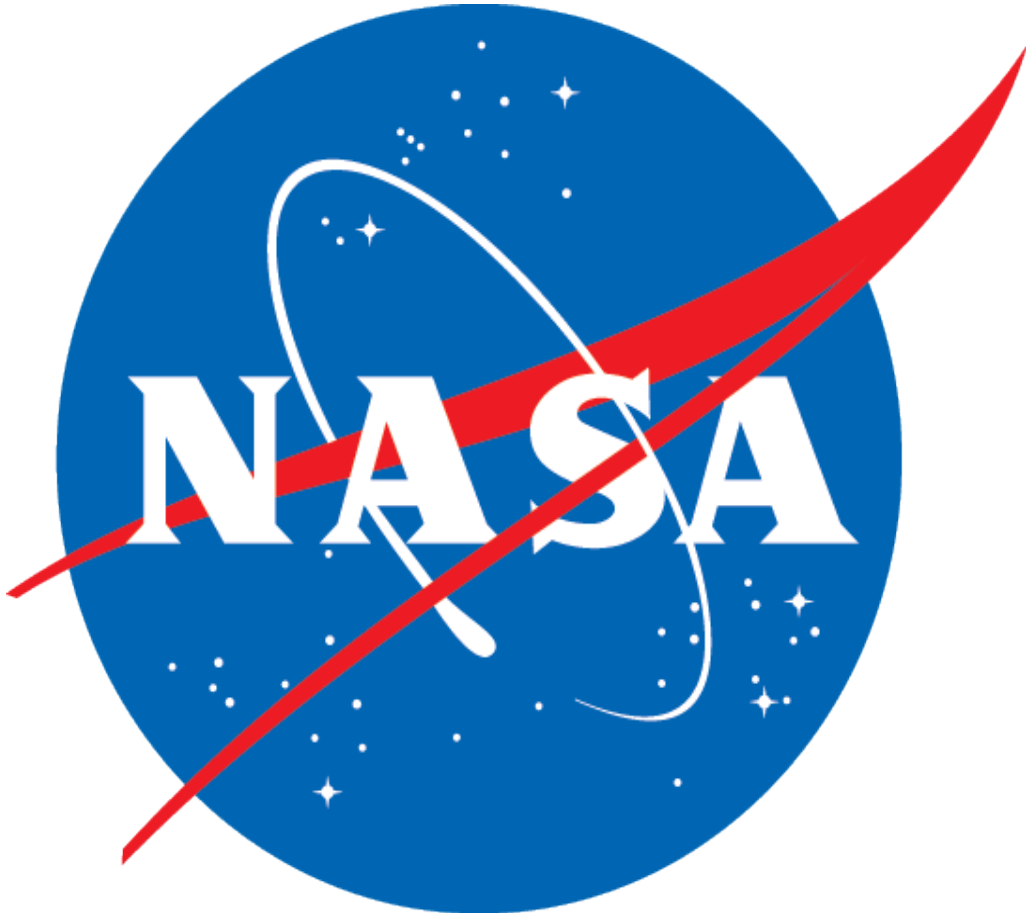


National Aeronautics and Space Administration



2020 CHIEF FOIA OFFICER REPORT

Ms. Bettina Inclan
Chief FOIA Officer
Associate Administrator
Office of Communications

High-Volume Agencies Receiving More Than 50 Requests in FY19

Section 1: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying DOJ's FOIA Guidelines is the presumption of openness.

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

A. FOIA Leadership

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at the Assistant Secretary or equivalent level. Is your agency's Chief FOIA Officer at this level?

ANSWER: Yes

2. Please provide the name and title of your agency's Chief FOIA Officer.

ANSWER: Bettina Inclan, Associate Administrator for Communications

B. FOIA Training

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

ANSWER: Yes

4. If yes, please provide a brief description of the type of training attended or conducted and the topics covered.

ANSWER: The staff attended either ASAP training (the FOIA-Privacy Act Workshop), or one or more of the following training offered by DOJ: Introduction to FOIA, FOIA Litigation Seminar, The Freedom of Information Act for Attorneys and Access Professionals, Advanced Freedom of Information Act Seminar, and the Annual FOIA Report Refresher Training. In addition, the Principal Agency FOIA Officer holds monthly video conferencing

(ViTS meetings) with the NASA FOIA professionals. At these meetings we discuss recent guidance issued by DOJ, recent case law issued by the courts, remand decisions of administrative appeals, and ways to improve NASA's FOIA processes to comply with these factors.

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

ANSWER: 80% of staff attended substantive FOIA training during this reporting period. The other 20% of staff members attended the monthly meetings held by Principal Agency FOIA Officer referenced in the previous response.

6. OIP has directed agencies to "take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year." If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

ANSWER: Most of the agency's FOIA professionals have attended an outside training, a DOJ training, and/or in-house training.

C. Outreach

7. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

ANSWER: NASA's FOIA professionals routinely engage in dialogue with the requesters. Additionally, NASA has a strong and robust Communications Office with Public Affairs Officers embedded in all NASA programs that answer all inquiries they receive from the media related to NASA programs/missions. NASA also has a Public Inquiry unit that answers thousands of inquiries it receives from the public via mail, email, or phone calls. The customer service NASA's Office of Communications provides to the public in response to any inquiry is an essential part of the agency's open government activities. These services are key activities that help reduce the number of FOIA requests NASA receives.

D. Other Initiatives

8. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA.

ANSWER: The Office of General Counsel makes a presentation about FOIA at the agency's New Employee Orientation Training sessions. Additionally, on an annual basis, NASA's Principal Agency FOIA Officer (hereinafter referred to as FOIA Officer), provides training sessions for NASA Program Offices. For 2019, the FOIA Officer was able to provide one

training session for the agency's officials within the Administrator's office, and one training session for another program office at NASA's HQ.

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

ANSWER: The National Aeronautics and Space Act mandates NASA to disseminate as much information as possible concerning its missions and scientific findings. In this regard, the agency has a robust Office of Communication with policy governing the release of information to the public, which is defined as information in any form provided to news and information media, especially information that has the potential to generate significant media, or public interest or inquiry. Examples include, but are not limited to, press releases, media advisories, news features, web postings, and responses to public inquiries. All of these efforts ensure the presumption of openness.

Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests

DOJ's FOIA Guidelines emphasize that "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." It is essential that agencies effectively manage their FOIA program.

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

1. For Fiscal Year 2019, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section **VIII.A.** of your agency's Fiscal Year 2019 Annual FOIA Report.

ANSWER: 4.19

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

ANSWER: N/A

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report data, using active workflows and track management, reviewing and updating processing procedures, etc.

- Note: In September 2017, OIP released a FOIA Self-Assessment Toolkit as a resource for agencies conducting a self-assessment of their FOIA program. The Toolkit is available on OIP's website for all agencies to use.

ANSWER: On a weekly basis the FOIA Officer conducts weekly assessments of its pending cases and provides a report to the agency's Chief FOIA Officer and other management officials. When a request is reported on several weekly reports, the FOIA Officer takes steps to find out where the bottlenecks are and assists with moving those cases forward in a more timely fashion. This issue became evident after the government shutdown ended in January 2019. The FOIA Officer distributed cases from its Headquarters' FOIA unit to other FOIA specialists working in NASA centers in order to bring down the number of pending and received cases (received during the shutdown).

4. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2019 (please provide a total number or an estimate of the number).

ANSWER: NASA's Chief FOIA Public Liaison received a total of 14 requests for assistance and/or disputes regarding their FOIA requests. All 14 requests/disputes were resolved without further issues being raised to agency's administrative appeal's unit at NASA's OGC or OGIS.

5. Optional -- Please describe:

- Best practices used to ensure that your FOIA system operates efficiently and effectively

ANSWER: The NASA FOIA officer frequently reviews and meets with FOIA specialists to review their FOIA cases and discuss strategies to improve its FOIA program, reduce the FOIA backlog, and speed up the processing of requests. This sometimes requires additional discussions with the FOIA requester to explain the challenges the FOIA specialist is facing in processing a backlogged request. Sometimes the requesters agree to narrow the scope and other times they do not agree to any suggestions.

- Any challenges your agency faces in this area

ANSWER: One of the biggest challenges NASA faces is the information we provide for use by other agencies. As an example, NASA's Disasters Program mobilizes for intensive risk events globally, including earthquakes, wildfires, floods, and severe weather. The program capitalizes on the wealth of environmental data gathered by Earth-observing satellites and other remote-sensing technology NASA uses to help emergency response managers prepare for, respond to and recover from disasters. Just in 2017, the program responded to 89 events. When there is a FOIA request for one of these disaster-related events, among the records are communications with many other agencies. For

example, one of our FOIA requests involves tens of thousands of pages related to a California wildfire and includes information from 26 other agencies, including the State of California and its local agencies. For this request, NASA has to consult with each one of those agencies. Therefore, FOIA requests seeking such records are extremely time consuming and pose a great challenge to NASA when consultations on voluminous records are required.

Section III: Steps Taken to Increase Proactive Disclosures

The Department of Justice has long focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

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

1. Provide examples of any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

ANSWER: The agency proactively posts requests for the agency's SmartPay Card Holder's list and FOIA logs for each Fiscal Year.

The list for SmartPay Card Holders can be accessed on the NASA Shared Services Center (NSSC) FOIA reading room at:

https://searchpub.nssc.nasa.gov/servlet/sm.web.Fetch/NASA_Cardholders_-_2-4-2014.pdf?rhid=1000&did=1761572&type=released.

The FOIA Logs can be accessed on the agency's HQ FOIA reading room at:

<https://www.nasa.gov/FOIA/elibrary>.

Additionally, NASA has one of the most robust uses of social media to disseminate information of interest to the public. As explained in Section D, Question 9 above, NASA's Office of Communication routinely releases information to the public, especially information that has the potential to generate significant media, or public interest or inquiry.

Additionally, our program offices regularly post documents related to mission updates, launches, etc., and this information is further publicized through tweets, program-sponsored events, interviews, etc. The Public Inquiries Office that receives thousands of requests for information from the members of the public also regularly revises its website to provide direct links to material of interest to the public.

2. 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?

ANSWER: Yes, the scientific community, media requesters, and others continually use our website to view new events and published information. As explained in Section D, Question 9, NASA has a statutory mandate to post as much information concerning its missions and scientific findings as possible. For this reason, NASA provides a vast amount of data on its websites for all types of groups (scientific, media, researchers, students, vendors, etc.)

3. If yes, please provide examples of such improvements.

ANSWER: All of NASA's Mission Directorates continually update their public websites with new information. NASA's events can be viewed at www.nasa.gov by clicking on any topics of interest or by clicking on NASA Audiences (Media, Educators, Students) to view the most updated event/information available to the public. While the examples are far too many to provide in this response, one that can be listed is the Science Mission Directorate. This division posts its latest science news, podcasts, grant award announcements, publications, and final reports on research results for the public and/or researchers at the following website: <https://science.nasa.gov/>.

4. Optional -- Please describe:

- Best practices used to improve proactive disclosures

See the response in question 1 under this section.

- Any challenges your agency faces in this area

ANSWER: N/A

Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information more accessible. In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

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

1. Is your agency leveraging or exploring any new technology to facilitate efficiency in its FOIA administration that you have not previously reported? If so, please describe the type of technology.

ANSWER: Yes. The creation of a SharePoint system in 2018 was very helpful in facilitating efficiency in the Program. Also, the use of NASA's Office of Information Technology to conduct FOIA searches for emails when the request concerns Capstone officials' records/emails has provided much efficiency in the administration of our FOIA program.

2. OIP issued guidance in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources, and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

ANSWER: Yes. NASA is working on adding additional updated guidance during this year.

3. Did your agency successfully post all four quarterly reports for the Fiscal Year 2019?

ANSWER: Yes

4. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2020.

ANSWER: N/A

5. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2018 Annual FOIA Report and, if available, for your agency's Fiscal Year 2019 Annual FOIA Report.

ANSWER: <https://www.nasa.gov/FOIA/annual-reports.html>

6. Optional -- Please describe:

- Best practices used in greater utilizing technology

ANSWER: N/A

- Any challenges your agency faces in this area

ANSWER: One challenge is de-duplicating emails. NASA FOIA unit has studied the use of deduplication software(s) to learn how well the software(s) can function and the costs associated with their purchase. However, one challenge NASA faced was the cost of the de-duplication software which was in the tens of thousands of dollars. The cost was too expensive for the FOIA Unit to further consider this technology.

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

The Department of Justice has emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations.

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2019 Annual FOIA Report and, when applicable, your agency's 2018 Annual FOIA Report.

A. Simple Track

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

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

ANSWER: Yes. NASA utilizes a multi-track system and has a separate track for simple requests.

2. If your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2019?

ANSWER: Yes.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2019 that were placed in your simple track.

ANSWER: 33%

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

ANSWER: N/A

D. Backlogs

Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal

Year 2018 and Fiscal Year 2019 when completing this section of your Chief FOIA Officer Report.

BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?

ANSWER: No.

6. If not, did your agency process more requests during Fiscal Year 2019 than it did during Fiscal Year 2018?

ANSWER: No.

7. If your agency's request backlog increased during Fiscal Year 2019, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming requests.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

ANSWER: NASA received several FOIA requests that sought voluminous amounts of records. Additionally, while dealing with these voluminous requests, NASA also could not process any of its cases due to the government shutdown from Dec. 22, 2018, through January 25, 2019 (35 days). During the government shutdown, the agency continued to receive many new requests which contributed to NASA's backlog and the agency's inability to respond in a more timely fashion.

8. If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2019. If your agency has no request backlog, please answer with "N/A."

ANSWER: 3.4%

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?

ANSWER: No.

10. If not, did your agency process more appeals during Fiscal Year 2019 than it did during Fiscal Year 2018?

ANSWER: Yes. NASA processed 16 Appeals in FY 2019 as compared to 15 appeals that it processed in FY 2018.

11. If your agency's appeal backlog increased during Fiscal Year 2019, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming appeals.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

ANSWER: NASA's Office of General Counsel, responsible for responding to FOIA Appeals, experienced a higher number of incoming appeals during this reporting year with an increase in their complexity. Additionally, the office was not able to review any appeals during the government shutdown which also contributed to delays in appeal response time.

12. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2019. If your agency did not receive any appeals in Fiscal Year 2019 and/or has no appeal backlog, please answer with "N/A."

ANSWER: 18.5%

E. Backlog Reduction Plans

13. In the 2019 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2018 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2019?

ANSWER: N/A. The backlog of cases carried over from FY 2018 to FY 2019 was 27 cases. NASA successfully closed all of those cases in 2019.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2019, what is your agency's plan to reduce this backlog during Fiscal Year 2020?

ANSWER: N/A. NASA's backlogged cases reported in the 2019 Annual Report are less than 100.

D. Status of Oldest Requests, Appeals, and Consultations

Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2018 and Fiscal Year 2019 when completing this section of your Chief FOIA Officer Report.

OLDEST REQUESTS

15. In Fiscal Year 2019, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

ANSWER: Yes.

16. 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 2018 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

ANSWER: N/A

17. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

ANSWER: One way the NASA FOIA Officer works to reduce the age of pending requests is to distribute the assignment of pending cases from a center that is experiencing a heavy load to other centers with lesser caseloads. However, due to the 35 day government shutdown, receiving several very complex FOIA requests with voluminous records, and the inability to procure adequate de-duplication software to help manage such voluminous records, it has become a challenge to reduce the overall age of the pending requests.

TEN OLDEST APPEALS

18. In Fiscal Year 2019, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

ANSWER: NASA did not have any pending appeals reported in the FY 2018 Annual FOIA Report.

19. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2018 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

ANSWER: N/A

20. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

ANSWER: The Office of General Counsel received 27 FOIA Appeals. The OGC closed 16 of these appeals, leaving 11 appeals that were reported on the 2019 Annual report.

TEN OLDEST CONSULTATIONS

21. In Fiscal Year 2019, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

ANSWER: NASA did not have any pending consultations reported in the FY 2018 Annual FOIA report.

22. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2018 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

ANSWER: N/A

E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans

23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2019.

ANSWER: Several FOIA requests NASA received seek a voluminous amount of data that requires many consultations with other agencies.

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

ANSWER: NASA continues to work on these voluminous complex cases and has not yet sent consultations to other agencies for review.

25. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2020.

ANSWER: NASA plans to issue rolling releases to its requesters seeking voluminous records, and keep an open dialog with them. We believe that once requesters see the types of records NASA maintains, they will be more willing to narrow the scope of their requests to facilitate faster processing.

F. Success Stories

Out of all the activities undertaken by your agency since March 2019 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, OIP will highlight these agency success stories during Sunshine Week. 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 key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

ANSWER: NASA recognized the need to consolidate FOIA business processes in order to achieve continual success in the program. FOIA Officers are now mostly located at Headquarters, and FOIA Officers who must remain at their respective center outside of Headquarters now work closely with the NASA Principal Agency FOIA Officer in charge of managing the agency’s FOIA program. This has made the oversight of business processes much easier. Another success story is the use of the IT Division to conduct email searches for NASA’s Capstone Officials. These searches not only streamline the process, but also reduce the appearance of any conflict because the officials are not involved in searches for their own emails.