

## **Time frame for 2014 Chief FOIA Officer Reports**

Unless otherwise noted, your 2014 Chief FOIA Officer Report should address agency activities that have occurred since the filing of last year's Report, which was March 11, 2013, up until the filing of the 2014 Report, which will be March 10, 2014. Thus, the general reporting period for the Chief FOIA Officer Reports is March 2013 to March 2014.

## **Content of 2014 Chief FOIA Officer Reports**

**Name of agency: National Indian Gaming Commission**

**Name and Title of agency Chief FOIA Officer: Eric Shepard**

### **Section 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 reporting period?

#### **Answer:**

The NIGC did not hold an agency FOIA conference, but participated in the Department of Interior's DOI Learn training program for records management. As part of this training, FOIA's substantive requirements are presented to agency staff and they are provided a test to ensure that the material was understood. Some of the topics covered include the identification and scope of records responsive to FOIA requests and the legal requirements for preserving those records once a relevant FOIA request is received. In addition to the DOI Learn training, the NIGC is in the preliminary stages of creating an internal FOIA training that will further educate agency staff on FOIA's requirements and their obligations in meeting those requirements.

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.

#### **Answer:**

**Not applicable.**

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

**Answer:** Yes. The FOIA professionals in the NIGC's Office attended multiple trainings hosted by the Office of Information Policy in FY 2012 and FY 2014. Additionally, two are enrolled for courses to be given in March 2014.

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

**Answer:** 66%

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.

**Answer:** At this time, all NIGC employees are required to take the Department of Interior's annual records management training course that is provided online through DOI Learn. This course incorporates FOIA concepts and describes generally how employees should treat records responsive to requests. Additionally, all FOIA staff are encouraged to attend the Department of Justice's seminars on the FOIA as they are available throughout the 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.

**Answer:** No.

*Discretionary Disclosures:*

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.

**Answer:** The NIGC has statutory restrictions that limit the scope of information dissemination under FOIA. Specifically, the NIGC is charged by Congress with administering and implementing the Indian Gaming Regulatory Act (IGRA). IGRA mandates that the NIGC “preserve any and all information received pursuant to [its investigative powers] as confidential pursuant to the provisions of paragraphs (4) and (7) of section 552(b) of Title 5.” 25 U.S.C. § 2716(a). The only exception to this rule is when that information indicates a violation of Federal, State, or Tribal law, in which case it must be provided to the appropriate law enforcement officials. 25 U.S.C. § 2716(b). As part of its statutory responsibilities, the NIGC receives confidential financial information as well as investigatory information. Both of those types of information are exempt under the above listed FOIA exemptions. Given these restrictions regarding disclosure, the NIGC has less discretion to release this information to the public.

Nevertheless, when processing its requests, the agency makes every effort to release nonexempt information by performing a line-by-line review of all responsive materials to ascertain what, if any, information can be publicly disclosed. This is especially relevant with respect to the agency’s use of Exemption 5 of the FOIA. The agency closely scrutinizes its application of Exemption 5. Where the material at issue can be reasonably segregated to allow for disclosure of non-exempt information, the agency routinely releases the information. In cases of drafts and working papers, agency staff performs a line-by-line review of each draft and compares it with the final document associated with those drafts, if one exists. Information contained in both the final and draft versions is released and only material that truly conforms with the interests protected by Exemption (b)(5) is redacted.

Finally, in each request, the NIGC has at least three separate individuals reviewing the redactions before they are finalized. Having separate individuals reviewing the same material leads to open discussions as to where discretionary releases can be made. Ultimately, this process leads to more information being provided to the public.

In sum, the NIGC endeavors to release as much information as it can in every request it receives. In particular, the agency carefully scrutinizes its use of Exemptions 5 to ensure that it is not used too broadly. The agency believes that this increases the amount of information that is released to the public in compliance with the presumption of openness.

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

**Answer:** Yes. The National Indian Gaming Commission (NIGC) made several discretionary releases of information that would have otherwise been eligible for withholding under FOIA Exemption 5.

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

**Answer:** FOIA Exemption 5

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

**Answer:** Most of the information released by the agency as a matter of discretion would normally fall under Exemption 5. Specifically, the agency has made discretionary releases of information contained in internal emails, handwritten notes, and draft documents. In these cases, FOIA staff reviews FOIA Update Vol. I, No. 1 (guidance on using the deliberative process privilege) and determines whether the release of information that qualifies under Exemption 5 would reasonably cause foreseeable harm. Where the information is unlikely to cause any harm, the agency heavily considers and normally makes discretionary releases.

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

**Answer:** 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.

**Answer:** Yes.

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.

**Answer:** Outside of the context of FOIA requests, the NIGC goes to great lengths to proactively release information to the public. The NIGC publishes on its website all discussion drafts of potential changes to its regulations, proposed rules, comments to discussion drafts and proposed rules, and transcripts of every consultation it participated in as part of its recent regulatory review. (See [http://www.nigc.gov/Tribal\\_Consultation/Consultation\\_Policy\\_February\\_2013.aspx](http://www.nigc.gov/Tribal_Consultation/Consultation_Policy_February_2013.aspx)) Copies of final rules are also published on the website.

With respect to the agency's everyday business, it publishes its decisions with regard to gaming ordinances and management contracts, as well as its Office of General Counsel's legal opinions. ([http://www.nigc.gov/Reading\\_Room.aspx](http://www.nigc.gov/Reading_Room.aspx)). Along with the agency's

decision documents, the postings also include redacted versions of the approved management agreements and gaming ordinances.

As a result of the regulatory review and other routine postings of NIGC documents, information that would otherwise have to be requested is already available to the public. When reviewing these documents prior to their posting, the agency strives to release as much of the information as it can. Moreover, the fact that so many of the agency's records are proactively disclosed is evidence of the agency's application of the presumption of openness.

## **Section 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." It is essential that agencies effectively manage their FOIA program.

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?

**Answer:** No, pursuant to 25 U.S.C. § 2707(b) the Chair of the NIGC "shall appoint and supervise other staff of the Commission without regard to the provisions of Title 5, governing appointments in the competitive service." Accordingly, the NIGC is exempted from this Title 5 job classification. Some agencies, like the NIGC, are specifically exempted from Title 5's classification provisions. See, e.g., 25 U.S.C. 2707(b) ("The Chairman shall appoint and supervise other staff of the Commission . . . . Such staff shall be paid without regard to the provisions of chapter 51 . . . of such title [5 USCS §§ 5101 et seq.] relating to classification . . .").

That being said, the NIGC had its HR Servicing Office review OPM's memorandum on the Government Information Specialist series to determine whether any of the NIGC's

FOIA professionals should be converted. The HR office responded that the only NIGC position that is performing FOIA work outside of the 0905 attorney position is the position classified as a GS-301-10 (equivalent) FOIA/PA and Records Management Assistant. HR opined that the position does not meet the criteria for the Government Information Series (0306) because the employee is doing intake/assistant work rather than the specialist work that requires analysis. Therefore, the NIGC has determined that the FOIA position will not be converted.

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

**Answer:** None.

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

**Answer:** As mentioned above, the NIGC is exempted from complying with the Title 5 job classification.

*Processing 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.

**Answer:** No. The agency is working diligently to make sure that all of the expedited review requests it receives are specially marked and designated as such requests. This, in turn, will ensure that expedited processing requests are reviewed immediately so that appropriate statutory deadlines are met.

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.

**Answer:** The agency has worked to establish relationships with all the agencies it frequently works with in completing consultations and referrals. At this time, no special agreements have been entered into for this purpose.

*Requester Services:*

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

**Answer:** Yes.

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

**Answer:** No.

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.

**Answer:** To ensure that the FOIA system is working at its optimum efficiency, the NIGC hired a FOIA attorney in FY2012 to review its systems and to make improvements where necessary. The result of this was the implementation of electronic processing of all FOIA and Privacy Act requests and a revamped electronic filing system for them. The FOIA attorney currently works with the rest of the FOIA staff to ensure that legally sufficient search processes are conducted and that redundancies in the processing of requests are eliminated. Part of this process includes the continuous review of filing practices and the integration of new features into the agency's FOIA Track database.

The agency also conducts regular FOIA meetings with all members of the FOIA staff. At meetings, FOIA staff are encouraged to provide input on the current FOIA system and make suggestions as to how to improve efficiency and reduce redundancy. The result of these meetings is a better functioning database that suits the needs of all relevant parties.

### **Section 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 both 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 (i.e., from March 2013 to March 2014). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

*Posting Material:*

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

**Answer:** Yes.

If so, describe the system that is in place.

**Answer:** When the agency issues a final decision or the Office of General Counsel issues a legal opinion, the FOIA Staff receives an email from a legal assistant alerting them that a document is eligible to be posted to the agency website. Upon receiving the document, FOIA personnel will draft a submitter notice to the relevant parties. Once the document has been reviewed by the submitter, the FOIA attorney will analyze any proposed redactions. When the review process is completed, the document is posted to the NIGC's electronic reading room on its website.

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

**Answer:** The NIGC posted documents related to its regulatory review, opinions drafted by its Office of General Counsel, agency determinations, and settlements entered into by the Chairwoman in response to enforcement actions. With respect to its regulatory review, the NIGC posted all discussion drafts of potential changes to its regulations, proposed rules, comments in response to discussion drafts and proposed rules, final rules, and transcripts of every consultation in which the NIGC participated. The agency also published its decisions on gaming ordinances and management contracts. In those cases, the NIGC also placed redacted versions of the approved management contracts as well approved ordinances online for inspection. In situations where the NIGC's Office of General Counsel issued an opinion on the classification of a certain game or whether certain submitted documents constitute management contracts, those documents were placed online as well.

It should also be noted that the NIGC also posts information on its website in conformance with the e-FOIA amendments. Whenever the agency receives two requests for the same document and reasonably anticipates a third, it works with its IT staff to ensure that the document is placed in its online reading room.

*Making Posted Material More Useful:*

3. 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.?

**Answer:** Yes.

4. If so, provide examples of such improvements.

**Answer:** The NIGC has responded to the need and demand for agency documents by enhancing the search capability of its website and the documents it posts to its website. The NIGC's Division of Public Affairs has been working to develop a new, more user-friendly website that makes it easier for the public to search for, and peruse, pertinent agency documents. All posted documents have text recognition functions so that they are search capable after being posted. This allows individuals visiting the website to more efficiently locate specific text within the posted documents. Additionally, the agency website has a "Contact Us" section, which solicits user feedback on all topics. As suggestions or requests are reviewed, common requests or suggestions are considered for possible implementation.

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

**Answer:** The agency currently possesses a Twitter and Facebook account where press releases are posted. Social media was also used to inform the public as to current agency operations and the Commission's plans with respect to consultations. These social media sites were not used, however, to highlight proactive disclosures.

6. 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.

**Answer:** The FOIA team has not experienced any challenges with respect to information it seeks to have posted. Agency management is cognizant of its responsibilities under FOIA and strives to provide as much information as possible to the public and the Tribes it regulates.

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

**Answer:** The agency currently works to disclose as much as it can to the public proactively, within the constraints implemented by the IGRA. As mentioned above, the agency is required to keep certain materials provided to it confidential. Where those restrictions are not implicated, the agency strives to place all final agency decisions as well as opinions generated by its General Counsel on to its website proactively.

#### **Section 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?

**Answer:** No. At this time, the NIGC does not have this feature as part of its FOIA system. The agency is currently updating its website and, as part of that process, is working with FOIA staff to implement an electronic tracking system that can be utilized to provide accurate, detailed and request-specific information. The agency intends to have this feature in place by the end of FY 2014.

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?

**Answer:** Not Applicable.

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.

**Answer:** Not Applicable.

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

**Answer:** Not Applicable.

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.

**Answer:** Yes. The agency is currently updating its website and, as part of that process, is working with FOIA staff to implement an electronic tracking system that can be utilized to provide accurate, detailed and request-specific information. The agency intends to have this feature in place by the end of FY 2014.

*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?

**Answer:** Yes.

If so, describe the technological improvements being made.

**Answer:** The agency is currently contracting with NARA and an outside party to assess the agency's records management program and to assist it in transitioning to an entirely electronic system. As part of this process, the outside party is expected to implement an RFID file tracking system that will assist personnel with locating specific records. Both of these measures will work to consolidate all of the agency's information silos into one central filing system. This will increase FOIA staff's ability to conduct searches and to locate responsive documents much more quickly and efficiently.

The agency, however, does not utilize document sharing platforms for consultations or have software that can sort and de-duplicate documents. The low volume of requests the agency receives annually makes it so these programs are not cost-effective for the agency. For example, only 50 requests were received in FY2013.

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

**Answer:** Given the relatively low volume of requests processed by the NIGC, additional technological tools are not cost effective.

## **Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs**

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 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 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?

**Answer:** Yes. The NIGC has implemented the use of a separate track for "simple" requests that do not require lengthy consultations with other entities or do not involve voluminous records.

- 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?

**Answer:** No.

- 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?

**Answer:** N/A

*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?

**Answer:** 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?

**Answer:** Not applicable. The NIGC did not have any backlog of administrative appeals.

### **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?

**Answer:** Stayed the same.

- 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.

**Answer:** The NIGC closed six of the ten oldest requests listed in its FY 2012 Annual FOIA report.

### **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?

**Answer:** Not applicable. The NIGC did not have any pending appeals at the end of FY 2012.

- 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.

**Answer:** Not applicable.

### **Ten Oldest Consultations**

- g. In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012?

**Answer:** Not Applicable. The NIGC did not receive any consultations.

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

**Answer:** Not Applicable.

*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 or appeals?

**Answer:** No. The increase in the backlog of pending requests is the result of the complexity of many of the requests received, along with the number of requests seeking submitter provided material. As a result, for many of the NIGC’s requests the agency is required to engage in the submitter review process for complex financial documents. Additionally, many of the requests received require the agency to consult with various components within the Department of Interior and the Department of Justice. This also results in decreased efficiency as awaiting responses from other agencies is often time-consuming.

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

**Answer:** Yes. While the NIGC’s FOIA staff remained intact during FY 2013, the agency’s backlog is partially the result of loss of staff that occurred in FY 2012. During that time, the agency underwent a re-organization and lost individuals who worked on requests that were pending at the time. The result of this is that several voluminous and complex requests needed to be re-processed. This set the agency behind in FY 2012, which was subsequently carried into FY 2013.

- 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?

**Answer:** No. Many of the requests in any given year received by the agency are complex and voluminous. There was no increase in the overall complexity of cases received.

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

**Answer:** Not applicable.

“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.

**Answer:** Some of the greatest obstacles presented to the agency were locating dated records and the submitter notice process.

- 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.

**Answer:** Not applicable.

*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.

**Answer:** Since completing the agency’s reorganization, the NIGC’s new FOIA system has increased its productivity markedly. While only 6 of the ten oldest requests were closed in the previous fiscal year, these were widely considered the agency’s most complex and voluminous requests. Despite allocating most of its resources towards closing its ten oldest backlogged requests, the agency was also able to make significant progress on all of its other pending requests. The result of this is that the agency is very close to closing its remaining backlogged cases. The NIGC is on pace to complete its processing of not only its ten oldest requests from its FY 2013 backlog, but possibly its entire FY 2013 backlog by the end of FY 2014.

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.

**Answer:** Not applicable.

### *Interim Responses:*

OIP has issued guidance encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information.

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

**Answer:** Yes. The NIGC proactively provides interim releases where possible. Once documents are received from responsive offices, we routinely review each FOIA case file to determine whether an interim response can be provided.

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.

**Answer:** The NIGC provided interim responses to four different requesters in its backlog in FY 2013.

### **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?

**Answer:** Not applicable.

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

**Answer:** Not applicable.

### **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.

**Answer:** In Fiscal Year 2013, the NIGC made great strides in closing some of its oldest pending backlogged cases. In particular, there were three requests that were sent in by the same requester in May 2011. Each of these requests sought voluminous records on different legal issues that were presented to the agency and implicated a large number of records containing Department of Justice and Department of Interior equity. The FOIA staff at the agency undertook in Fiscal Year 2013 to get all three of these massive requests closed. FOIA personnel worked with the requester to narrow the scope of all three of the requests and were able to consolidate two of them. After the scope of the requests was narrowed, the FOIA staff worked tirelessly with attorneys within the NIGC as well as at the consulting agencies in an effort to get all responsive records properly reviewed. By the close of Fiscal Year 2013, the agency released close to 3,000 pages of documents and was able to close two of those three requests. With respect to the remaining request, the agency made a substantive interim release of 1,000 pages of documents within Fiscal Year 2013 and is in line to be closed by the end of Fiscal Year 2014.

While not falling within any of the enumerated categories listed in the report, the NIGC would also like to describe the progress of the agency's FOIA system thus far into Fiscal Year 2014. Although the agency's backlog did not shrink between the end of Fiscal Year 2012 and Fiscal Year 2013, much progress was made. In fact, as of the writing of this report, the agency's backlog has been nearly cut in half since the beginning of the fiscal year. Of the twenty-eight pending backlogged cases at the close of Fiscal Year 2013, only sixteen remain. The agency is pleased with the progress it has made thus far and is optimistic that it can reach its goal to eliminate its entire backlog by the end of this fiscal year.