

2024 Chief FOIA Officer Report

of the

Federal Communications Commission

P. Michele Ellison, General Counsel and Chief FOIA Officer

The Federal Communications Commission (FCC or Commission) is an independent regulatory agency. It was established by the Communications Act of 1934 and is charged with regulating interstate and international communications by radio, wire, satellite, and cable. It is directed by five Commissioners nominated by the President and confirmed by the United States Senate. The President designates one of the Commissioners as Chair, who acts as the chief executive officer of the agency. The FCC is organized by function into seven operating bureaus and twelve staff offices. Implementation of the Freedom of Information Act (FOIA) is the responsibility of all FCC components, as FOIA requests are processed by the bureau or office that is the custodian of the records sought. The Commission's General Counsel is the FCC's Chief FOIA Officer. As specified in the *Guidelines for 2024 Chief FOIA Officer Reports*, the general reporting period for this Chief FOIA Officer (CFO) Report is March 2023 to March 2024. The FCC conducted a review of its administration of the FOIA and analyzed the data from its FOIA Annual Report from Fiscal Year 2023 (October 1, 2022, to September 30, 2023), supplemented by data gathered for the period through March 2024. The FCC's performance demonstrates its commitment to openness and proactive disclosure and its ongoing efforts at self-assessment and improvement of its FOIA program. Highlights of this review and analysis include:

- The agency conducted its FOIA program in an effective and timely manner during the reporting period. In addition to processing more than 500 requests, the Commission also stood up and implemented a new and more robust case management system for administering the FOIA.
- Consistent with the requirements of the FOIA Improvement Act of 2016 and Department of Justice (DOJ) guidance, the FCC granted (in full or in part) 285 FOIA requests, or 53.27% of 535 requests processed, in FY 2023.
- The agency's average response time for simple track initial FOIA requests was 16.08 days in FY 2023, improving on the FY 2022 average by more than a day. This is the seventh year in a row that the agency has met and exceeded DOJ's 20-day benchmark.
- The number of pending appeals at the end of FY 2023 remained low at 16.
- The average response time for expedited processing requests was 3.24 days in FY 2023, a decrease by more than half from FY 2022 (6.62 days). The average response time remained under the 10-day benchmark for the eighth year in a row.
- The agency's FOIA request backlog as a percentage of total requests received decreased from FY2022.
- The agency proactively posted on its website approximately 1.3 million records in FY 2023.

Section I: FOIA Leadership and Applying the Presumption of Openness

The guiding principle underlying the Attorney General’s 2022 [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?

Yes.

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

P. Michele Ellison, General Counsel, is the FCC’s Chief FOIA Officer.

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?

Effective FOIA administration is central to Goal 6 of the *FCC Strategic Plan Fiscal Years 2022- 2026*, Foster Operational Excellence, which directs the agency to model “excellence in government” and “maintain a commitment to transparent and responsive processes that encourage public involvement and serves the public good.” The Office of the Managing Director (OMD) and Office of General Counsel (OGC) have primary responsibility to administer the FCC’s FOIA program, and more generally support the FCC’s mission regulating interstate and international communications by radio, television, wire, satellite, and cable. The FCC is the United States’ primary authority for communications law, regulation, and technological innovation.

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?

Yes. Pursuant to established practice, FCC FOIA response letters must expressly consider the foreseeable harm standard as applicable to responsive records. OGC reviews every draft agency FOIA response letter and any responsive records prior to release to ensure compliance with DOJ’s guidance on foreseeable harm, among other things.

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

interest protected by a FOIA exemption. This is commonly referred to as a *Glomar* response. If your agency tracks *Glomar* responses, please provide:

- the number of times your agency issued a full or partial *Glomar* response (separate full and partial if possible);
- the number of times a *Glomar* response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).

The FCC has not used *Glomar* responses during the reporting period or in the last several years; based on past experience, it does not anticipate doing so in FY 2024. Therefore, the agency does not have a formal process for tracking such responses and does not plan to incorporate such tracking during FY 2024. However, if the agency were to adopt a formal system for tracking *Glomar* responses, it would need to assess the feasibility of adding a software feature to its FOIA system and would need to explore the relative time and personnel resources that would be required for such an undertaking given the dearth of *Glomar* responses issued by the agency.

6. If your agency does not track the use of *Glomar* responses, are you planning to track this information in the future?

As noted above, the FCC does not anticipate issuing any *Glomar* responses in FY 2024. Should that posture change, consideration will be given with respect to how any such responses will be tracked.

7. 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.

One key focus has been ensuring ongoing training and professional development of FOIA staff. During the reporting period, OGC staff has made concerted efforts to educate agency personnel through direct engagement regarding the presumption of openness, consistent with the Attorney General's March 15, 2022 Memorandum.

Section II: Ensuring Fair and Effective FOIA Administration

The Attorney General's 2022 [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.

During the reporting period, the Commission has undertaken a variety of tangible efforts to ensure appropriate FOIA training for relevant staff. The FCC requires all agency staff

to take a Records Management training course annually, as described in more detail below. The agency also offered additional targeted training to staff with FOIA responsibilities on its new platform for FOIA administration, ArkCase. In addition, the FOIA Service Center, housed in the FCC's OMD, routinely shares information about DOJ FOIA Training sessions with the agency's FOIA professionals and other staff with FOIA responsibilities, and numerous staff with substantial FOIA responsibilities attended one or more of these supplemental FOIA sessions during the reporting period.

Tailored FOIA training for the agency's bureaus and offices is conducted on request. In addition, the FOIA Service Center maintains an ongoing training program, providing individual FOIA training to any staff when requested.

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?

Yes. As explained in more detail in the response to Question 3 below, the agency's FOIA professionals and other staff attended FOIA training offered by DOJ's Office of Information Policy (OIP) and the FCC.

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

- DOJ Training:
 - Virtual Annual FOIA Report Refresher and Quarterly Report Training - October 4, 2023
 - Virtual Chief FOIA Officer Report Refresher Training - October 11, 2023
 - Virtual Introduction to the Freedom of Information Act - November 7, 2023
 - Virtual Litigation Seminar - November 14, 2023
 - Virtual Procedural Requirements and Fees Training - December 6, 2023
 - Virtual Exemption 1 and Exemption 7 Training - January 9, 2024
 - Virtual Exemption 4 and Exemption 5 Training - January 11, 2024
 - Virtual Privacy Considerations Training - January 18, 2024
 - Virtual Administrative Appeals, FOIA Compliance, and Customer Service Training - January 25, 2024
 - Virtual Advanced Freedom of Information Act Training - February 6, 2024
- FCC-Specific FOIA Administration Platform Training

The FCC mandates an annual Records Management training course for all agency staff. The National Archives and Records Administration (NARA) also requires mandatory annual records management training for all agency personnel including federal employees, contractors, volunteers, and others that create, receive, access, or use Federal records on behalf of the agency. The course is offered by video on demand through the agency's Intranet. The agency monitors completion of this mandatory training requirement.

FOIA training materials are widely available to all staff, including personnel with FOIA responsibilities, on demand through the agency's Intranet. Among these are a FOIA Overview; a copy of the Attorney General's 2022 FOIA Guidelines; detailed information from the joint DOJ - FCC training held onsite several years ago; ArkCase FOIA training; the FOIAonline coordinator list and best practices; as well as a detailed FOIA "Things to Remember" worksheet for issuing initial responses.

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.

All of the FCC's FOIA professionals and staff with FOIA responsibilities attended at least one FOIA training session during the reporting period.

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.

Not applicable.

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?

The agency has ongoing efforts in both of these areas. The agency's internal and public FOIA webpages provide detailed information for employees who are not FOIA professionals but may need to provide records in response to a FOIA request, or who are otherwise incidentally involved in the FOIA process. For instance, the FCC's internal FOIA webpage provides contact information for staff FOIA experts in the agency's FOIA Service Center, OGC, and component bureaus and offices, as well as links to the FOIA training and materials described above that are available to all staff. As indicated above, the agency's OGC offers specialized FOIA training sessions to the bureaus and offices upon request.

OGC engages with agency senior leadership on a regular basis regarding FOIA responsibilities, including backlogs and other pending FOIA issues. In addition, the FOIA Service Center issued weekly reports to agency staff with FOIA responsibilities, and monthly reports to senior staff in the bureaus and offices, showing the status of pending FOIA requests throughout the reporting period.

B. Outreach

7. 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.

Yes. The FOIA Service Center invites dialogue with any member of the requester community prior to filing and reaches out in appropriate cases to requesters after filing, to help the requester more reasonably describe and clarify the request. This consultation helps both to direct requesters to publicly-available records that can be accessed immediately and outside of the standard FOIA request process and to improve the efficient routing of FOIA requests once filed. Some frequent requesters contact the FOIA Service Center regularly prior to filing to discuss the type of information at issue and where it may likely be found, so that the information sought is reasonably described and the appropriate custodian bureau or office is identified in the filed request, thus reducing processing delays. Additionally, the FOIA Service Center engages in post-filing consultations in many cases where a request does not meet the requirements of a properly filed FOIA request.

8. Outside of the standard request process or routine FOIA Liaison or FOIA Requester Service Center interactions, did your FOIA professionals engage in any outreach or dialogue, with the requester community or open government groups regarding your administration of the FOIA? For example, did you proactively contact frequent requesters, host FOIA-related conference calls with open government groups, or provide FOIA training to members of the public? 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.

Yes. It is standard practice for agency staff to contact requesters proactively to clarify or narrow the scope of complex or voluminous requests. In addition to reducing processing time, such outreach can serve to more clearly identify the records sought and to reduce processing fees. For example, in multiple cases during the reporting period staff contacted the requester and explained that materials publicly available on the Commission's website were responsive to the request and offered further assistance to locate the records, revise the request to identify additional records sought, or withdraw the request. In addition, as a result of the agency's outreach, the requesters in many instances narrowed their requests by subject matter or time period or agreed to receive responsive records on a rolling basis.

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 2023 (please provide a total number or an estimate of the number for the agency overall).

We estimate 51 occasions on which requesters sought assistance from the FOIA Public Liaison. These inquiries typically seek the status of a pending FOIA request or seek help utilizing databases and other information provided on the FCC's website. Such requests were promptly addressed, either directly by the FOIA Public Liaison or by routing to the appropriate bureau or office staff, who were asked to follow up with the FOIA Public Liaison when the request is resolved. (Note: This figure does not include multiple

exchanges with an individual requester related to a single FOIA request.)

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.

Yes. The agency reviews its personnel resources on an ongoing basis to meet its program objectives, including FOIA. FOIA responsibilities are assigned to full-time FOIA staff, as well as to other staff on an as-needed basis to meet variations in the FOIA workload. During the reporting period and as part of its overall workforce planning efforts, the agency successfully recruited and is in the process of hiring additional FOIA professionals in light of retirements and other departures.

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.

Weekly and monthly reporting on FOIA processing is an important best practice successfully implemented by the agency. The FOIA Service Center actively tracks individual FOIA requests and issues weekly informational reports to agency FOIA professionals showing FOIA requests that are backlogged, soon-to-be backlogged, or on hold, thus facilitating timely staff action and improving agency performance. The FOIA Service Center also circulates to senior staff in the bureaus and offices monthly reports showing the status of pending FOIA requests, ensuring appropriate oversight within each organizational unit.

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

Senior staff conduct continuous and comprehensive assessment of the agency's FOIA program and collaborate on ways to improve the agency's administration of the statute. During the reporting period, particular emphasis has been placed on exploring the appropriate use of e-discovery which can result in more efficient and effective processing of FOIA requests.

Section III: Proactive Disclosures

The Attorney General's 2022 [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.

As an agency receiving fewer than 1,000 FOIA requests per year, the Commission informally identifies records that are required to be proactively disclosed and posts material proactively, often beyond the requirements of the statute. The Commission has adopted a three-pronged strategy on proactive disclosures. First, in accordance with the requirements of the FOIA Improvement Act of 2016, the agency posts in its electronic FOIA reading room records that have been requested three or more times. Second, and more broadly, the electronic FOIA reading room lists records disclosed in response to a FOIA request that the agency determines have become, or are likely to become, the subject of subsequent requests for substantially the same records. In addition, it is the FCC's policy to post on its website any information that is of general interest to the public so long as no national security, law enforcement, legal, or privacy issues prohibit its dissemination. The inventory of website content disclosed pursuant to this policy is available online at <https://www.fcc.gov/general/website-inventory-priorities-and-schedules>.

2. How long after identifying a record for proactive disclosure does it take your agency to post it?

Once a record is identified for proactive disclosure, staff endeavor to post the record as expeditiously as possible, usually in a matter of days.

3. Does your agency post logs of its FOIA requests?

- If so, what information is contained in the logs?
- Are they posted in CSV format? If not, what format are they posted in?

At present, the agency does not post logs of its FOIA requests.

4. 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.

- Freedom of Information Act (FOIA) Electronic Reading Room – The Commission maintains a webpage listing records disclosed in response to FOIA requests that the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records. <https://www.fcc.gov/general/freedom-information-act-electronicreading-room>
- Broadband Connectivity Programs – The Commission launched several new and updated webpages related to connectivity programs including the Affordable Connectivity Program (ACP) and Emergency Broadband Benefit Program (EBB): ACP Outreach

Grant Opportunities: <https://www.fcc.gov/acp-grants-opportunities>; ACP Outreach Grant Program Management Policies and Resources: <https://www.fcc.gov/acp-grants-management>; ACP/EBB Data Page: <https://www.fcc.gov/consumers/consumer-complaint-center/acpebb-data-page>; ACP Outreach Grant Notice of Funding Opportunity (NOFO): <https://www.fcc.gov/acp-outreach-grant-notice-funding-opportunity-nofo>; Digital Connectivity & Lifeline Awareness Week of Action September 11-17, 2023: <https://www.fcc.gov/consumer-governmental-affairs/digital-connectivity-lifeline-awareness-week-action-september-11-17-2023>; FCC Announces That More Than 20 Million Households Enrolled In Affordable Connectivity Program: <https://www.fcc.gov/consumer-governmental-affairs/fcc-announces-more-20-million-households-enrolled-affordable-connectivity-program>; FCC Proposes Rules to Help Domestic Violence Survivors Access Safe and Affordable Connectivity: <https://www.fcc.gov/fcc-proposes-rules-help-domestic-violence-survivors-access-safe-and-affordable-connectivity>

- Public Safety Guidance – The Commission launched new and updated webpages providing communications-related public safety guidance: Super Typhoon Mawar: <https://www.fcc.gov/mawar>; Hurricane Lee: <https://www.fcc.gov/lee>; wildfires in Hawaii: <https://www.fcc.gov/HawaiiWildfires>; Hurricane Idalia <https://www.fcc.gov/Idalia>; and Hurricane Hilary <https://www.fcc.gov/Hilary>
- Accessibility – the Commission established new webpages devoted to accessibility for consumers with disabilities: FCC to Consider Improving Accessibility and Effectiveness of Wireless Emergency Alerts: <https://www.fcc.gov/fcc-consider-improving-accessibility-and-effectiveness-wireless-emergency-alerts-0>; Hearing Aid Compatibility Service Provider Certification: <https://www.fcc.gov/wireless/hearing-aid-compatibility-service-provider-certification>; FCC Seeks Comment on Hearing Aid Compatibility (HAC) Task Force Report and Waiver Request: <https://www.fcc.gov/fcc-seeks-comment-hearing-aid-compatibility-hac-task-force-report-and-waiver-request>; FCC Seeks Comment on Hamilton’s Application for Full Certification to Provide IP CTS: <https://www.fcc.gov/fcc-seeks-comment-hamiltons-application-full-certification-provide-ip-cts>; FCC Grants Waiver of Certain Accessible Emergency Information Requirements: <https://www.fcc.gov/consumer-governmental-affairs/fcc-grants-waiver-certain-accessible-emergency-information-requirements>; FCC June 8 Open Meeting to Consider Accessibility of Video Conferencing Services: <https://www.fcc.gov/consumer-governmental-affairs/fcc-june-8-open-meeting-consider-accessibility-video-conferencing-services>; Chairwoman Rosenworcel Shares Proposal to Require Accessibility of Interoperable Video Conferencing Services: <https://www.fcc.gov/consumer-governmental-affairs/chairwoman-rosenworcel-shares-proposal-require-accessibility-interoperable-video-conferencing>; FCC Requires Access to Video Conferencing, Proposes Performance Objectives and TRS Integration: <https://www.fcc.gov/consumer-governmental-affairs/fcc-requires-access-video-conferencing-proposes-performance-0>; FCC Certifies Clear Captions to Provide Internet Protocol Captioned Telephone Service: <https://www.fcc.gov/fcc-certifies-clearcaptions-provide-internet-protocol-captioned-telephone-service>; FCC Issues Reminder to Make Televised Emergency Information Accessible to Viewers with Disabilities:

<https://www.fcc.gov/consumer-governmental-affairs/fcc-issues-reminder-make-televised-emergency-information-accessible-viewers-disabilities>

- Consumer Guides – the Commission established new webpages devoted to consumer guides: Consumer Guides: <https://www.fcc.gov/consumers/guides/consumer-guides>; Wireless 911 Service: <https://www.fcc.gov/consumers/guides/wireless-911-service>; Proteja su Información Personal: <https://www.fcc.gov/consumers/guides/proteja-su-informacion-personal>; Protecting Your Personal Data: <https://www.fcc.gov/protecting-your-personal-data>
- FCC Administration – new webpages were established announcing changes within the Commission: Commissioner Anna M. Gomez: <https://www.fcc.gov/about/leadership/anna-gomez>; Space Bureau: <https://www.fcc.gov/space>; Office of International Affairs: <https://www.fcc.gov/international-affairs>; OIG Whistleblower Protection Coordinator <https://www.fcc.gov/inspector-general/whistleblower>
- Reports and Working Papers – the Commission established new webpages for reports and working papers: Voice Telephone Services: Status as of June 30, 2022: <https://www.fcc.gov/reports-research/reports/voice-telephone-services-reports/voice-telephone-services-status-june-30>; Internet Access Services (As of December 31, 2021): <https://www.fcc.gov/reports-research/reports/internet-access-services-reports/internet-access-services-december-31-2021>; Funding Map: <https://www.fcc.gov/economics-analytics/funding-map>; 2023 IPCS Mandatory Data Collection: <https://www.fcc.gov/2023-ipcs-mandatory-data-collection>; Proposed 2023 IPCS Annual Reports: <https://www.fcc.gov/proposed-2023-ipcs-annual-reports>

5. 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, the FCC has a sustained focus on making proactive disclosures more useful and accessible.

6. 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.

The FCC's policy on open data is showcased in an "Open Government at the FCC" webpage. The "Open Government at the FCC" webpage provides links, including: 1) FCC Open Data, enabling public innovation by publishing data underlying FCC regulatory proceedings and activities with a focus on improving quality, openness, accessibility and utility, including a link to several FCC datasets that can be downloaded; 2) FCC Developers Page, promoting the innovative application of FCC data by connecting developers with the tools they need to unlock government data, including a link to several FCC developer application programming interfaces; 3) FCC Digital

Strategy, discussing the agency's participation in federal cross-agency initiatives to increase data usability and consumption; 4) FCC Data and Information Officers, a roster of FCC staff members dedicated to providing data and information; and 5) FCC blog posts on open government. The webpage may be accessed at <https://www.fcc.gov/general/open-government-fcc>.

7. 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.

Yes. Proactive disclosures at the FCC involve a wide range of staff across its various component bureaus and offices. These staff routinely identify records for proactive disclosure consistent with standard FCC procedures and post material proactively beyond the requirements of the statute.

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

One best practice to highlight is the agency's efforts to increase public awareness of available information that the agency proactively discloses. The FCC participates in numerous social media and e-mail subscription services through which, among other things, it publicizes proactive disclosures for public awareness. These include Facebook, X, Instagram, YouTube, and others. For instance, the FCC maintains over fifty RSS feeds, by which users can receive automatic updates covering actions by individual bureaus and offices and numerous types of FCC documents and databases. Users can also receive this information by email subscription.

Section IV: Steps Taken 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 2022 [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?

Yes. During the reporting period, the agency devoted significant resources to the successful transition to a new and more robust case management system for administering the FOIA, ArkCase, which became operational on October 1, 2023. More generally, and as noted earlier, the agency reviews its FOIA-related technological capabilities on an ongoing basis to meet its program objectives. Throughout the reporting period, agency FOIA and IT staff maintained an ongoing and substantive dialogue about current and prospective technological capabilities as applied to FOIA obligations.

2. Please briefly describe any new types of technology your agency uses to support your FOIA program.

As indicated above, during the reporting period, the agency transitioned to ArkCase, a new and more robust FOIA system (which became operational on October 1, 2023).

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.

FCC IT staff have access to Microsoft eDiscovery, a search tool for content in other MS programs, such as OneDrive, SharePoint, Teams, and Microsoft 365 Groups, which is used to support the FOIA program in select instances as IT resources permit. In addition, as noted above, the FCC transitioned to a more robust FOIA system during FY 2023 featuring comprehensive document management capabilities, including automatic conversion to PDF format. Additionally, once fully optimized, the agency expects the new FOIA system to also support predictive coding and assisted review. Because these features are novel and are still being implemented, it is premature to quantify the time and financial resources that will be saved.

As previously reported, the agency's FOIA professionals are able to convert documents, emails, and other conventional digital materials to PDF format automatically using Adobe Acrobat Pro software. This software provides a full range of FOIA processing tools, including redaction marking and application, FOIA exemption labeling, and deduplication using character searches. The software also enables the agency to provide documents in digital form to requesters without the need to scan paper copies. For very large volume productions, the Commission has also used file hosting services to provide records to requesters, rather than sending such records over multiple e-mails or on physical media.

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?

Yes. The agency's FOIA website addresses the elements noted in the OIP 2017 guidance. As previously reported, there is a clear link to the agency's FOIA webpage, <https://www.fcc.gov/foia>, appended at the bottom of all FCC webpages. Additionally, the FOIA webpage can also be accessed directly from the OGC page on the FCC's website. The FOIA webpage includes, as recommended in the OIP guidance, links to: (i) the electronic FOIA reading room which provides easy access to proactive disclosures, among other things; (ii) instructions to the public on how to make a FOIA request or to contact the agency about an existing request; and (iii) the Commission's

Annual FOIA Reports and Chief FOIA Officer Reports, among other reports. The agency's FOIA webpage also includes summary graphs of the annual and quarterly FOIA reports, the agency's FOIA reference guide and regulations, text of the FOIA, and the DOJ FOIA guide.

5. Did all four of your agency's [quarterly reports](#) for Fiscal Year 2023 appear on FOIA.gov?

Yes.

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 2024.

Not applicable.

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 2022 Annual FOIA Report and, if available, for your agency's Fiscal Year 2023 Annual FOIA Report.

For the agency's FY 2023 Annual FOIA Report, please see <https://www.fcc.gov/reports-research/reports/annual-foia-reports/freedom-information-act-annual-report-fy-2023>. The agency's FY 2022 Annual FOIA Report and associated statistical data can be found at: <https://www.fcc.gov/reports-research/reports/annual-foia-reports/freedom-information-act-annual-report-fy-2022>

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?

Yes. As required under the FOIA Improvement Act of 2016, in May 2019, the agency submitted to DOJ its plan to meet the National FOIA Portal's interoperability requirement using FOIAonline. As previously noted, the agency transitioned to a new FOIA system, ArkCase, on October 1, 2023. This newly-implemented system fully integrates with FOIA.gov's National FOIA Portal.

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

For very large volume productions, the Commission has used file hosting services to provide records to requesters, rather than sending such records over multiple e-mails or on physical media. Additionally, FOIA staff have found that using targeted electronic searches, when appropriate, can result in a more effective and efficient process which ultimately benefits the requester.

Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness in Responding to Requests, and Reduce Backlogs

The Attorney General's 2022 [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 typical FOIA or Privacy Act process?

Yes.

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

First-party requests for records may be made under the Privacy Act or the FOIA. For example, a party may request under either statute records of consumer complaints that they filed with the FCC regarding their phone or Internet service. Both FOIA and Privacy Act requests were processed electronically in FOIAonline and currently are processed in ArkCase.

3. Please describe any other steps your agency has taken to remove barriers to accessing government information.

In addition to posting records proactively, the FOIA Service Center and component bureau and office staff engage requesters and prospective requesters in order to immediately refer them to publicly-available sources for the information they seek, where such sources exist, and to clarify and refine their requests so as to facilitate more efficient access to government records, when appropriate.

B. Timeliness

4. For Fiscal Year 2023, 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 2023 Annual FOIA Report.

3.24 days.

5. 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 2023 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.

Not applicable.

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

Yes. The agency's multi-track system consists of simple, complex, and expedited tracks.

7. 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 2023?

Yes. The agency processed simple requests within an average of 16.08 working days (a reduction in processing speed of more than a day from the figure reported last year).

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

Not applicable.

9. Please provide the percentage of requests processed by your agency in Fiscal Year 2023 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.

79.8% of requests processed by the FCC in FY 2023 were placed in the simple track, or 427 of 535 total requests processed.

10. 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?

Not applicable.

C. Backlogs

Backlogged Requests

11. If your agency had a backlog of requests at the close of Fiscal Year 2023, 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 2022?

No. The agency reported a backlog of 35 requests at the close of FY 2023. It reported 33 backlogged requests at the end of FY 2022.

12. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2023 than it did during Fiscal Year 2022?

Yes. The agency processed 508 requests during FY 2022 and 535 requests during FY 2023.

13. If your agency's request backlog increased during Fiscal Year 2023, 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)
- Litigation
- Any other reasons – please briefly describe or provide examples when possible

The agency’s FY 2023 backlog remains relatively low, especially as a percentage of initial FOIA requests. The agency did experience some unique challenges and extraordinary demands on its human and IT resources. For example, we attribute the small increase (of two backlogged requests) mainly to the competing workload priorities confronting component bureaus and offices, many of which have lost key staff members, and in some cases, to extended delays associated with interagency FOIA consultations. In addition, many of the backlogged FOIA requests present complex issues or involve significant volumes of records for review and processing. OGC FOIA staff also devoted significant time during this reporting period to the transition to the ArkCase case management system, which we anticipate will expedite the FOIA process overall.

14. 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 2023. 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.”

The request backlog is 5.97%, or 35 of 586 incoming initial FOIA requests, a decrease from the 6.31% reported last year.

Backlogged Appeals

15. If your agency had a backlog of appeals at the close of Fiscal Year 2023, 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 2022?

No. The number of backlogged appeals increased slightly from 10 at the end of FY 2022 to 12 at the end of FY 2023.

16. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2023 than it did during Fiscal Year 2022?

Yes, the FCC processed 11 appeals during FY 2023 and 7 appeals during FY 2022.

17. If your agency’s appeal backlog increased during Fiscal Year 2023, 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)
- Litigation
- Any other reasons – please briefly describe or provide examples when possible

The agency's FY 2023 backlog of 12 appeals remains relatively low. We attribute the backlog mainly to the complexity attendant to some of the appeals, while others are in ongoing settlement discussions involving voluminous numbers of potentially responsive records. We also note that loss of staff contributed to the accrual of backlogged appeals during FY 2023. In addition, significant FOIA staff resources were devoted to the transition to the ArkCase administration system, which we anticipate will improve FOIA administration overall going forward.

18. 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 2023. 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 2023 and/or has no appeal backlog, please answer with "N/A."

70.58% which is a decrease of 40.53 percentage points from last year. As noted, the appeals that are backlogged often involve complex issues and, in some cases, a high volume of records. While the agency generally endeavors to resolve appeals through settlement, some of the agency's backlogged appeals will require resolution by the full Commission.

D. Backlog Reduction Plans

19. In the 2023 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2022 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 2023?

Not applicable.

20. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2023, please explain your agency's plan to reduce this backlog during Fiscal Year 2024.

Not applicable.

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

Ten Oldest Requests

21. In Fiscal Year 2023, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2022 Annual FOIA Report?

No. The agency did close half of the ten oldest requests that were reported pending in the FY 2022 Annual FOIA Report.

22. 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 2022 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

As noted above, the agency closed five of the ten oldest requests that were reported pending in the FY 2022 Annual FOIA Report. The agency has since closed an additional request, reported among the ten oldest in the FY 2022 Annual FOIA Report, after the close of FY 2023 but during the reporting period.

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

During the reporting period, senior FOIA staff in OMD and OGC met regularly with senior bureau and office staff to discuss and resolve any backlogged FOIA requests. Senior agency FOIA staff have also recently adopted a more proactive approach to resolving backlogged requests, including engaging with requesters directly to facilitate dialogue regarding any backlogged requests. We also emphasize that the agency continues to process the vast majority of initial FOIA requests within 20 business days.

Ten Oldest Appeals

24. In Fiscal Year 2023, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2022 Annual FOIA Report?

No. The agency did close three of the ten oldest appeals that were reported pending in the FY 2022 Annual FOIA Report.

25. 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 2022 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

As noted above, the agency closed three of the ten oldest appeals that were reported pending in the FY 2022 Annual FOIA Report during FY 2023. Since that time, the agency has closed an additional appeal that was among the ten oldest reported in the FY 2022 Annual FOIA Report.

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

As indicated earlier in this report, the agency's backlogged FOIA appeals generally present complex legal issues that are not easily resolvable. That aside, OGC has made reducing the agency's backlogged appeals a priority and is devoting additional resources to this effort, including reallocating additional staff to work on backlogged FOIA

appeals. It should be noted, however, that unlike the vast majority of federal agencies, the Commission is statutorily limited in its ability to delegate the resolution of appeals to staff. Therefore, procedurally-sound FOIA appeals are addressed by the full Commission.

Ten Oldest Consultations

27. In Fiscal Year 2023, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2022 Annual FOIA Report?

Yes. The agency reported one pending consultation in its FY 2022 Annual Report. This consultation was closed during FY 2023.

28. 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 2022 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Not applicable.

Additional Information Regarding Ten Oldest

29. 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 2024.

The ten oldest requests and appeals from FY 2023 generally involve complex issues or voluminous records. In addition, and as noted above, in contrast to agencies that may resolve appeals at the staff level, appeals of FCC decisions on initial FOIA requests, unless resolved informally or dismissed for procedural reasons, are considered and voted on by the full Commission. Senior FOIA staff in OMD and OGC have engaged, and continue to engage, with bureaus and offices to discuss plans and resources for addressing requests and appeals that are listed at the end of FY 2023 as the “ten oldest” or backlogged.

F. Additional Information about FOIA Processing

30. 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
- Any other information to illustrate the impact of litigation on your overall FOIA administration

Eight FOIA requests were the subject of litigation during the reporting period, seven of which originated from the same requester and generally covered overlapping subject matter. Generally, extensive FOIA litigation diverts limited FOIA staff time and resources, making it more difficult to address and process incoming FOIA requests. This

results in slower response times overall and potentially adds to the agency's FOIA backlog.