FREEDOM OF INFORMATION ACT (FOIA)-BACKLOG-REDUCTION PLAN

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INTRODUCTION

The Freedom of Information Act (FOIA), enacted into law more than 50 years ago, requires Federal Departments and Agencies to provide the public access to Government records and information based on the principles of openness and accountability in government. The FOIA's expectation is that Departments and Agencies will implement the law with a clear presumption: In the face of doubt, openness prevails. Failure to provide timely and accurate responses to requests under the FOIA not only weakens public trust, but also subjects a Department or Agency to potential lawsuits. The FOIA mandates that Federal entities must respond to requests within 20 days, with some exceptions.

Each year, individuals and entities file hundreds of thousands of requests under the FOIA with the Federal Government for information on numerous topics intended to shed light on the Government's activities and contribute to the understanding of the Government's actions. The United States Agency for International Development (USAID) receives hundreds of FOIA requests each year. USAID is committed to the principles embodied in the FOIA and responds to all requests in an open and transparent manner. While USAID has made significant improvements in the overall administration of our FOIA program in recent years, including by reducing a backlog that once spanned several decades, a FOIA-request backlog still remains. USAID defines a "backlogged" request as one that remains pending beyond the statutory 20-day time period.

Accordingly, USAID has taken significant steps to improve our FOIA-request processing, as evidenced by our year-over-year improved processing performance. For example, since Fiscal Year (FY) 2011, USAID's average processing time for simple FOIA requests decreased from 166.91 days to 10.78 days in FY 2017. Similarly, the average processing time for complex FOIA requests decreased from 324.18 days in FY 2011 to 291.48 days in FY 2017. USAID also improved our average number of days to adjudicate requests for expedited processing from 78.85 days in FY 2013 to 3.3 days in FY 2014. USAID has sustained this improved rate through FY 2018. Additionally, the Agency's average processing time for administrative appeals decreased from 504.33 days in FY 2011to 219.67 days in FY 2017. Further, the number of administrative appeals backlogged at the end of the Fiscal Year decreased from 23 in FY 2011 to only 2 in FY 2017. As a result of comprehensive searches and legally defensible analyses, USAID has seen a significant decrease in administrative appeals filed. Lastly, in accordance with the guidelines published by the U.S. Department of Justice (DOJ), USAID closed our 10 oldest FOIA requests, administrative appeals, and consultations for the past 5 consecutive years, beginning in FY 2013.

USAID views the FOIA's statutory mandates as integral to providing transparency and accountability to the American public and is committed to compliance with its requirements. As required by the FOIA Improvement Act of 2016, and in accordance with the Agency's FOIA Improvement Plan, USAID successfully overhauled our August 1996 FOIA regulations (Part 212 of Chapter 22 of the Code of Federal Regulations), in time to meet the aggressive 180-day deadline of December 27, 2016, established by the Act.

As a testament to this commitment, USAID has developed this formal FOIA-Backlog-Reduction Plan, which documents our ongoing efforts to institutionalize further currently employed best practices and define others to eliminate the FOIA-request backlog, centered on the following key areas of success:

- Obtaining Leadership Support;
- Routinely Reviewing Processing Metrics;
- Using Resources Effectively;
- Increasing Staff Training and Engagement;
- Increasing Proactive Disclosure; and
- Communicating Effectively with Internal and External Stakeholders.

Executive Order (E.O.) 13392, *Improving Agency Disclosure of Information,* states that a FOIA-backlog-reduction plan should include the following: (1) staffing and Agency support for FOIA activities; and, (2) "specific activities that the Agency will implement to eliminate or reduce the Agency's FOIA-request backlog, including (as applicable) changes that will make the processing of FOIA requests more streamlined and effective, and increase reliance on the dissemination of records that can be made available to the public through a website or other means that do not require the public to make a request for the records under the FOIA." To meet the requirements of DOJ and E.O. 13392, this FOIA-Backlog-Reduction Plan provides a roadmap to reduce USAID's backlog of FOIA requests; improve the effectiveness and efficiency of the FOIA program; serve the FOIA-requester community better; and continue USAID's commitment to open government through transparency, participation, and collaboration.

OBJECTIVES

USAID has a team of FOIA professionals dedicated to comprehensive decisions on processing FOIA requests and making determinations to release documents that are legally defensible. For each review, USAID's FOIA team applies the "foreseeable-harm" standard and sound legal analyses and disposes of records appropriately (as required).

USAID will build on these practices to improve the overall effectiveness and efficiency of our FOIA program by reducing both the number and age of backlogged requests each year.

MISSION AND FUNCTIONS OF THE BUREAU FOR MANAGEMENT

USAID centralizes FOIA processing in our Bureau for Management (M). The Assistant Administrator for the M Bureau serves as the Chief FOIA Officer for the Agency and provides high-level oversight and support to USAID's FOIA programs; recommends adjustments to the Agency's practices and personnel; and provides funding, as necessary, to improve the Agency's administration of FOIA matters.

The Information and Records Division within the Office of Management Services in the M Bureau (M/MS/IRD) is the central point for all incoming FOIA requests and is responsible for developing policy and procedures for FOIA and records management; the retention and disposition of records; information-collection reviews; Federal registrar liaison activities; mandatory declassification reviews; form management; and the coordination of essential records. M/MS/IRD receives, tracks, and processes all of USAID's FOIA requests to ensure consistency and transparency within the Agency. M/MS/IRD staff also train USAID employees in both FOIA and records management to achieve and sustain compliance and contribute actively to the overall success of USAID's records- and information-management programs.

FOIA STAFFING

USAID employs one FOIA Officer, who is responsible for the original determination to release or deny access to a record, in whole or in part. The FOIA Officer also serves as the FOIA Public Liaison Officer, the supervisory official to whom a FOIA requester can raise concerns about the services received, following an initial response from the FOIA staff. Moreover, the FOIA Public Liaison assists, as appropriate, in reducing delays, increasing transparency, and understanding the status of requests and resolving disputes.

USAID has nine Direct-Hire Government Information Specialists, more commonly referred to as "FOIA Specialists," who are responsible for processing requests and preparing records for release when authorized by the FOIA. The FOIA Specialists are also responsible for all communications between the FOIA requesters, FOIA business submitters[1], and USAID. One of the nine FOIA Specialists is the FOIA Team Lead, the principal Operations Officer responsible for overseeing the day-to-day operations of FOIA processes within the Agency.

Additionally, USAID engages additional contract FOIA Specialists to assist with FOIA processing and reducing the backlog. These contractors provide a surge capacity to augment the existing U.S. Direct-Hire FOIA Specialists. The contractors are also responsible for processing FOIA requests for records throughout the entire life cycle. Furthermore, the contractors respond to influxes in requests and backlogs precipitated by the ebb and flow inherent in a FOIA environment.

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[1] USAID defines "business submitters" as persons or entities that submit records to USAID that contain confidential commercial information, which, if publicly disclosed, could cause the submitter substantial competitive harm in the marketplace.

Lastly, a set of contractors provides USAID with e-discovery services and assists with searches of electronic records, the preponderance of documents responsive to FOIA requests. The contractors provide full-time e-discovery and administrative support for electronic-records identification, codification, and manipulation. This includes the collection and preparation of documents, such as emails and other formats for FOIA processing, e.g., de-duplication, threading, transfers and uploads of files, and formatting conversions.

FOIA STAKEHOLDERS

Several stakeholders play an integral role in the success of USAID's FOIA program. These stakeholders include:

- The USAID Administrator;
- USAID's Chief FOIA Officer (Assistant Administrator for the M Bureau);
- Office of the USAID Chief Information Officer;
- Office of the USAID General Counsel;
- All USAID Bureaus, Independent Offices and Missions;
- The USAID FOIA Team;
- USAID's FOIA Liaison Officers;
- The Requester Community;
- Congress;
- The Office of Information Policy within DOJ;
- The Office of Government Information Services within the National Archives and Records Administration;
- The Office of Management and Budget (OMB); and
- Other Federal Departments and Agencies.

CONTRIBUTING FACTORS

Various factors contribute to the FOIA-request backlog at USAID, including the following:

I. **COMPLEXITY**. FOIA requests and corresponding responsive records have increased in complexity. USAID, in accordance with DOJ guidelines, tracks requests as "simple," "complex," and "expedited." The majority of requests submitted to USAID are complex: they involve voluminous records, for which numerous consultations are required, or involve sensitive documents. For example, USAID operates in high-threat and non-permissive environments where safety and security are paramount concerns. Therefore, the Agency exercises extraordinary care in the review of many requested records, which necessitates the coordination and collaboration of internal and external stakeholders. In addition, many of the requests USAID receives seek records that contain classified or commercial information. Thus, as required by E.O. 12600, USAID must routinely solicit business-submitter comments on the releasability of confidential commercial information. As a result, USAID frequently invokes Chapter 5 of the United States Code 552(b)(4) to protect certain proprietary information of submitters that could cause competitive harm if the Agency were to release it. Liaising with submitters requires additional processing days for coordination, deliberation, and, ultimately, the redaction of confidential information.

"Any and all records" requests require broad and extensive collaboration with requesters in an attempt to pinpoint more specifically the Agency records being sought. USAID's FOIA staff will often communicate with a requestor to refine the scope and then contact the appropriate USAID office(s). Requests frequently require collaboration with various offices in Washington, D.C., and around the globe, with both internal and external stakeholders, which can contribute to significant processing time.

II.   **VOLUME**. Electronic searches often yield massive numbers of pages in response to a single FOIA request, each of which requires a page-by-page, line-by-line review to determine relevance and releasability.

III.   **WORLD-WIDE EVENTS.** Requests driven by unforeseen or unplanned events that receive media attention (e.g., an earthquake in Mexico and Hurricanes Irma and Maria, etc.) also increase public interest and may require international collaboration and coordination. These requesters often seek, and receive, expedited processing. Focusing attention on these time-sensitive requests can delay the processing of others.

IV.   **OPEN-DATA INITIATIVE/CONGRESSIONAL INQUIRIES.** USAID's FOIA professionals have an expanded role in opining on the release of data in response to the Open-Data Initiative and processing documents to respond to time-sensitive Congressional inquiries. With regard to Open-Data, the Agency's FOIA professionals play an integral role in the established internal process to review data-sets to publish. Regarding Congressional inquiries, FOIA professionals apply expertise in USAID's decision-making process to balance maximum release and protect sensitive information, which leads to information sharing. These additional important duties contribute to the backlog of FOIA requests, as they divert attention and focus.

KEY AREAS OF SUCCESS FOR REDUCING THE BACKLOG

I.   OBTAINING LEADERSHIP SUPPORT

> According to DOJ, "Agency leadership is critical to achieving any goal. When Agency managers make reducing backlogs and improving timeliness a priority, it increases awareness and accountability across the board. Having leadership support also makes it easier for FOIA managers to obtain any additional necessary resources or personnel."

To meet the key success factor of Obtaining Leadership Support:

- The USAID Administrator has issued an Agency-wide notice to remind our workforce of its responsibility pursuant to the FOIA and will continue to do so;

- The USAID Administrator will bifurcate our responsibility for administering the FOIA through a supplemental delegation of authority to the Office of Inspector General (OIG) to administer the FOIA and the Privacy Act with respect to OIG's records. This will include intake, processing, production, and administrative appeals and will improve the Agency's overall ability to respond more efficiently and effectively to requests under the FOIA and Privacy Act;

- The USAID Administrator will enforce our policy directive (Automated Directives System Chapter 507) that requires the leadership of each Bureau, Independent Office, and Mission (B/IO/M) to designate one FOIA Liaison Officer responsible for coordinating the search for, and collection of, potentially responsive records and for obtaining subsequent recommendations for release;

- The USAID Administrator will hold the Agency's workforce accountable for the identification, review, and reasonable organization and retention of responsive records;

- The USAID Chief FOIA Officer will continue to provide oversight of USAID's FOIA program, including by providing necessary budgetary and human-resource allocations; and

- The USAID FOIA Liaison will meet regularly with the Agency's leaders, and engage other stakeholders to provide updates on the progress of backlogged requests and obtain support in bringing cases to closure. This regular engagement will help to spread management responsibility for FOIA across the Agency and ensure greater accountability.

II.   ROUTINELY REVIEWING PROCESSING METRICS

DOJ advises Departments and Agencies that "[i]t is important for FOIA professionals to both collect and regularly review data regarding backlogs and timeliness." DOJ additionally provides that "[t]he constant use of a wide variety of metrics allows FOIA offices to stay on top of their incoming requests, make adjustments as needed, and know when to seek out additional resources. Monitoring data is also useful when analyzing systems for inefficiencies and is yet another way to maintain accountability."

To meet the key success factor of Routinely Reviewing Processing Metrics, USAID FOIA professionals will do the following:

- Continue to monitor the status of pending search actions; collaborate and consult with B/IO/Ms regularly, to identify any potential harm in the disclosure of records; and ensure the application of the foreseeable-harm standard;

- Create a Working Group on Reducing the Backlog. Identify senior members from USAID's FOIA stakeholders, to oversee the actionable items from the backlog-reduction strategy, and track the backlog reduction with monthly progress reports to the Chief FOIA Officer;

- Use reports and data to assess the status and assignment of all outstanding cases; identify a defined closure plan for each case; and continue to organize requests by multiple tracks[2] so the Agency can then process them on a first-in/first-out basis to achieve greater efficiency:

  o With multiple processing tracks, requests are assigned to different processing queues, depending on the complexity of the request.

  o Requests that involve a low volume of records, or would be relatively simple to review, are designated "simple" requests, assigned to their own queue, and processed separately from requests that are more complex.

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[2] "Multi-track processing of requests for records is based on the amount of work or time (or both) involved in processing requests." From Section 552(a)(6)(D)(i) of the fold.

- o By contrast, those requests that involve a high volume of records, and/or are more complex to process, are assigned to the "complex" processing track. Requests granted expedited processing are assigned to their own track; and

- Increase the regular review of FOIA data to understand specific challenges and needs and identify increases in incoming requests and make resource adjustments accordingly.

III. USING RESOURCES EFFECIVELY

DOJ's guidance indicates that "[A]gencies should seek ways to better utilize staff and technology to work smarter, not just harder. One way to more effectively manage staff is to utilize 'Intelligent Case Management' to identify common trends in requests, and direct similar requests to the same analyst, allowing an analyst to become an 'expert' in certain types of requests, thereby promoting efficiency."

To meet the key success factor of Using Resources Effectively, USAID will do the following:

- Continue to make strategic, intelligent case assignments to FOIA Specialists based on trends and other similarities to build resident experts who are poised to process requests faster;

- Continue to evaluate our FOIA-related staffing levels and employ a surge capacity, as necessary, to address fluctuations in the number of FOIA professionals and the complexity and volume of work;

- Continue to assess tools and resources for our FOIA processing and identify new technologies that will reduce search- and processing-times to increase efficiencies;

- Continue to operate our FOIA database for tracking and processing in a cloud-hosting environment to provide for more timely system upgrades that contribute to complete and more reliable processing and reporting and improve system functionality and decrease system disruptions; and

- Compile a comprehensive list of all Agency databases to facilitate the ease of searching.

IV. INCREASING STAFF TRAINING AND ENGAGEMENT

DOJ's guidance provides the following: "When FOIA personnel are properly trained they can process requests more efficiently, requiring less assistance from supervisors or other personnel. Regular training of FOIA personnel is strongly encouraged and managers should try to identify specific areas where staff can benefit from additional training. Managers and FOIA professionals should also utilize regular training opportunities provided by OIP [the Department of Justice, Office of Information Policy]."

To meet the key success factor of Staff Training and Engagement, USAID will do the following:

- Ensure our FOIA professionals regularly participate in relevant training to stay abreast of changes in case law, and other trends, to inform their analyses;

- Mandate Records- and Information-Management Training for all FOIA Liaison Officers;

- Improve internal collaboration across the Agency;

- Update our Standard Operating Procedures for the FOIA to improve the transition of backlogged FOIA requests between outgoing/incoming staff; and

- Improve external communications throughout the Federal Government and the community of FOIA requesters.

V. INCREASING PROACTIVE DISCLOSURES

The FOIA contains proactive disclosure provisions that require Federal Departments and Agencies to make certain categories of nonexempt records available to the public without waiting for a FOIA request. The statute outlines four categories of records that Departments and Agencies are required to "make available for public inspection and copying," which consists of operational documents (final orders and opinions, policy statements, and staff manuals and instructions) and frequently requested records.

To meet the key success factor of Increasing Proactive Disclosures, USAID will do the following:

- Continue to identify frequently requested records and post them to the USAID eFOIA Library:

  - By taking affirmative steps to post information online readily and systematically in advance of any public request, the Agency will reduce its overall backlog;

- Continue to collaborate with the Open-Data Team to facilitate proactive disclosures; and

- Consider having business submitters identify in advance confidential commercial and financial information that could cause substantial competitive harm, to reduce processing time and increase proactive disclosures. This would facilitate more timely release determinations regarding acquisition and assistance records (such as cost and technical proposals, final awards, modifications, and quarterly and annual reports) in advance of a FOIA request, while allowing USAID to comply with the submitter-notification requirement of E.O. 12600.

VI.   COMMUNICATING EFFECTIVELY

DOJ's guidance underscores the importance of engaging in a dialogue with both Agency staff and the requester, so all parties have a common understanding of the FOIA request and processing procedures. Often, these conversations allow the FOIA requester and the FOIA professional to collaborate on a plan for responding to a complex request. Talking through an approach to the request and reaching an understanding can be very helpful to both the requester and the Agency.

To meet the key success factor of Communicating Effectively, USAID will do the following:

- Continue to communicate with requesters regarding the scope and status of their FOIA requests;

- Continue to define and communicate clearly the fee structure for each requester type;

- Continue consistent communications practices and status tracking with internal and external stakeholders; and

- Continue adjudicating fee waivers and expedited processing requests in a timely manner.

CONCLUSION

USAID remains committed to open Government, including by reducing its backlog of FOIA requests through transparency, participation, and collaboration. By addressing these key success factors, USAID will improve our ability to process requests more promptly and efficiently, and we will reduce our existing backlog—both the number of requests and the age of each request year-over-year.

REFERENCES

U.S. Department of Justice, Office of Information Policy (DOJ/OIP). (2014, August 15). OIP Guidance: Reducing Backlogs and Improving Timeliness. Retrieved from http://www.justice.gov/oip/oip-guidance-0.

DOJ/OIP. (2006, June 14). DOJ E.O. 13,392 FOIA Improvement Plan.   Retrieved from https://www.justice.gov/oip/doj-eo-13392-foia-improvement-plan.