



**U.S. OFFICE OF PERSONNEL MANAGEMENT
OFFICE OF THE INSPECTOR GENERAL
OFFICE OF EVALUATIONS AND INSPECTIONS**

Final Evaluation Report

Evaluation of the U.S. Office of Personnel Management's Non-Career Officials' Involvement in the Freedom of Information Act Response Process

**Report Number 4K-RS-00-15-059
November 17, 2015**

-- CAUTION --

This evaluation report has been distributed to Federal officials who are responsible for the administration of the audited program. This evaluation report may contain proprietary data which is protected by Federal law (18 U.S.C. 1905). Therefore, while this evaluation report is available under the Freedom of Information Act and made available to the public on the OIG webpage (<http://www.opm.gov/our-inspector-general>), caution needs to be exercised before releasing the report to the general public as it may contain proprietary information that was redacted from the publicly distributed copy.

EXECUTIVE SUMMARY

Evaluation of the U.S. Office of Personnel Management's Non-Career Officials' Involvement in the Freedom of Information Act Response Process

Report No. 4K RS-00-15-059

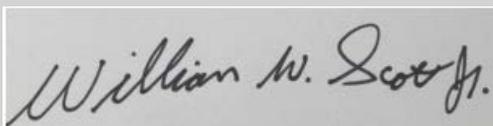
November 17, 2015

Why Did We Conduct the Evaluation?

At the request of the U.S. Senate Committee on Homeland Security and Governmental Affairs, we conducted this evaluation to determine whether there was any involvement of non-career officials in the response process for Freedom of Information Act (FOIA) requests at the U.S. Office of Personnel Management (OPM). If so, we were asked to determine if their involvement resulted in any unwarranted delays in the response to the FOIA request or the withholding of any documents or portion of any documents that would have otherwise been released.

What Did We Find?

We determined that non-career officials at OPM were not involved in the response process for FOIA requests received between January 2010 and August 2015. Consequently, non-career officials' involvement did not result in either any undue delays or the withholding of any documents or portion of any document that would have otherwise been released. Given that there were no findings or recommendations resulting from our review, a draft report was not issued for this evaluation and no corrective action is necessary.



William W. Scott, Jr.
Chief, Office of Evaluations and Inspections

TABLE OF CONTENTS

	<u>Page</u>
EXECUTIVE SUMMARY	i
ABBREVIATIONS	1
INTRODUCTION	2
RESULTS OF THE EVALUATION	3
APPENDICIES	4
A. Scope and Methodology	4
B. Freedom of Information Act Officer’s Certification	7
C. U.S. Senate Committee on Homeland Security and Governmental Affairs’ Request	8
D. Major Contributors to this Report	12
REPORT FRAUD, WASTE, AND MISMANAGEMENT	

ABBREVIATIONS

CIO	Chief Information Officer
FOIA	Freedom of Information Act
OIG	Office of the Inspector General
OPM	U.S. Office of Personnel Management
ROC	Retirement Operations Center

INTRODUCTION

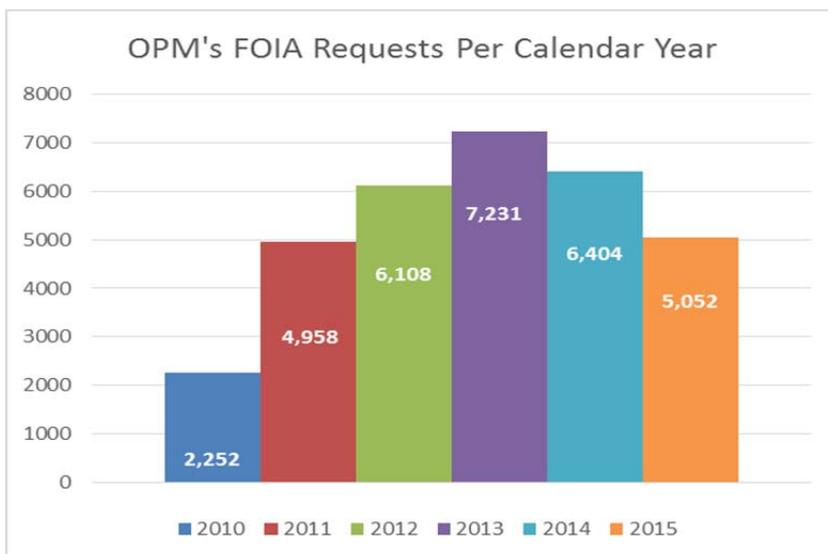
This report details the results from our evaluation of the U.S. Office of Personnel Management's (OPM) non-career officials' involvement in the Freedom of Information Act (FOIA) response process between January 2010 and August 2015. This evaluation was conducted by OPM's Office of the Inspector General (OIG), as authorized by the Inspector General Act of 1978, as amended.

Our evaluation was performed in response to a request, dated June 23, 2015, from the U.S. Senate Committee on Homeland Security and Governmental Affairs (Committee), asking that we analyze the involvement of non-career officials in OPM's FOIA response process. Specifically, the Committee asked us to determine if involvement of non-career officials resulted in:

- Any undue delays in responding to FOIA request; or,
- The withholding of any document or portion of any document that would have otherwise been released but for the non-career official's involvement in the process.

Since 1967, FOIA has provided the public the right to request access to records from Federal agencies. Agencies, including OPM, are required to release any documents requested under FOIA, unless they fall under one of nine statutory exemptions. These exemptions apply when the release of sensitive information would be harmful to specific, enumerated Government or private interests. FOIA also requires agencies to proactively make certain categories of information, such as frequently requested records, available electronically. FOIA therefore serves an important role in promoting transparency and accountability in the Federal Government.

OPM's FOIA Office, located within OPM's Office of the Chief Information Officer, is responsible for providing oversight in the processing of FOIA requests. The FOIA Office serves as the center for the intake and dissemination of FOIA requests to the appropriate OPM program offices, and ensures that program offices comply with FOIA guidelines, policies, and procedures.



OPM report receiving approximately 32,000 FOIA requests between January 1, 2010 and August 16, 2015. Yearly totals are shown in the chart to the left. (Please note: The 2015 total reflects the number of FOIA requests received between January 1, 2015 and August 16, 2015.)

RESULTS OF THE EVALUATION

Our evaluation determined that OPM non-career officials were not involved in the FOIA Office's response process. Consequently, non-career officials' involvement did not result in any undue delays or the withholding of any documents or portion of any documents that would have otherwise been released. Because this report contains no findings or recommendations, we did not issue a draft report and no corrective action is necessary.

APPENDIX A: SCOPE AND METHODOLOGY

We conducted this evaluation in accordance with the *Quality Standards for Inspection and Evaluation, January 2012*, approved by the Council of the Inspectors General on Integrity and Efficiency.

We performed our fieldwork between August 18, 2015 and October 15, 2015 at the OPM Headquarters located in Washington, DC.

The scope of this evaluation covered FOIA requests received by OPM between January 1, 2010 and August 16, 2015.¹

We met with OPM's FOIA Officer² and the FOIA specialists who manage FOIA requests to gain an understanding of the policies and procedures used when processing a FOIA request. We also inquired about the involvement of non-career officials in the FOIA process.

In conducting this evaluation we relied on computer-generated data provided by the FOIA Office. Due to the nature of this evaluation, we did not verify the reliability of the data involved. However, nothing came to our attention during our review of the data to cause us to doubt its reliability. We believe the data was sufficient to achieve our goal.

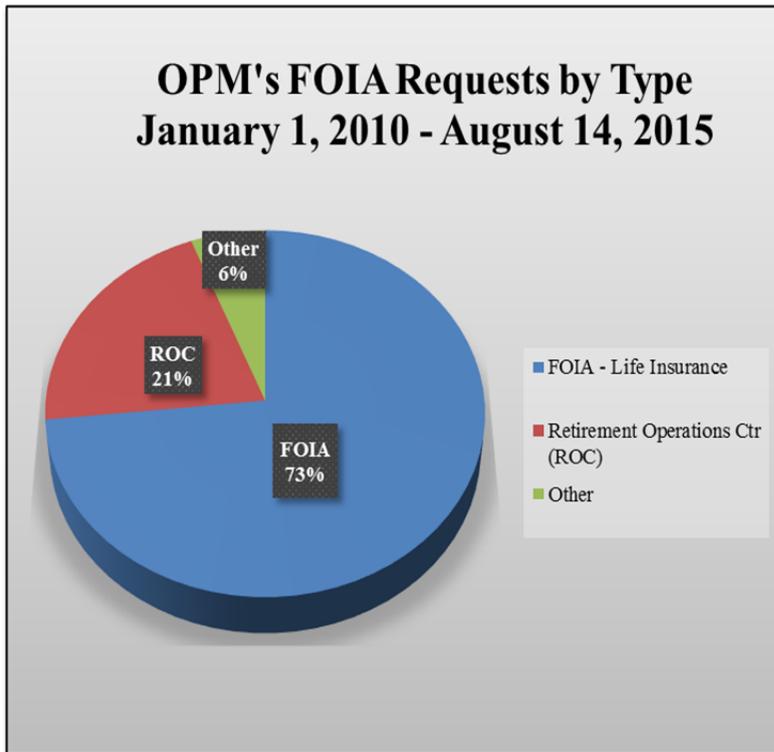
The FOIA Office provided us with an extracted file from their tracking system of all FOIA requests received between January 1, 2010 and August 16, 2015. We analyzed the file and identified a total universe of 32,005 FOIA requests. We determined from our interviews that a large number of the requests, 30,129 in total, included in the file were not actually FOIA requests. The majority of these non-FOIA requests were categorized by OPM as "FOIA-Life Insurance" (FOIA) and "Retirement Operations Center" (ROC), relating to annuitants' life insurance claims.³ The data file contained these requests because OPM includes them in the

¹ Although the Committee's June 2015 letter requested that we review FOIA submissions made since 2007, we had previously performed such a review for Senator Charles Grassley in 2010. That review included requests submitted between 2007 and 2009. Therefore, we limited our scope to 2010 through 2015 in order to avoid duplicative work.

² FOIA requires each Federal agency to have a designated "Chief FOIA Officer" who is responsible for executing the agency's responsibilities under the law. At OPM, this individual is the Chief Information Officer (CIO). The individual who is directly in charge of OPM's FOIA Office, however, has the title "Chief, FOIA Officer". For purposes of this report, the term "FOIA Officer" is referring to OPM's Chief, FOIA Officer rather than the CIO.

³ Retirement Operations Center and FOIA-Life Insurance requests represented 94 percent of requests in the data file. These requests are submitted by the funeral home that is handling the burial for an annuitant. In the requests they are seeking verification of whether the annuitant had life insurance, the money payable, and to whom. In many cases the funeral home or mortuary will not accept the deceased individual until they have validated that there will be money to cover the expenses.

annual FOIA reports it submits to the U.S. Department of Justice. The remaining “Other”⁴ FOIA requests shown in the following chart totaled 1,876.



We excluded those requests that were FOIA-Life Insurance (23,474), FOIA-Death Benefits (8), and Privacy Act⁵ (28) from our universe. We left the ROC requests in our universe in order to verify the FOIA Office’s assertion that these requests were life insurance requests for annuitants.⁶ We chose to use the ROC requests due to the amount of requests received in the FOIA-Life Insurance category. This left us with a sample universe of 8,495 requests. Using Interactive Data Extraction Analysis (IDEA) software, we selected a random sample of 75 FOIA requests. The sample size was designed to verify adherence to the various

processes, not to project outcomes from those processes.

The Committee also requested that we seek a “certification” from the FOIA Officer that there has been no interference in the FOIA process by non-career officials during his/her tenure. In accordance with the request, we provided a suggested certification form to the FOIA Officer to complete for inclusion with the results of our review. See Appendix B for the FOIA Officer’s certification.

⁴ The “Other” requests relate to the following projects types: Combined Federal Campaign Operations; Contracting; Facilities & Administrative Services; Employee & Family Support Policy; FOIA-Complex Requests; FOIA-Death Benefits; FOIA-Media Requests; FOIA-Simple Requests; FOIA/Privacy Act (New Release); Human Capital Management Services; Information Services & Chief Information Officer; Merit System Accountability; Miscellaneous Incoming Work; Office of Congressional Relation; Office of the Director; Office of the Inspector General; Privacy Act Requests; Retirement & Insurance Services; Talent & Capacity Policy; Talent Services; Workforce Information & System Requirements.

⁵ The Privacy Act is another means through which individuals can obtain information from the Federal Government. Since these requests were not submitted under FOIA, we did not include them in our sample selection universe.

⁶ Resource limitations were the basis for including ROC requests and excluding the FOIA-Life Insurance requests from our sample universe. Because we were informed that these two categories were functionally similar, we excluded the significantly larger FOIA-Life Insurance population.

APPENDIX B: FOIA Officer's Certification

Certification of Chief FOIA Officer Regarding the Role of Non-Career Officials in the FOIA Process

Certifying Official's Name: [REDACTED]

Certifying Official's Title: Chief, FOIA Officer

Scope of Certifying Official's FOIA Duties: Providing oversight and management on the processing of FOIA requests, creating policy, procedures and updating FOIA regulations OPM-wide.

Date Certifying Official Assumed FOIA Duties: July 16, 2012

By my signature here, I certify that the statement marked below is true and accurate to the best of my knowledge and belief.

[REDACTED]

Signature of Certifying Official

10-22-2015

Date

[Please select one:]

Since the date I assumed my FOIA duties, no non-career officials have been involved in the Office of Personnel Management's response to any FOIA request.

Since the date I assumed my FOIA duties, non-career officials have been involved in the Office of Personnel Management's response to one or more FOIA requests, but the involvement has never resulted in the undue delay of a response or the provision of less information than would have been provided but for the involvement.

I am providing the attached statement in my own words regarding the role of non-career officials in the FOIA process at the Office of Personnel Management.

APPENDIX C: U.S. SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS REQUEST

RON JOHNSON, WISCONSIN, CHAIRMAN

JOHN MCCAIN, ARIZONA	THOMAS R. CARPER, DELAWARE
ROB PORTMAN, OHIO	CLAIRE McCASKILL, MISSOURI
RAND PAUL, KENTUCKY	JON TESTER, MONTANA
JAMES LANKFORD, OKLAHOMA	TAMMY BALDWIN, WISCONSIN
MICHAEL B. ENZI, WYOMING	HEIDI HESTRAMP, NORTH DAKOTA
KELLY AYOTTE, NEW HAMPSHIRE	CORY A. BOOKER, NEW JERSEY
JONI ERNST, IOWA	GARY C. PETERS, MICHIGAN
BEN SASSE, NEBRASKA	

KEITH B. ASHDOWN, STAFF DIRECTOR
GABRIELLE A. BATKIN, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

June 23, 2015

The Honorable Patrick E. McFarland
Inspector General
U.S. Office of Personnel Management
1900 E Street, NW, Room 6400
Washington, DC 20415

Dear Mr. McFarland:

The Committee on Homeland Security and Governmental Affairs is conducting oversight of how Executive Branch departments and agencies respond to Freedom of Information Act (FOIA) requests. The Committee recognizes the important role that FOIA plays in holding the government accountable to American taxpayers and seeks to ensure that government officials do not interfere with the FOIA process to inhibit transparency. Accordingly, as the Committee examines how departments and agencies comply with FOIA, the Committee is interested in learning about any involvement by non-career officials with the FOIA process at the Office of Personnel Management.

Enacted in 1966, FOIA bestows a right upon the American public to request records created by Executive Branch departments and agencies.¹ FOIA does not require requestors to articulate a reason for the request and creates a presumption of access so long as the request does not encompass any of the nine categories of information exempted from the statute.² This right of openness and transparency guaranteed by FOIA allows the American public to understand how their government is operating—a concept essential to perpetuate a flourishing democracy. FOIA, therefore, is a critical tool available to the American public to learn and understand how their government is acting on their behalf, as well as to hold the government accountable for its actions.

¹ 5 U.S.C. § 552.

² *Id.* at § 552(b). FOIA states that agencies may withhold the following nine categories: (1) information that is classified to protect national security; (2) information related solely to the internal personnel rules and practices of an agency; (3) information that is prohibited from disclosure by another federal law; (4) trade secrets or commercial or financial information that is confidential or privileged; (5) privileged communications within or between agencies; (6) information that, if disclosed, would invade another individual's personal privacy; (7) certain information compiled for law enforcement purposes; (8) information that concerns the supervision of financial institutions; and (9) geological information on wells. *Id.*

The Honorable Patrick E. McFarland
June 23, 2015
Page 2

Just one day after taking office, President Obama issued a memorandum to all heads of Executive Branch departments and agencies emphasizing that openness and transparency are fundamental aspects of FOIA.³ President Obama stated:

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.⁴

As described in the President's directive, FOIA is an essential tool vital to furthering transparency within government programs and operations. Department and agency personnel play an important role in ensuring FOIA requests are handled in a timely manner. In addition, Offices of Inspectors General (OIGs) across Executive Branch perform a critical role in providing oversight of agency operations and investigating allegations of misconduct related to the processing of FOIA requests.

Recent media reports indicate prior cases where non-career officials have been substantially involved in the FOIA response process. For example, during Hillary Clinton's tenure as Secretary of State, her staff carefully reviewed and scrutinized politically sensitive documents requested under FOIA—directly affecting what documents or portions of documents were ultimately released to requestors.⁵ Her staff's involvement in the response process led to delays, despite the Department's FOIA officer already having prepared and finalized responses for release.⁶ Additionally, in 2010, former Department of Homeland Security Secretary Janet Napolitano's non-career staff was substantially involved in the Department's FOIA response process by implementing an intricate review and approval process for FOIA responses, including redacting potentially embarrassing information, which compromised transparency and accountability to American taxpayers.⁷ These troubling examples raise particular concerns as the Committee seeks to ensure Executive Branch departments and agencies are following public

³ Memorandum from Pres. Obama to Heads of Executive Departments and Agencies, *Freedom of Information Act* (Jan. 21, 2009), available at https://www.whitehouse.gov/the_press_office/Freedom_of_Information_Act/ (last visited Jun. 23, 2015).

⁴ *Id.*

⁵ Laura Meckler, *Hillary Clinton's State Dep't Staff Kept Tight Rein on Records*, WALL ST. J., May 19, 2015, available at <http://www.wsj.com/articles/hillary-clintons-state-department-staff-kept-tight-rein-on-records-1432081701> (last visited Jun. 23, 2015).

⁶ *Id.*

⁷ *Id.*; see also H. Comm. on Oversight & Gov't Reform, *Staff Report: A New Era of Openness? How and Why Political Staff at DHS Interfered with the FOIA Process*, 112th Cong. (Mar. 30, 2011), available at http://oversight.house.gov/wp-content/uploads/2012/02/DHS_REPORT_FINAL_FINAL_4_01_11.pdf (last visited Jun. 23, 2015).

The Honorable Patrick E. McFarland
June 23, 2015
Page 3

records law and that non-career personnel are not adversely affecting the quantity, quality, and timeliness of information provided to the American public through the FOIA process.

In light of previous cases of involvement by non-career officials in the FOIA response process and the critical role that OIGs play in providing oversight of internal agency operations, the Committee wants to ensure that agencies are taking the appropriate steps to fully respond to FOIA requests without unnecessary delay, and that the involvement of non-career officials in the FOIA process does not result in less information being provided to the requestors than otherwise would have been provided. Further, the Committee wants to be sure that honest efforts by departments and agencies to respond to FOIA requests are not frustrated or compromised by the involvement of non-career officials in the FOIA response process.

In order to assist the Committee's oversight obligations, I ask that your office please analyze the involvement of non-career officials' involvement in the FOIA response process at the department or agency, if any, for the period of January 1, 2007, to the present. If non-career officials were involved in the FOIA response process, please analyze whether their involvement resulted in any undue delay of a response to any FOIA request or the withholding of any document or portion of any document that would have otherwise been released but for the non-career official's involvement in the process. If your analysis shows such a result, please provide the following information about each FOIA request:

- a. Contents of the FOIA request;
- b. Recommendation by the department or agency's FOIA officer as to what information should be disclosed in response to the request;
- c. Name(s) and position(s) of non-career personnel who were involved with the response process;
- d. Details and supporting documents related to the processing of the response to the FOIA request;
- e. Documents that were ultimately disclosed in response to the request; and
- f. Documents or information that would have been disclosed in response to the FOIA request absent the involvement of non-career department or agency personnel.

As part of your analysis, I request that you seek a written certification from the department or agency's chief FOIA officer that 1) no non-career officials were involved in the department or agency's response to any FOIA request or 2) if such involvement occurred, the involvement of non-career officials has never resulted in the undue delay of a response to a FOIA request or the provision of less information than would have been provided but for the involvement of the non-career officials. Please provide this certification to the Committee in conjunction with your analysis.

I respectfully request that your office perform this analysis and report back to the Committee within 60 days. If you have any questions about this request, please have your staff contact Caroline Ingram of the Committee staff at (202) 224-4751. Thank you for your attention to this matter.

The Honorable Patrick E. McFarland
June 23, 2015
Page 4

Sincerely,



Ron Johnson
Chairman

cc: The Honorable Thomas R. Carper
Ranking Member

APPENDIX D: MAJOR CONTRIBUTORS TO THIS REPORT

OFFICE OF EVALUATIONS AND INSPECTIONS

William W. Scott Jr., Chief

██████████, Program Analyst

██████████, Program Analyst



Report Fraud, Waste, and **Mismanagement**

Fraud, waste, and mismanagement in the Government concerns everyone: Office of the Inspector General staff, agency employees, and the general public. We actively solicit allegations of any inefficient and wasteful practices, fraud, and mismanagement related to OPM programs and operations. You can report allegations to us in several ways:

By Internet: <http://www.opm.gov/our-inspector-general/hotline-to-report-fraud-waste-or-abuse>

By Phone: Toll Free Number: (877) 499-7295
Washington Metro Area: (202) 606-2423

By Mail: Office of the Inspector General
U.S. Office of Personnel Management
1900 E Street, NW
Room 6400
Washington, DC 20415-1100

-- CAUTION --

This evaluation report has been distributed to Federal officials who are responsible for the administration of the audited program. This evaluation report may contain proprietary data which is protected by Federal law (18 U.S.C. 1905). Therefore, while this evaluation report is available under the Freedom of Information Act and made available to the public on the OIG webpage (<http://www.opm.gov/our-inspector-general>), caution needs to be exercised before releasing the report to the general public as it may contain proprietary information that was redacted from the publicly distributed copy.