer: <https://www.archives.gov/foia/reports>

8. In February 2019, DOJ and OMB issued joint Guidance establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

Answer: NARA does not use a consolidated FOIA tracking system. However, NARA is currently investigating a FOIA tracking system that would take advantage of an interoperability standard with the National FOIA Portal. Currently each FOIA component uses its own FOIA tracking tool that requires staff manually input submissions received via email from the National FOIA Portal.

9. Optional -- Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

Answer: NARA is exploring ways to obtain advanced search and review technology that could assist with FOIA processing (a universal case management system with built-in e-discovery, deduplication, redaction capabilities, etc., and one that works for classified as well as unclassified records).

SECTION V: STEPS TAKEN TO REMOVE BARRIERS TO ACCESS, IMPROVE TIMELINESS IN RESPONDING TO REQUESTS, AND REDUCE BACKLOGS

The Attorney General's FOIA Guidelines instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

A. Remove Barriers to Access

1. Has your agency established alternative means of access to first-party requested records outside of the FOIA process?

Answer: **Yes**

2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.

Answer: **The National Personnel Records Center continues receiving first party requests for Veterans military personnel records. The NPRC uses [eVetRecs](#) Online Service Records Request tool for veterans to request their own or family member's records. NARA has also partnered with the Veterans Administration to digitize veteran's Official Military Personnel Files (OMPF). This will make it easier for veterans to view and retrieve their records.**

B. Timeliness

3. For Fiscal Year 2022, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2022 Annual FOIA Report.

Answer: **7**

4. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2022 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Answer: **N/A, NARA's averaged 7 days**

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

Answer: **Yes**

6. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2022?

Answer: **No**

7. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?

Answer: **No, NARA's simple track increased from 136 to 141 days.**

8. Please provide the percentage of requests processed by your agency in Fiscal Year 2022 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100.

Answer: **92.8%**

9. 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?

Answer: **N/A**

C. Backlogs

BACKLOGGED REQUESTS

10. If your agency had a backlog of requests at the close of Fiscal Year 2022, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

Answer: **NARA's backlog decreased by 2 requests. This is a result of the adjusted number of backlogged FOIAs NARA received in the previous Fiscal Year (see V.A.) This adjusted number is from back-dated requests received during the pandemic.**

11. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2022 than it did during Fiscal Year 2021?

Answer: **N/A**

12. If your agency's request backlog increased during Fiscal Year 2022, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

An increase in the number of incoming requests

A loss of staff

An increase in the complexity of the requests received (if possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase)

Impact of COVID-19 and workplace and safety precautions

Any other reasons – please briefly describe or provide examples when possible

Answer: **NARA received 14975 FOIA requests in FY 2022 which is a decrease of 2 cases from FY 2021. While the backlog did not increase, NARA's inability to reduce its**

backlogged cases is due to a temporary decrease in NARA's FOIA processing staff, and the requirement to meet a record number of production schedules stemming from increased litigation. As a result, the backlog of complex cases grew. A significant case included a suit brought by the Washington State Attorney General for its FOIA request relating to the potential closure of the National Archives building in Seattle, WA. Additionally, seven lawsuits were filed from the almost 50 requests related to the 15 boxes that were transferred to NARA from former President Donald Trump's Mar-a-Lago residence. NARA FOIA staff were also assigned to work Special Access projects, including the John F. Kennedy assassination records release and the Presidential Records Act (PRA) Special Access requests for President Donald J. Trump records.

13. 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 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A."

Answer: **Backlog is 66.57% of total FOIA requests received.**

BACKLOGGED APPEALS

14. If your agency had a backlog of appeals at the close of Fiscal Year 2022, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

Answer: **No, backlog appeals increased by 56.**

15. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2022 than it did during Fiscal Year 2021?

Answer: **No, NARA processed 45 appeals in FY 2021 and processed 22 appeals in FY 2022.**

16. If your agency's appeal backlog increased during Fiscal Year 2022, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming appeals
- A loss of staff
- An increase in the complexity of the requests received (if possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase)
- Impact of COVID-19 and workplace and safety precautions

Any other reasons – please briefly describe or provide examples when possible

Answer: NARA received 81 FOIA appeals in FY 2022 which is an increase of 27 from FY 2021. One contributing factor to the growth of the appeal backlog is the complexity of the requests. Many of the appeals were for classified archival records that were created by other agencies. All classified cases are referred to the creating agency for review and declassification determination. Additionally, there was a decrease in NARA’s FOIA staff, specifically a number of key FOIA individuals. FOIA staff were required to meet a record number of production schedules stemming from increased litigation. As a result, the backlog of complex cases grew. A significant case included a suit brought by the Washington State Attorney General for its FOIA request relating to the potential closure of the National Archives building in Seattle, WA. Additionally, seven lawsuits stemmed from the almost 50 requests related to the 15 boxes of records that were located at former President Donald Trump’s Mar-a-Lago residence. NARA FOIA staff were also assigned to work Special Access projects, including the John F. Kennedy assassination records release and the Presidential Records Act (PRA) Special Access requests for President Donald J. Trump records.

17. 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 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2022 and/or has no appeal backlog, please answer with "N/A."

Answer: 191.35%

D. Backlog Reduction Plans

18. In the 2022 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2021 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency’s efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2022?

Answer: No, NARA was unable to implement a backlog reduction plan for the three archival program offices that comprise the vast majority of NARA’s FOIA backlog due to resource limitations with respect to both staff and technology. As OIP noted in 2018, “agencies’ backlogs may increase due to circumstances outside of their control. Many agencies strive to respond to significantly more requests received while relying on the same amount of (or, in some instances, fewer) experienced FOIA staff. As the number of requests received across the government continues its upward trend, many agencies reach a point at

which, despite their best efforts to streamline processing and leverage technology, their backlog will nevertheless increase.”

19. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2022, please explain your agency’s plan to reduce this backlog during Fiscal Year 2023.

Answer: In light of the COVID19 Pandemic, virtually all of NARA’s facilities had limited staff in the first half of FY 2022, which resulted in an increase in our backlogs. As staff returned to our buildings, some NARA FOIA units assessed their backlog and identified simple and ready to close cases within its backlog to more complex cases. Using this distinction, NARA is going to focus its efforts on closing any outstanding simpler FOIA cases as well as older, more complex FOIA cases that are ready to close. Some NARA units were able to hire new staff who will assist in closing older cases.

E. Reducing the Age of Requests, Appeals, and Consultations

TEN OLDEST REQUESTS

20. In Fiscal Year 2022, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2021 Annual FOIA Report?

Answer: No

21. 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 2021 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

Answer: NARA closed 6 of the 10 oldest FOIA requests.

22. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

Answer: Due to the lingering effects of the pandemic, an increase in the number of litigation and special access requests, NARA has not been able to make progress in reducing the overall age of our pending requests.

TEN OLDEST APPEALS

23. In Fiscal Year 2022, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2021 Annual FOIA Report?

Answer: No

24. 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 2021 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

Answer: **In FY 22, NARA did not close any of its ten oldest appeals. NARA's oldest appeals are all for classified archival records that were created by other agencies, which have to be sent out on consultation with these agencies. The agencies have not yet responded.**

25. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

Answer: **Due to the lingering effects of the pandemic, an increase in the number of litigation and special access requests, NARA has not been able to make much progress in reducing the overall age of our pending FOIA appeals.**

TEN OLDEST CONSULTATIONS

26. In Fiscal Year 2022, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2021 Annual FOIA Report?

Answer: **Yes**

27. 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 2021 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Answer: **N/A**

ADDITIONAL INFORMATION REGARDING TEN OLDEST

28. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2023.

Answer: **Several of NARA's ten oldest FOIA requests were for classified archival records that were created by other agencies and are therefore waiting on consultations to other agencies for their declassification decisions. NARA has assigned an employee in the National Declassification Center and the Presidential Libraries to track the ten oldest requests and to regularly contact those agencies that are slow in making their determinations. In addition, even though NARA is the appeal authority for FOIA requests of archival records that contain classified national security information instead of the agency with the classification equity, NARA does not have the authority to declassify the information contained in our classified holdings. All FOIA requests and appeals that involve classified information require consultations with the creating/originating agency, and often with multiple other agencies/components. This process inevitably adds to the time needed for the review and processing of requests and appeals for the withholding of**

classified information. There are still lingering effects of the pandemic NARA and other agencies are dealing with that contribute to delay in responding to the older requests.

F. Additional Information about FOIA Processing

29. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency's overall FOIA request processing and backlog. If possible, please indicate the number and nature of requests subject to litigation, common causes leading to litigation, and any other information to illustrate the impact of litigation on your overall FOIA administration.

Answer: Yes, NARA had 28 FOIA litigation cases in FY 2022 that took approximately 3,000 total staff hours. Thirteen of these litigation cases were filed in FY 2022. Two (the Washington State Attorney General FOIA request relating to the potential closure of the National Archives building in Seattle, WA and the 15 boxes that were located at former President Donald Trump's Mar-a-Lago residence) were large and complex and were a priority for NARA staff to complete. As a result, NARA staff were not able to work the FOIA complex backlog cases or appeals.

30. How many requests during Fiscal Year 2022 involved unusual circumstances as defined by the FOIA? (This information is available in your agency's FY22 raw data).

Answer: NARA currently does not track this data. NARA is investigating ways to start tracking this data for the Fiscal Year 2023 Chief FOIA Officer's Report.