

**March 16, 2015 to March 14, 2016 Chief FOIA Officer Report  
for the Overseas Private Investment Corporation**

Chief FOIA Officer: Kimberly Heimert, Vice President and General Counsel

**I. Steps Taken to Apply the Presumption of Openness**

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.

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

**FOIA Training**

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

Yes. For example, OIP's Best Practices Series Workshop.

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

OPIIC is a small agency. One staff member handles the majority of FOIA operations and that staff member attends at least one FOIA training event once a year. Four other staff members have assigned FOIA functions, but do not regularly process FOIA requests. One out of five staff members is 20%, although the individual who attended training does much more than 20% of the FOIA processing.

- 3. 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.**

All staff members with assigned FOIA functions will attend at least one event in the next year.

**Discretionary Disclosure**

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

Discretionary releases are a part of normal OPIIC processing. When records are reviewed, a review for potential harm is made before a record is considered for withholding under an exemption. Therefore all records which would not cause harm are released, regardless of whether an exemption technically applies.

- 5. During the reporting period did your agency make any discretionary releases of otherwise exempt information?**

Yes, disclosures were made, but not formally tracked.

**6. What exemptions would have covered the information that was released as a matter of discretion?**

Exemption 5.

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

An example is OPIC's internal deliberative memoranda and correspondence regarding a project. These are the most voluminous types of OPIC records. In order to fulfill its mission, OPIC must review and analyze confidential commercial information received from applicants and outside sources with the permission of those applicants. The evaluations, opinions, and recommendations of OPIC staff reviewing the information could be protected under FOIA Exemptions b(4) or b(5). In such cases only Exemption b(5) is within the agency's control to waive. OPIC will consider for redaction only the portions of the records which, if released, could harm OPIC's review process and any portions flagged for Exemption b(4) review by the applicant. Although the entire document may be part of the internal pre-decisional deliberative process, technically within the scope of Exemption b(5), OPIC will release the non-harmful portions.

For example, OPIC received a request for records related to an OPIC loan which included OPIC's internal memoranda. OPIC reviewed these internal deliberative records line by line and only withheld information when required to for privacy reasons under exemption b(6), when required to for confidential commercial information under Exemption b(4), or when the release of information would cause harm to OPIC.

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

Not applicable.

**Other initiatives**

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

OPIC posts copies of its annual report (which include audited financial statements), <http://www.opic.gov/media-connections/annual-reports>; brief summaries of all board approved projects, <http://www.opic.gov/opic-action/all-project-descriptions>; summaries of any environmentally or socially sensitive projects prior to approval <http://www.opic.gov/doing-business-us/OPIC-policies/environment/documents>; and provides many other types of information on its website.

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

The Attorney General's 2009 FOIA Guidelines emphasized that "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open Government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests."

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

## Processing Procedures

- 1. For Fiscal Year 2015, 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 2015 Annual FOIA Report.**

Not applicable. OPIC did not adjudicate any requests for expedited processing in FY2015.

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

Not applicable.

- 3. On July 2, 2015, OIP issued new guidance to agencies on the proper procedures to be used in the event an agency has a reason to inquire whether a requester is still interested in the processing of his or her request. Please confirm here that to the extent your agency may have had occasion to send a "still interested" inquiry, it has done so in accordance with the new guidelines for doing so, including affording requesters thirty working days to respond.**

OPIC already observed procedures that met OIP's July 2, 2015 guidance. "Still interested" letters are only sent by the agency when the circumstances of the request indicate that the requester may no longer be interested, including lengthy gaps in communication and the availability of new information. Whenever requesting a response from a requester where inaction may lead to an administrative closing, as is the case with "still interested" letters, OPIC provides two to three written notices, in addition to phone calls where phone communication has been requested. The written notices are provided via e-mail if an e-mail address has been provided. The notice period ran for a minimum of six weeks, or roughly thirty business days. The only required adjustment from OPIC's previous procedures was to use business days as a unit of measure instead of weeks. This adjustment has been made.

## Requester Services

- 4. Agency FOIA Requester Service Centers and FOIA Public Liaisons serve as the face and voice of an agency. In this capacity they provide a very important service for requesters, informing them about how the FOIA process works and providing specific details on the handling of their individual requests. The FOIA also calls on agency FOIA Requester Service Centers and FOIA Public Liaisons to assist requesters in resolving disputes. Please explain here any steps your agency has taken to strengthen these services to better inform requesters about their requests and to prevent or resolve FOIA disputes.**

OPIC is a small agency with a low volume of requests and very few requester disputes. The FOIA Office routinely provides guidance to requesters with questions or issues and therefore demand for FOIA Public Liaisons or other assistance is very low. Accordingly, OPIC's FOIA budget focuses on processing requests.

## Other Initiatives:

- 5. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc., please describe them here.**

If a request is too broad or framed inefficiently, OPIC will generally contact the requester and offer alternative request wording based on the records sought. This both reduces OPIC's processing workload and reduces fees incurred and time spent waiting on the requester's end.

### **III. Steps Taken To Increase Proactive Disclosures**

**Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.**

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

#### **Posting Material:**

- 1. Describe your agency's process or system for identifying "frequently requested" records required to be posted online under Subsection (a)(2) of the FOIA. For example, does your agency monitor its FOIA logs or is there some other system in place to identify these records for posting.**

The FOIA Office receives approximately 30 to 40 requests a year, therefore a FOIA Officer will review the FOIA Log at least once a year to determine if any records have been frequently requested.

- 2. Does your agency have a distinct process or system in place to identify records for proactive disclosure? If so, please describe your agency's process or system.**

No. OPIC's FOIA Office does not have a distinct process in place to identify records for proactive disclosure. OPIC's Office of External Affairs maintains OPIC's public web presence, and that office regularly posts information about OPIC programs, projects, and outreach. This includes summaries of approved projects, summaries of environmentally or socially sensitive projects prior to approval, and annual financial statements.

- 3. When making proactive disclosures of records, are your agency's FOIA professionals involved in coding the records for Section 508 compliance or otherwise preparing them for posting? If so, provide an estimate of how much time is involved for each of your FOIA professionals and your agency overall.**

OPIC's FOIA Office does not post records to the website itself. Any information that OPIC's FOIA Office wishes to publish online, including proactive disclosures or reading room links, must be coordinated with the Office of External Affairs who is responsible for OPIC's website, blog, and social media outlets.

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

No.

- 5. If so, please briefly explain those challenges.**

Not applicable.

- 6. Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.**

OPIC posts copies of its annual report (which include audited financial statements), <http://www.opic.gov/media-connections/annual-reports>; brief summaries of most approved projects, <http://www.opic.gov/opic-action/all-project-descriptions>; summaries of any environmentally or socially sensitive projects prior to approval, <http://www.opic.gov/doing-business-us/OPIC-policies/environment/documents>; and provides many other types of information on its website.

- 7. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe those efforts.**

OPIC's blog and newsletter inform subscribers about available information.

**Other Initiatives:**

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

OPIC website and social media outlets continue to be improved based on internal and external feedback.

#### **IV. Steps Taken To Greater Utilize Technology**

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

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

**Making Material Posted Online More Useful:**

- 1. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website?**

OPIC website and social media outlets continue to be improved based on internal and external feedback.

- 2. If yes, please provide examples of such improvements?**

OPIC has updated its electronic reading room page to include some already publically available records which have been requested. While this has not increased the amount of available information, it has made such information more accessible and requests for these types of information have declined due to their higher visibility.

**Other initiatives:**

- 3. Did your agency successfully post all four quarterly reports for Fiscal Year 2015?**

Yes.

4. **If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2016.**

Not applicable.

5. **Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? See OIP Guidance, "The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications." (Nov. 22, 2013) If yes, what are the different types of electronic means are utilized by your agency to communicate with requesters?**

Yes. OPIC's FOIA Office communicates with all requesters via e-mail unless an e-mail address is unavailable or the requester indicates that another form of communication is preferred.

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

Not applicable, e-mail communication is the default.

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

The President's FOIA Memorandum and the Attorney General's 2009 FOIA Guidelines have emphasized the importance of improving timeliness in responding to requests. This section your Chief FOIA Officer Report addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations. For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2015 Annual FOIA Report and, when applicable, your agency's 2014 Annual FOIA Report.

**Simple Track:** Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

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

No, our volume of requests does not justify having a separate track.

2. **If so, for your agency overall, for Fiscal Year 2015, was the average number of days to process simple requests twenty working days or fewer?**

Not applicable.

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

Not applicable.

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

Yes.

**Backlogs:** Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2014 and Fiscal Year 2015 when completing this section of your Chief FOIA Officer Report.

**Backlogged Requests:**

5. **If your agency had a backlog of requests at the close of Fiscal Year 2015, did that backlog decrease as compared with Fiscal Year 2014?**

No, the backlog increased from two to five.

6. **If not, explain why and describe the causes that contributed to your agency not being able reduce its backlog.**

FOIA requests have becoming increasingly complex. For example, OPIC used to receive many requests for "The loan agreement for project ABC," a request that is typically processed within twenty or thirty business days. More frequently requesters are instead requesting "All correspondence between OPIC and third parties regarding project ABC," a change that greatly increases: 1) the number of responsive documents, 2) the number of third party notices required, and 3) the variety of information reviewed.

Furthermore, more than half of OPIC's backlog is due to consultations and out of the agency's control. Three of the backlogged requests are due to outstanding requests for consultation that at of the end of FY2015 had been running for 79 business days, 117 business days, and 159 business days. When consultations with other agencies are required, OPIC's response is often slowed by months.

7. **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 2015. If your agency did not receive any requests in Fiscal Year 2015 and/or has no request backlog, please answer with "N/A."**

12.5%.

**Backlogged Appeals**

8. **If your agency had a backlog of appeals at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?**

No backlog.

9. **If not, explain why and describe the causes that contributed to your agency not being able reduce backlog.**

Not applicable.

10. **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 2015. If your**

agency did not receive any appeals in Fiscal Year 2015 and/or has no appeal backlog, please answer with "N/A."

Not applicable.

**Status of Ten Oldest Requests, Appeals, and Consultations:** Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2014 and Fiscal Year 2015 when completing this section of your Chief FOIA Officer Report.

#### **Ten Oldest Requests**

**11. In Fiscal Year 2015, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2014 Annual FOIA Report?**

No.

**12. 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 2014 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.**

OPIIC had five pending perfected requests at the end of FY2014. Three requests were closed in FY2015 and two were still pending at the end of FY2015. One of the remaining requests was the largest FOIA request received in the past five years by far and required a determination on more than 50% of the number of pages otherwise processed in FY2015. This request was completed and closed in December 2015. The other remaining request has been pending a consultation response from another agency since April 2015 and remains open.

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

None of the requests pending at the end of FY2014 were withdrawn by the requester.

#### **Ten Oldest Appeals**

**14. In Fiscal Year 2015, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2014 Annual FOIA Report?**

Not applicable, no administrative appeals were pending.

**15. 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 2014 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.**

Not applicable, no administrative appeals were pending.

#### **Ten Oldest Consultations**

**16. In Fiscal Year 2015, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2014 Annual FOIA Report?**

Not applicable, no consultations were pending.

**17. 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 2014 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.**

Not applicable, no consultations were pending

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

**18. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2014.**

The two requests carried over from the end of FY2014 to the end of FY2015 illustrate the two main challenges facing OPIC in FOIA processing. These challenges are the same as those which faced OPIC in FY2014.

OPIC is a small agency and accordingly maintains a small FOIA Office. Therefore requests for voluminous amounts of records require a large portion of the FOIA Office’s resources.

OPIC’s FOIA Office recognizes that requesters often do not know how OPIC’s records are organized or searched and therefore we attempt to work directly with requesters retrieved in search. When requesters are not receptive to framing their requests to target the information sought while minimizing the amount of unresponsive or duplicative records, OPIC does not have the resources to respond within twenty or thirty business days.

Additionally a barrier to closing pending requests is the consultation process with other agencies. One pending perfected request from the end of FY2014 that was carried over to FY2015 has been awaiting another agency’s consultation since April 2015.

A designated FOIA Consultation point would be helpful for for enabling agencies to follow up and ensure that their consultation requests have been received.

**19. If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.**

FOIA Number	Date received by OPIC	Date consultation request sent	Last attempted contact <sup>1</sup>
2014-00049	09/16/2014	04/15/2015	02/02/2016
2015-00007	01/06/2015	06/09/2015	01/28/2016
2014-00011	01/29/2015	02/13/2015	12/18/2015 (Closed)

**20. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2016.**

OPIC closed three of its five pending requests from the end of FY2014 during FY2015. One more request was closed in December 2015. In order to close the remaining request, OPIC requires a consultation response from another agency. OPIC continues to follow up on consultation

<sup>1</sup> As of 02/05/2016.

requests on a regular basis, however OPIC has no other tools with which to encourage the other agency to respond within FY2016.

**VI. Use of FOIA's Law Enforcement "Exclusions"**

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

No.

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

Not applicable.