

**March 11, 2013 to March 10, 2014 Chief FOIA Officer Report
for the Overseas Private Investment Corporation**

Chief FOIA Officer: Dev Jagadesan

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.

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.

FOIA Training

- 1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this period?**

Yes, OPIC provides individual training to liaisons within each department who are responsible for coordinating FOIA searches and comments. Departmental training is also available upon request.

- 2. If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.**

Two sessions providing a FOIA overview. Several sessions to discuss particular FOIA exemptions or changes.

- 3. Did your FOIA professionals attend any FOIA training during the reporting period such as that provided by the Department of Justice?**

Yes, the FOIA Officer attended the Director's Lecture Series (FOIA Fee Summit).

- 4. Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this time period.**

50%

- 5. OIP has issued guidance that every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year. Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year.**

OPIC is a small agency with one full time FOIA staff member; she attends an OIP event at least once a year.

Outreach

- 6. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement.**

Yes. OPIC issued new FOIA regulations and posted them for public comment. All public comments were directly addressed.

Discretionary Disclosure

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

- 7. Does your agency have a formal process in place to review records for discretionary release? If so, please briefly describe this process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases.**

Discretionary releases are a part of normal OPIC processing. When records are reviewed, a review for potential harm is made before a record is considered for withholding under an exemption.

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

Yes, disclosures were made, but not formally tracked.

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

Exemption 5.

- 10. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.**

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.

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

Not applicable.

Other initiatives

- 12. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014.**

Yes. OPIC made a new page for the quarterly reports and placed them on its webpage for public download. Due to IT issues, however, the reports could not be read by the FOIA.gov centralized webpage. OPIC FOIA staff will periodically check the FOIA.gov centralized webpage to ensure that the reports are being read by FOIA.gov properly.

- 13. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please provide links in your description.**

OPIC posts copies of its annual report, <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

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

Describe here the steps your agency has taken to ensure that your management of your FOIA program is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

Personnel

During Sunshine Week 2012 OPM announced the creation of a new job series entitled the Government Information Series, to address the work performed by FOIA and Privacy Act professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

- 1. Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series? Do your FOIA professionals work with your agency's Open Government Team?**

No. OPIC is a small agency and the FOIA Office is operated primarily by one employee who is a general attorney. This attorney is located in the legal department and also performs a significant amount of legal work which requires the knowledge and classification of an Attorney Series position.

- 2. If not, what proportion of personnel has been converted to the new job series?**

None.

- 3. If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted?**

Not applicable.

Posting Procedures

4. **For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.**

Yes.

5. **Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.**

No. OPIC processed all requests for consultation received in the last year in less than a day.

Requester Services

6. **Do you use e-mail or other electronic means to communicate with requesters when feasible?**

Yes.

7. **Does your agency notify requesters of the mediation services offered by the Government of Information Services (OGIS) at NARA?**

Yes, all adverse appeal determinations include the OGIS recommended language.

8. **Describe 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.**

OPIC utilizes FOIA Coordinators in each department who are responsible for running the searches in respective departments under the guidance of the FOIA Officer. All responsive records are then gathered by and reviewed by the FOIA Officer. This enables efficient searching at the department level by a staff member familiar with the records systems and efficient processing at the FOIA Office level by a trained FOIA officer.

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.

Describe here the steps your agency has taken to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period. In doing so, answer the questions listed below and describe any additional steps taken by your agency to make proactive disclosures of information.

Posting Material

1. **Do your FOIA professionals have a system in place to identify records for proactive disclosures?**

No.

2. **If so, describe the system that is in place.**

Not applicable.

- 3. 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, <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.

Making Posted Material More Useful:

- 4. 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, such as soliciting feedback on the content and presentation of posted material, improving search capabilities on the site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.?**

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

- 5. If so, provide examples of such improvements.**

OPIC has expanded beyond its standard website to include a wide array of social media including a blog, a Facebook account, a Twitter account, and an RSS feed to proactively provide the public with information on new OPIC projects, conferences, and developments. Interested individuals can subscribe to OPIC's feeds and receive new OPIC developments directly without the need to return to check OPIC's website for developments.

- 6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized?**

Yes, OPIC utilizes twitter, Facebook, a blog, an RSS feed, and e-mail to highlight information for the public.

- 7. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are**

No.

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

All proactive disclosure information is provided above.

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. Over the past several years agencies have reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2014, as we have done over the past years, the questions have been further refined and now also address different, more innovative aspects of technology use.

Online tracking of FOIA requests

1. Can a FOIA requester track the status of his/her request electronically?

No. OPIC does not have an automated online tracking system due to the low volume of requests, about 40 a year. Requesters may, however, e-mail the general FOIA mailbox or the FOIA Officer in charge of the request for an update on the request's status at any time. Status updates are usually provided within one business day.

2. If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?

As stated above, OPIC does not have an automated online tracking system, however when requesters ask for a status update, the FOIA Officer in charge of the request will provide specific details as requested.

3. Describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.

The FOIA Officer will provide as much detail as is requested and is available. For example, OPIC has informed requesters in the past that search for one portion of their request has been completed, but that search for other portions is pending, or that a delay has occurred because OPIC is retrieving records from off-site storage.

4. In particular, does your agency tracking system provide the requester with an estimated date of completion for his/her request?

As stated above, OPIC does not have an automated online tracking system, however all requesters are proactively provided with an estimated completion date which is updated if search or review reveals that the estimated processing time is likely to be longer than originally anticipated.

5. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability? If not, please explain why.

No. OPIC is a small agency and receives about 40 requests a year. The current system of receiving updates directly from the FOIA Officer provides requesters with timely and accurate detail on the status of their request without overly burdening the FOIA Officer. Accordingly OPIC does not believe it is an efficient use of taxpayer funds to create an entirely new automated tracking system for requesters.

Use of technology to facilitate processing of requests:

- 6. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?**

Yes.

- 7. If so, describe the technological improvements being made.**

OPIC has created a tracking and reporting system using shared server technology that allows the attorney handling FOIA requests to enter information for each request and track its progress. The system operates on agency servers with technical support provided by the IT department. It uses a minimal amount of resources and requires little maintenance. The attorneys who deal with FOIA matters review the information on a daily basis.

- 8. Are there additional technological tools that would be helpful to further achieving efficiencies in your agency's FOIA program?**

Yes. Access to the FOIA software showcased by the Department of Justice (DOJ) for use in removing duplicates, especially duplicate e-mails, would greatly speed up processing of large requests which put a strain on OPIC's small agency resources. According to the information provided by the DOJ, this software is expensive and not worth it for the one or two large requests OPIC receives a year. If the DOJ could provide access to small agencies when they need it or organize a group pricing for smaller agencies, it would be helpful.

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

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged request or appeals and by looking at whether agencies closed their ten oldest requests and appeals. *For the figures required in this Section, please use those contained in the specified sections of your agency's 2013 Annual FOIA Report and, when applicable, your agency's 2012 Annual FOIA Report.*

Simple Track Requests:

- 1. 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.**
- a. Does your agency utilize a separate track for simple requests?**
No, our volume of requests does not justify having a separate track.
- b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?**
Not applicable.
- c. If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?**

No. OPIC had one request which it processed in 118 business days, but had to hold for another 204 business days because of two agencies who took 6-10 months to process requests for consultation. If this FOIA request's processing time were to be set to 118 days OPIC's average would fall by 6 days to 15 business days.

Backlogs and "Ten Oldest" Requests, Appeals, and Consultations:

2. **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. 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 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.**

Backlogs

- a. **If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012?**

No.

- b. **If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?**

No backlog.

Ten Oldest Requests

- c. **In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?**

Yes.

- d. **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 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed two of them, you should note that you closed two out of seven "oldest" requests.**

Not applicable, all 2012 "oldest requests" closed.

Ten Oldest Appeals

- e. **In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?**

Not applicable, no administrative appeals were pending.

- f. **If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C.(5) of your Fiscal Year 2012 Annual FOIA Report.**

Not applicable, no administrative appeals were pending.

Ten Oldest Consultations

- g. In Fiscal Year 2013, did your agency close the ten oldest consultations that were pending as of the end of Fiscal Year 2012?**

Not applicable, no consultations were pending.

- h. If no, please provide the number of these consultations your agency was able to close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report.**

Not applicable, no consultations were pending

Reasons for Any Backlogs:

- 3. If you answered “no” to any of the questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:**

Request and/or Appeal Backlog:

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests?**

No.

- b. Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff?**

No.

- c. Was the lack of a reduction in the request and/or appeal backlog caused by an increase in the complexity of the requests received?**

Yes. OPIC had two backlogged requests that were both for larger amounts of documents than have been requested in at least five years. One backlogged request required searching the e-mails of approximately 30% of the entire agency's staff. Due to OPIC's small size, OPIC typically works with requesters to ensure they get useful information in a reasonable time. However, when a requester refuses to work with OPIC and instead accepts a lengthy estimated processing time for a large and duplicate filled set of documents, such as the e-mails of 30% of OPIC's staff, OPIC has no alternative under the FOIA but to carry the request forward.

- d. What other causes, if any, contributed to the lack of a decrease in the request and/or appeal backlog?**

Both backlogged requests were made near the end of the fiscal year and therefore were only backlogged by a few weeks at the end of the fiscal year.

“Ten Oldest” Not Closed

- e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012.**

Not applicable, “Ten Oldest” requests closed.

- f. **If your agency was unable to close any of its ten oldest requests or appeals 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.**

Not applicable, "Ten Oldest requests closed.

Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs

Given the importance of these milestones, it is critical that Chief FOIA Officers assess the causes for not achieving success and create plans to address them.

4. **If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2014.**

OPIC is a small agency with limited resources. Unusually large requests like those currently backlogged are a rare occurrence and OPIC's FOIA Office does not have the capacity to handle these requests within twenty business days. OPIC has informed the requesters that in addition to the usual amount of time allotted to a request, their requests will be given all of the FOIA Office's excess capacity after other requests are processed on a normal basis. OPIC also provides rolling releases in response to these large requests and follows up after a release is made to confirm that the requester continues to want the balance.

5. **If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency's plan for achieving backlog reduction in the year ahead.**

Not applicable, OPIC had a backlog of only two requests.

Interim Responses

6. **Does your agency have a system in place to provide interim responses to requesters when appropriate?**

OPIC provides rolling responses when possible for requests that are estimated to exceed twenty business days.

7. **If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed**

100% of backlogged requests received a substantive, interim response.

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

In order to increase transparency regarding the use of the FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to "treat the records as not subject to the requirements of [the FOIA]," 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. **Did your agency invoke a statutory exclusion during Fiscal Year 2013?**

No.

2. If so, what is the total number of times exclusions were invoked?

Not applicable.

VII. Spotlight on Success

Out of all the activities undertaken by your agency since March 2013 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas. As noted above, these agency success stories will be highlighted during Sunshine Week by OIP. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

1. OPIC updated its FOIA regulations on February 14, 2014. Although OPIC's practice was in compliance with current FOIA guidance, its regulations had not been updated to include new FOIA guidance. For example, for several years OPIC has been using the search date as the cutoff date for responsive records, but the old regulations did not mention a cutoff date. The new regulations make it clear that OPIC's practice is to use the more inclusive and recommended search date.
2. OPIC posted these regulations in the Federal Register and solicited public comment. All comments were addressed directly with the commenter.
3. The new regulations facilitate public requests for information by providing much more information about OPIC's FOIA process to the potential requester. The additional information includes more detail on requesting fee requester categories and fee waivers, as well as the difference between the two, a common topic of confusion and back and forth between OPIC's FOIA Office and the requester.
4. The new regulations also provide more clarity on the issue of confidential commercial information. As the U.S. Government's development finance institution, the majority of OPIC's FOIA requests deal with commercial information OPIC received from a business submitter. Accordingly the new regulations devote an entire section to explaining the notice and comment process provided to a business submitter and the standard for withholding confidential commercial information. This provides transparency for a requester who may not receive the full set of requested records due to the presence of confidential commercial information as well as transparency for the business submitter as to what protections are available for their sensitive information once it is submitted to OPIC.