



**Report of the
Chief FOIA Officer
of the
U.S. Trade and Development Agency**

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FY2010 CHIEF FOIA OFFICER REPORT

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The United States Trade and Development Agency (“USTDA”) submits this report at the request of the Office of Information Policy of the United States Department of Justice.

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.

- 1. 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.**

USTDA is a small, commercially-oriented agency that receives few FOIA requests each year. During FY2010, USTDA received a total of twenty-one (21) FOIA requests. USTDA does not employ full-time FOIA personnel, but rather utilizes personnel with part-time or occasional duties equal to approximately 15% of one work year in FY2010. Over the last few years, USTDA has utilized one Assistant General Counsel, who acts as USTDA’s FOIA Public Liaison, to process FOIA requests as part of his or her overall agency responsibilities. Each FOIA request is personally reviewed by the Assistant General Counsel, who has read and understands the President’s FOIA Memorandum and the Attorney General’s FOIA Guidelines. This hands-on process ensures that the application of the presumption of openness is a central aspect of USTDA’s FOIA program.

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

The President’s FOIA Memorandum and the Attorney General’s FOIA Guidelines have been circulated to each USTDA staff member who works on FOIA matters and will also be posted on USTDA’s intranet for access by all USTDA personnel.

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

The Chief FOIA Officer and the Assistant General Counsel in charge of FOIA matters have read and understand the President’s FOIA Memorandum and the Attorney General’s FOIA Guidelines and endeavor to implement the presumption of openness. The Assistant General Counsel also attended a training on the contents of this report, which noted the presumption of openness. Because each FOIA request receives the direct attention of the Assistant General

Counsel, no other special training has been attended or conducted on the new FOIA Guidelines.

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

The President's FOIA Memorandum and the Attorney General's FOIA Guidelines have been incorporated in the review package used by USTDA's Office of the General Counsel and specifically by the Assistant General Counsel in charge of FOIA matters in the analysis of each FOIA request.

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

USTDA strives to make discretionary releases of otherwise exempt information to the greatest extent appropriate. Each time that any grounds are considered to exempt information from disclosure, the Assistant General Counsel reviews whether the text of the FOIA and its corresponding guidance would permit a discretionary disclosure of the information, and if so, seeks to make such a discretionary disclosure.

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

Because of the nature of USTDA's work and the documents that USTDA produces, the exemption that would more often apply to USTDA information to be released as a matter of discretion is contained in FOIA Exemption 5 – Privileged Inter-agency or Intra-agency Memoranda or Letters.

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

Each potential release of information under the FOIA is personally reviewed by the Assistant General Counsel in charge of FOIA matters. He or she will closely assess the information to be released against the text of the FOIA and available FOIA guidance to determine whether discretionary releases are possible and will make discretionary releases whenever appropriate.

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

Because of the relatively few FOIA requests USTDA receives each year, USTDA is in a position to provide individualized legal attention to each request. As such, the Assistant General Counsel in charge of FOIA matters reviews each potential release of information in light of the presumption of openness. USTDA believes that such individualized attention ensures that the presumption of openness is carefully applied in each case.

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

In FY2010, USTDA had four (4) requests where records were released in full and three (3) requests where records were released in part. In FY2009, USTDA had five (5) requests where records were released in full and no requests where records were released in part. Of the requests processed in FY2010 which produced responsive records, 57% were released in full. Because of the very few FOIA requests that USTDA receives each year, USTDA does not believe that the decrease in records released in full from FY2009 to FY2010 is material.

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 system for responding to requests is effective and efficient. This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support. 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.

Upon USTDA receiving a new FOIA request, the request is forwarded to the Assistant General Counsel in charge of FOIA matters, who reviews the request, logs the request into USTDA's electronic FOIA log and determines how to appropriately respond to the request. Working in cooperation with USTDA's other FOIA personnel, the Assistant General Counsel then determines whether USTDA has any responsive documents and, working under the presumption of openness, then determines which documents to release. The Assistant General Counsel in charge of FOIA matters continuously works to ensure that the system for responding to requests is effective and efficient, and if necessary implements changes or improvements as appropriate. USTDA believes that this system works efficiently in light of the relatively few FOIA requests that USTDA receives each year.

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

Yes. Because of the few FOIA requests that USTDA receives each year, USTDA believes that the IT support currently provided to its FOIA professionals is sufficient. In addition, the Assistant General Counsel in charge of FOIA matters maintains an open line of communication with USTDA's IT support staff to quickly and efficiently discuss any IT

questions or issues that may arise.

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

USTDA's Chief FOIA Officer and the Assistant General Counsel in charge of FOIA matters maintain an open line of communication and work directly with USTDA's Open Government Team, which is led by USTDA's Director for Congressional Affairs and Public Relations who is also USTDA's Chief Information Officer.

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

The Chief FOIA Officer and the Assistant General Counsel in charge of FOIA matters meet to discuss whether adequate staffing is being devoted to responding to FOIA requests. USTDA expects to continue these meetings regularly to assure that adequate staffing is in place. In addition, beginning in FY2010 USTDA assigned an Information Resource Assistant to support the Assistant General Counsel on FOIA matters. USTDA is also considering adding an additional support person whose part-time responsibilities would be assisting with responding to FOIA requests.

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

USTDA is currently undertaking a review to determine ways to improve the efficient and effective operation of its FOIA process. One step that USTDA is considering is increasing its FOIA staffing by one additional individual.

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, including providing examples of proactive disclosures that have been made since issuance of the new FOIA Guidelines. In doing so, answer the questions listed below and describe any additional steps taken by your agency to make proactive disclosures of information.

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

Yes.

b. What types of records have been posted?

The USTDA website contains a great deal of information. The types of records that are regularly posted and updated on USTDA's website include USTDA brochures, USTDA annual reports and other USTDA publications and information. USTDA's website also includes information about USTDA- and other government-sponsored events.

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

USTDA's FOIA webpage now includes a section entitled "Frequently Requested Records and Records Likely to Become the Subject of FOIA Requests" where records are posted in accordance with subsection (a)(2) of the FOIA. As part of the Assistant General Counsel's review of each FOIA request, he or she continuously determines whether the records sought should be placed in this section of USTDA's website and whether to include records beyond those required by subsection (a)(2) of the FOIA.

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

The Chief FOIA Officer and the Assistant General Counsel maintain an open line of communication with each other as well as with other USTDA staff to identify records that are appropriate for posting on USTDA's website.

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

USTDA currently permits visitors to its website to subscribe to USTDA RSS Feeds. USTDA RSS Feeds allow users to stay informed of USTDA developments by automatically retrieving the latest content from the USTDA website. In addition, USTDA permits visitors to its website to subscribe to regular USTDA news and information updates.

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

USTDA has endeavored to increase proactive disclosures with respect to USTDA's library database of USTDA-funded activities. USTDA maintains a regularly updated web page on USTDA "Library Holdings" which allows individuals to electronically search USTDA's library database for completed USTDA-funded studies by region, country or sector.

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. In 2010 agencies reported widespread use of technology in handling FOIA requests. For this

section of your Chief FOIA Officer Report for 2011, please answer the following more targeted questions:

1. Electronic receipt of FOIA requests:

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

As a small agency with less than 50 full-time employees, USTDA does not have any component parts. USTDA does not currently receive FOIA requests electronically. USTDA allows submission of FOIA requests via mail or facsimile. As an agency that receives very few FOIA requests each year, USTDA's current mechanism allows agency personnel to easily track FOIA requests and provides FOIA requesters with a reasonable means by which to submit FOIA requests. Nonetheless, USTDA plans to include a function on its website that will permit the receipt of FOIA requests electronically through email.

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

N/A.

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

N/A.

2. Electronic tracking of FOIA requests:

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

USTDA is capable of tracking FOIA requests electronically agency-wide.

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

N/A.

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

Because USTDA receives so few FOIA requests each year, USTDA currently tracks FOIA requests through the use of off-the-shelf commercial spreadsheet software.

3. Electronic processing of FOIA requests:

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

USTDA is capable of processing FOIA requests electronically agency-wide.

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

N/A.

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

USTDA uses off-the-shelf commercial software to process FOIA requests electronically, including email, word processing and spreadsheet software.

4. Electronic preparation of your Annual FOIA Report:

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

USTDA currently uses off-the-shelf commercial word processing and spreadsheet software to prepare its Annual FOIA Report.

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

USTDA is satisfied with its existing system to prepare the Annual FOIA Report.

V. STEPS TAKEN TO REDUCE BACKLOGS AND IMPROVE TIMELINESS IN RESPONDING TO REQUESTS

Improvements to timeliness in responding to pending FOIA requests and reductions in backlogs are both ongoing agency efforts. The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. Section XII of your Annual FOIA Report includes figures that show your agency's backlog of pending requests and administrative appeals for the past two fiscal years. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In this section you should address the following elements.

1. **If your agency has a backlog, report here whether that backlog is decreasing. That reduction should be measured in two ways. First, report**

whether the number of backlogged requests and backlogged administrative appeals that remain pending at the end of the fiscal year decreased or increased, and by how many, when compared with last fiscal year. Second, report whether your agency closed in Fiscal Year 2010 the ten oldest of those pending requests and appeals from Fiscal Year 2009, and if not, report how many of them your agency did close.

Backlogged requests increased from FY2009 to FY2010. There were nineteen (19) backlogged requests pending at the end of FY2010, compared with nine (9) at the end of FY2009. There were no backlogged administrative appeals pending at the end of FY2010 or at the end of FY2009. Of the ten oldest pending requests from FY2009, USTDA closed three (3) in FY2010.

2. If there has not been a reduction in the backlog as measured by either of these metrics, describe why that has occurred. In doing so, answer the following questions and then include any other additional explanation:

a. Is the backlog increase a result of an increase in the number of incoming requests or appeals?

No.

b. Is the backlog increase caused by a loss of staff?

Yes. As mentioned above, USTDA utilizes one Assistant General Counsel, who acts as USTDA's FOIA Public Liaison, to process FOIA requests as part of his or her overall agency responsibilities. However, for part of FY2009 and FY2010, USTDA's Office of the General Counsel was significantly short-staffed. Primarily as a result of such significant short-staffing, USTDA increased its backlog of pending FOIA requests from nine (9) in FY2009 to nineteen (19) by the end of FY2010. USTDA continues to work on decreasing the backlog of FOIA requests.

c. Is the backlog increase caused by an increase in the complexity of the requests received?

No.

d. What other causes, if any, contributed to the increase in backlog?

N/A.

3. Describe the steps your agency is taking to reduce any backlogs and to improve timeliness in responding to requests and administrative appeals. In doing so answer the following questions and then also include any other steps being taken to improve timeliness.

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

Yes.

- b. **Has your agency increased its FOIA staffing?**

In order to reduce its FOIA request backlog, beginning in FY2010 USTDA assigned an Information Resource Assistant to support the Assistant General Counsel in responding to the current backlog. USTDA is also considering adding an additional support person whose part-time responsibilities would be assisting with responding to FOIA requests. USTDA expects that the current short-staffing at its Office of the General Counsel will improve in FY2011, which will further assist in addressing the current backlog.

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

No. USTDA does not believe that IT issues are a cause of its current backlog.

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

Yes. USTDA's Chief FOIA Officer takes an active role in overseeing USTDA's capacity to process requests and works closely with the Assistant General Counsel in charge of FOIA matters.

Spotlight on Success

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

As a commercially-oriented agency, USTDA prides itself on its transparency and desire to disseminate commercially-useful information. Although there is no one particular success story that is emblematic of USTDA's transparency efforts, a continuing example is how USTDA strives to provide as much information on its website as possible. In addition to publishing its annual reports on its website (which include audited financial data), USTDA also publishes a wide range of brochures, notices of procurement opportunities (both with USTDA and with USTDA grantees), information about USTDA staff, senior leadership speeches, operational and regional briefs, as well as many other documents. USTDA is particularly proud of its searchable reports database, as USTDA believes that most information of broad public interest is set forth in the reports. The reports contain the essence of USTDA's activities and inform the public of USTDA's program. As we enter FY2011, USTDA will continue to take proactive steps to increase the amount of material that is publicly available on its website.

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