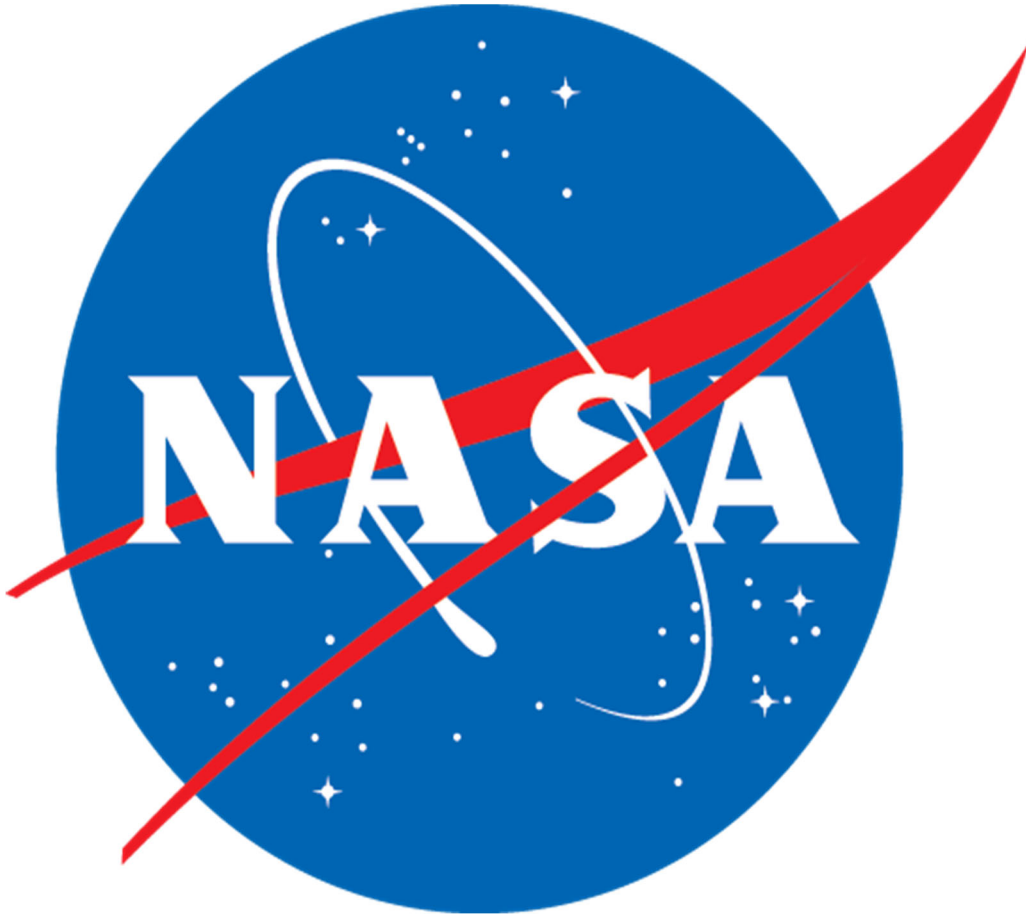


**National Aeronautics and Space Administration**



**2023 CHIEF FOIA OFFICER REPORT**

**Mr. Marc Etkind**  
*Chief FOIA Officer*  
*Associate Administrator*  
*Office of Communications*

## **SECTION I: FOIA LEADERSHIP AND APPLYING PRESUMPTION OF OPENNESS**

The guiding principle underlying the Attorney General’s FOIA Guidelines is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration.

Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

### **A. Leadership Support for FOIA**

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. See 5 U.S.C. § 552(j)(1) (2018). Is your agency’s Chief FOIA Officer at or above this level?

**ANSWER:** Yes

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

**ANSWER:** Mr. Marc Etkind, Associate Administrator for the Office of Communications

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

**ANSWER:** The Freedom of Information Act Unit is part of the National Aeronautics and Space Administration’s (NASA’s) Office of Communications (OCOMM). OCOMM handles corporate, Agency-wide communications for NASA and is accountable for managing the planning, development, and implementation of communications events, activities, and products for stakeholders, including the general public. It provides for the widest practicable and appropriate dissemination of information to news media and the general public concerning the objectives, methods, and results of NASA programs. OCOMM is responsible for planning, organizing, directing, and coordinating Agency-wide communications activities for all facets of NASA’s mission, programs, activities, and functions for the Agency’s workforce, media, and the general public. The scope of the Agency’s communications entails a broad, diverse, and integrated set of efforts, including news and media engagement, digital services and products (including Web, multimedia, and social media), non-technical publications, and exhibits, as well as speaking and public engagement activities and events.

## **B. Presumption of Openness**

4. The Attorney General's 2022 FOIA Guidelines provides that "agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions." Does your agency provide such confirmation in its response letters?

**ANSWER:** Yes.

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interested protected by a FOIA exemption. This is commonly referred to as a Glomar response. With respect to these responses, please answer the below questions:

a. In addition to tracking the asserted exemption, does your agency specifically track whether a request involved a Glomar response?

**ANSWER:** No. NASA's FOIA database did not have a field that could be checked to track a particular response as a "Glomar" response. If the request was closed with a "Glomar" response, the system only allowed the case to be closed as a denial based on a FOIA Exemption.

b. If yes, please provide: N/A

- i. the number of times your agency issued a full or partial Glomar response (separate full and partial if possible);
- ii. the number of times a Glomar response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).

**ANSWER:** See response to 4 (a) above.

c. If your agency does not track the use of Glomar responses, what would your agency need to do to track in the future? If possible, please describe the resources and time involved.

**ANSWER:** Per discussions with NASA's FOIA database vendor, a field has been created that allows future cases closed with a Glomar response to be tracked in the system as a "Glomar" response in addition to tracking the applicable FOIA Exemption(s).

6. 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 that NASA disseminate to the public as much information as possible concerning its missions and scientific findings. Please see answer to question number 3 above regarding OCOMM's mission to meet this mandate.

## **Section II – Ensuring Fair and Effective FOIA Administration**

The Attorney General's FOIA Guidelines provide that "[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of FOIA obligations by the entire agency workforce." The Guidelines reinforce longstanding guidance to "work with FOIA requesters in a spirit of cooperation." The Attorney General also "urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency's FOIA administration" as part of ensuring fair and effective FOIA administration.

## **A. FOIA Training**

1. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

**ANSWER:** The NASA Principal Agency FOIA Officer receives training information from the American Society of Access Professionals (ASAP) and the Department of Justice Office of Information Policy (OIP), then distributes that information to NASA FOIA staff so they can sign up to attend the offered training.

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

**ANSWER:** Yes

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

**ANSWER:** NASA FOIA staff registered for a few FOIA trainings offered by the National Archives and Records Administration as well as OIP. NASA staff attended the following events and trainings:

- NexGen FOIA Tech Showcases held on 2/9 - 2/10/22, and the follow-up workshop held on 3/31;
- 5/4/22, DOJ FOIA Summit;
- 5/3/22, DOJ Virtual Procedural requirements and Fees;
- 4/19/22, DOJ Virtual Processing;
- 6/14/22, DOJ Virtual FOIA Exemption 4 and 5.

In addition, the Principal Agency FOIA Officer held quarterly TEAMS meetings with NASA's FOIA professionals to discuss any new guidance issued by OIP, any recent case law or remands of administrative appeal decisions affecting the handling of NASA's FOIA cases, and ways to improve NASA's FOIA processes to comply with these factors. All of the FOIA staff attended two virtual trainings on processing contracts offered by one of NASA's attorneys, who has extensive experience in government contracts and procurement. NASA's contracts are highly technical, which require careful review and technical knowledge.

4. Please 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:** For NASA's internal contracts training, 100% of the FOIA staff attended. Additionally, 100% of the FOIA staff attended other virtual DOJ FOIA training during this reporting period. Furthermore, 80% of staff attended the quarterly meetings in which some sort of training was held by the Principal Agency FOIA Officer as explained in the previous response.

5. 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:** N/A.

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and if senior leaders at your agency received a briefing on your agency's FOIA resources, obligations, and expectations during the FOIA process?

**ANSWER:** The Office of General Counsel makes a presentation about FOIA at the agency's New Employee Orientation Training sessions for new employees. Additionally, on an annual basis, the Principal Agency FOIA Officer provides training sessions for NASA Program Offices. In 2022, the Principal Agency FOIA Officer provided seven training sessions for program offices at NASA Headquarters and NASA Centers. NASA's FOIA website also has links to resources and training videos from DOJ on FOIA.gov. The Principal Agency FOIA Officer routinely refers employees to this material. Examples of videos the FOIA unit provides to its non-FOIA professionals are: [DOJ Executive Briefing on FOIA](#) (with DOJ video), and [FOIA.gov – Frequently Asked Questions](#) (with DOJ videos). Links to the DOJ resources and videos are also available on NASA's FOIA website.

## **B. Outreach**

7. Did your FOIA professionals engage in any outreach or dialogue, outside of the standard request process, 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:** No. While the FOIA unit does not have any outreach *outside* of the standard FOIA processes, NASA has a strong and robust OCOMM with Public Affairs Officers embedded in all NASA programs to answer all inquiries received from the media related to NASA programs and missions.

OCOMM handles corporate, Agency-wide communications for NASA and is accountable for managing the planning, development, and implementation of communications events, activities, and products for stakeholders, including the general public. The office provides for the widest practicable and appropriate dissemination of information to news media and the general public concerning the objectives, methods, and results of NASA programs. The office is responsible for planning, organizing, directing, and coordinating Agency-wide communications activities for all facets of NASA's mission, programs, activities, and functions for the Agency's workforce, media, and the general public. The scope of the Agency's communications entails a broad, diverse, and integrated set of efforts, including news and media engagement, digital services and products (including Web, multimedia, and social media), non-technical publications, and exhibits, as well as speaking and public engagement activities and events. The office works to promote effective NASA communications by ensuring synergy and strategic focus and working collaboratively with the Office of Legislative and Intergovernmental Affairs, the Office of STEM Engagement, and other Agency organizations, as appropriate.

NASA also has a Public Inquiry unit that answers thousands of inquiries from the public via mail, email, or phone calls. The customer service that NASA's OCOMM 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.

8. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue, and, if applicable, any specific examples.

**ANSWER:** Yes, the FOIA specialists always reach out to requesters to discuss any aspect of the FOIA request that is voluminous or unclear and/or discuss the FOIA process to better serve the requester and provide the best quality customer service possible.

9. 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 Fiscal Year 2022 (please provide a total number or an estimate of the number).

**ANSWER:** NASA's Chief FOIA Public Liaison received only seven requests for assistance and/or disputes from requesters regarding their FOIA requests during this reporting period. All seven requests/disputes were resolved without further issues being raised to the agency's administrative appeal unit at NASA's OGC or OGIS.

#### **D. Other Initiatives**

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

**ANSWER:** The FOIA unit has sought to obtain an attorney detailed to the unit to work with the FOIA processors and provide training for processing NASA's highly technical contracts and grants. This request is under consideration.

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

**ANSWER:** On a weekly basis, the Principle Agency FOIA Officer conducts assessments of NASA's pending cases and provides a report to the agency's Chief FOIA Officer and other management officials. This report provides a snapshot of each FOIA processor's workload and what needs to be done either by the Principal Agency FOIA Officer or management to assist with resolving complex issues that are holding up the completion of a request.

Additionally, after an agency-wide restructuring in 2021, the FOIA unit's decentralized business processes were consolidated into one unit with the Principal Agency FOIA Officer in charge of monitoring FOIA compliance for all NASA Centers. In the past, each NASA Center had its own FOIA officer reporting to an official at that Center. However, as a result of NASA's organizational restructuring, FOIA processors now report to the Principal Agency FOIA Officer who assigns cases based on the workload of each analyst. This centralization of the FOIA offices helps with a more equitable distribution of FOIA workloads. For example, one FOIA analyst may only have 5 cases assigned to them, whereas another may have 15 cases. The weekly metrics report is one way for the Principal Agency FOIA Officer to measure each analyst's workload and implement an assignment process that factors in request complexity, as well as each analyst's caseload and proficiency across the FOIA landscape.

12. Optional -- If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.

**ANSWER:** See response to question 7 above.

### **SECTION III: PROACTIVE DISCLOSURES**

The Attorney General's FOIA Guidelines emphasize that "proactive disclosure of information is . . . fundamental to the faithful application of the FOIA." The Guidelines direct agencies to post "records online quickly and systematically in advance of any public request" and reiterate that agencies should post records "in the most useful, searchable, and open formats possible."

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

**ANSWER:** NASA has one of the most robust uses of social media to disseminate information of interest to the public. NASA's OCOMM routinely releases information to the public, especially information that has the potential to generate significant media, public interest, or other inquiries. 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.

OCOMM's Public Inquiries Office, which 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. 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: NASA has a vast amount of information posted on its many websites by its Mission Directorates and program officials. The FOIA unit proactively posts the SmartPay Card Holder's list, FOIA logs, and any requests that have been requested 3 times or more.

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\\_Active\\_Cardholders\\_List\\_1-5-2023.pdf?rhid=1000&did=1761572&type=released&FixForIE=NASA\\_Active\\_Cardholders\\_List\\_1-5-2023.pdf](https://searchpub.nssc.nasa.gov/servlet/sm.web.Fetch/NASA_Active_Cardholders_List_1-5-2023.pdf?rhid=1000&did=1761572&type=released&FixForIE=NASA_Active_Cardholders_List_1-5-2023.pdf).

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

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

Additionally, as explained above, NASA received several FOIA requests for a contract. The contract and its modifications were posted during this reporting period at the following link:

<https://www.nasa.gov/content/msfc-foia-electronic-library>.

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?

ANSWER: Yes. As explained above, NASA posts a vast amount of information for the scientific community, researchers, students, media requesters, vendors, and others interested in NASA's new or historical events and published information which is continually updated.

NASA has a statutory mandate to post as much information concerning its missions and scientific findings as possible. A few examples of data that the FOIA unit routinely provides the public to view without the need to submit a FOIA request are:

[NASA's Technical Reports Servers](#) (NTRS). NTRS is managed by NASA's Scientific and Technical Information unit (STI). This database provides access to NASA metadata records, full-text online documents, images, and videos. The types of information included in this database are conference papers, journal articles, meeting papers, patents, research reports, images, movies, and technical videos – scientific and technical information (STI) created or funded by NASA.

[NASA Space Act Agreements Community of Practice](#) – NASA has the ability to enter into special agreements, called Space Act Agreements, to further the aims of the agency.

[NASA History Office, Headquarters](#) – Includes many electronic books.



[Johnson Space Center, History Office](#) – Includes many records related to its Apollo mission era and other space flight history, images, and videos.

[NASA Office of Inspector General \(OIG\)](#) – Full-text reports, audits, memoranda, testimony, etc.

[Management and Policy Documents](#) – Provides a list of links to scanned documents that are vital to understanding how NASA functions and its role in the federal government.

[NASA Online Directives Information System \(NODIS\)](#) – Provides full-text of NASA Policy Directives (NPDs) and NASA Procedural Directives (NPRs) by date and by name.

[NASA Image Library](#) – Consolidates imagery and videos in one searchable location. Users can download content in multiple sizes and resolutions and see the metadata associated with images, including EXIF/camera data on many images.

4. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

**ANSWER:** All of NASA’s Mission Directorates continually update their public websites with new information. NASA is a leader among federal agencies in providing open data to citizens and has a robust infrastructure for internet-facing open data management. NASA has cataloged a comprehensive data inventory, available at [data.nasa.gov](#), which is also pushed to data.gov on set time schedules and allows the public to search datasets from NASA and other agencies. NASA currently has over 50,000 datasets at a current growth of 2% in 2022, and the list continues to grow as the Agency implements the Evidence-Based Policymaking Act under the purview of the NASA Data Governance Council. With the goal to make NASA data as interoperable as possible, NASA deployed [api.nasa.gov](#), which provides machine-readable access to data, and [code.nasa.gov](#) to offer computer code in multiple languages to assist application developments. 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 latest events and information available to the public. While the examples are far too many to provide in this response, all of NASA Mission Directorates post their latest scientific news, past projects, podcasts, grant award announcements, publications, and final reports on research results for the public or researchers at their respective websites.

5. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

**ANSWER:** Yes, see response to question 4 above.

6. Optional -- Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.

**ANSWER:** For best practices, please see response to question 4 above. One challenge the FOIA unit faces is the remediation of records under Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended in 1998. NASA uses contractors for this service. Again, because of the vast

amount of information NASA posts on its various websites, in order to ready FOIA records for web posting, there is a queue time for 508 remediation services before records may be posted to the web.

#### **SECTION IV: STEPS TAKEN TO GREATER UTILIZE TECHNOLOGY**

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's [FOIA Guidelines](#) emphasize the importance of making FOIA websites easily navigable and complying with the [FOIA.gov](#) interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

**ANSWER:** Yes. NASA uses FOIAXpress to track its FOIA workflow. We also use SharePoint to store our FOIA request files which allow all relevant personnel to collaborate on records received and processed in response to FOIA requests. In addition, NASA uses its Office of Information Technology to conduct FOIA searches of employee and Capstone official email accounts. This has greatly helped to streamline the administration of our FOIA program. NASA also uses Adobe Acrobat Pro to redact records. NASA was able to purchase additional licenses for EverMap AutoPortfolio which is an Acrobat plug-in that enables staff to organize and de-duplicate voluminous emails.

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program.

**ANSWER:** N/A

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.

**ANSWER:** The Adobe Pro does have a function that allows users to search for short texts (such as names, telephone numbers, email addresses, etc.) and redact them all in a document.

4. 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.

5. Did all four of your agency's [quarterly reports](#) for Fiscal Year 2022 appear on FOIA.gov?

**ANSWER:** Yes.

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2023.

**ANSWER:** N/A

7. 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 2021 Annual FOIA Report and, if available, for your agency's Fiscal Year 2022 Annual FOIA Report.

**ANSWER:** NASA's Annual FOIA Reports for Fiscal Years 2021 and 2022, including the raw data for each, can be accessed at the following website: <https://www.nasa.gov/FOIA/annual-reports.html>.

8. In February 2019, DOJ and OMB issued joint [Guidance](#) establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

**ANSWER:** Yes.

9. Optional -- Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

**ANSWER:** N/A

## **SECTION V: STEPS TAKEN TO REMOVE BARRIERS TO ACCESS, IMPROVE TIMELINESS IN RESPONDING TO REQUESTS, AND REDUCE BACKLOGS**

The Attorney General's [FOIA Guidelines](#) instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

### **A. Remove Barriers to Access**

1. Has your agency established alternative means of access to first-party requested records outside of the FOIA process?

**ANSWER:** No

2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.

**ANSWER:** NASA receives a nominal number of requests from requesters seeking their own records. Therefore, for these types of requests, NASA simply reviews the records and processes them under both the FOIA and Privacy Act to provide the widest possible access.

### **B. Timeliness**

3. For Fiscal Year 2022, 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 2022 Annual FOIA Report.

**ANSWER:** 7.08

4. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2022 Annual FOIA Report, 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

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

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

6. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2022?

**ANSWER:** Yes. The agency overall average number of days to process simple requests was 10.88 working days in Fiscal Year 2022.

7. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?

**ANSWER:** N/A

8. Please provide the percentage of requests processed by your agency in Fiscal Year 2022 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100.

**ANSWER:** 31.77%

9. 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.

### **C. Backlogs**

#### **BACKLOGGED REQUESTS**

10. If your agency had a backlog of requests at the close of Fiscal Year 2022, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

**ANSWER:** No. NASA's backlog was 28 at the end of FY 2021, and 38 at the end of FY 2022.

11. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2022 than it did during Fiscal Year 2021?

**ANSWER:** Yes. NASA processed 775 requests in FY 2021, and 982 requests in FY 2022.

12. If your agency's request backlog increased during Fiscal Year 2022, 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)
- Impact of COVID-19 and workplace and safety precautions
- Any other reasons – please briefly describe or provide examples when possible

**ANSWER:** NASA received several complex FOIA requests in fiscal year 2022 seeking a voluminous amount of records. The information NASA had to process included information from other agencies requiring extensive consultations with many stakeholders. These FOIA requests are extremely time consuming and pose a great challenge to NASA, especially when voluminous records are involved. As a result of the complexity of these requests, NASA

continues to process some of the FOIA requests that were received in fiscal year 2022 in the current fiscal year (2023).

13. 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 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A."

**ANSWER:** 3.83%

### **BACKLOGGED APPEALS**

14. If your agency had a backlog of appeals at the close of Fiscal Year 2022, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

**ANSWER:** Yes. NASA had a backlog of 8 appeals at the end of FY 2021, and 6 at the end of FY 2022.

15. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2022 than it did during Fiscal Year 2021?

**ANSWER:** N/A

16. If your agency's appeal backlog increased during Fiscal Year 2022, 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)
- Impact of COVID-19 and workplace and safety precautions
- Any other reasons – please briefly describe or provide examples when possible

**ANSWER:** Although NASA's FOIA appeals did decrease this fiscal year compared to last year, the agency did face challenges reducing the backlog. FOIA appeals are reviewed by attorney advisors who advise on FOIA matters and a variety of other legal areas. Litigation related to

COVID-19 and the multitude of legal questions related to COVID-19 created a significant demand on attorney resources. This demand, coupled with reduced attorney personnel during this time, caused a backlog of appeals for this reporting year.

17. 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 2022. Please use the following calculation based on data from your Annual FOIA Report:(backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2022 and/or has no appeal backlog, please answer with "N/A."

**ANSWER:** 66.67%

#### **D. Backlog Reduction Plans**

18. In the 2022 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2021 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 2022?

**ANSWER:** NASA did not implement a backlog reduction plan last year because its backlog in Fiscal Year 2022 was less than 1,000 requests.

19. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2022, please explain your agency's plan to reduce this backlog during Fiscal Year 2023.

**ANSWER:** N/A. NASA's backlogged cases reported in the 2022 Annual Report are less than 1,000.

#### **E. Reducing the Age of Requests, Appeals, and Consultations**

##### **TEN OLDEST REQUESTS**

20. In Fiscal Year 2022, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2021 Annual FOIA Report?

**ANSWER:** Yes.

21. 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 2021 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

**ANSWER:** N/A.

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

**ANSWER:** The Principle Agency FOIA Officer works to reduce the age of pending requests by re-distributing pending cases from FOIA specialists experiencing heavy work volumes to other FOIA specialists with lesser caseloads. However, due to the receipt of several very complex FOIA requests with voluminous records, NASA faced challenges reducing the overall age of NASA its pending requests.

### **TEN OLDEST APPEALS**

23. In Fiscal Year 2022, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2021 Annual FOIA Report?

**ANSWER:** No.

24. 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 2021 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

**ANSWER:** NASA closed 4 of the 8 FOIA appeals reported as pending at the end of FY 2021. NASA encountered challenges closing all 8 of those appeals for the reasons explained in response to question 16 of this section.

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

**ANSWER:** As indicated in response to question 16 above in this section, NASA's Office of the General Counsel (OGC) reviews FOIA appeals. NASA OGC faced challenges in reviewing FOIA appeals because of other COVID related work and litigation. NASA OGC plans to focus on its ten oldest appeals and endeavors to process as many appeals as the office receives in this fiscal year.

### **TEN OLDEST CONSULTATIONS**

26. In Fiscal Year 2022, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2021 Annual FOIA Report?

**ANSWER:** NASA did not have any pending consultations from FY 2021.

27. 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 2021 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.



**ANSWER:** N/A

## **ADDITIONAL INFORMATION REGARDING TEN OLDEST**

28. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2023.

**ANSWER:** One of the biggest challenges NASA faces is that the nature of its work is inherently collaborative with other agencies, state/local governments, international partners, and companies. Thus, records responsive to NASA FOIA requests frequently require extensive consultations with numerous other stakeholders. These FOIA requests are extremely time consuming and pose a great challenge to NASA, especially when voluminous records are involved. The Principle Agency FOIA officer reviews and meets with FOIA analysts about their FOIA cases to discuss strategies to improve the FOIA program, reduce the FOIA backlog, and speed up the processing of requests. This also sometimes requires additional discussions with FOIA requesters to explain the challenges faced by FOIA analysts in processing a backlogged request. Sometimes these discussions help requesters to narrow the scope of their requests or agree to the records NASA produced for interim releases. NASA plans to continue this process to close some of its pending requests.

### **F. Additional Information about FOIA Processing**

29. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency’s overall FOIA request processing and backlog. If possible, please indicate the number and nature of requests subject to litigation, common causes leading to litigation, and any other information to illustrate the impact of litigation on your overall FOIA administration.

**ANSWER:** During fiscal year 2022 NASA continued working on one FOIA litigation from last year’s reporting period. The records responsive to this FOIA request required a great deal of consultation with other agencies and stakeholders.

30. How many requests during Fiscal Year 2022 involved unusual circumstances as defined by the FOIA? (This information is available in your agency’s FY22 raw data).

**ANSWER:** NASA invoked a 10-day extension for 162 FOIA requests due to unusual circumstances during FY 2022.