



Office of Inspector General

Office
202.692.2900
peacecorps.gov/OIG
[OIG Reports](#)

Hotline
202.692.2915 | 800.233.5874
[Online Reporting Tool](#)
OIG@peacecorps.gov

To: Carrie Hessler-Radelet, Director
Anne Hughes, Acting Chief Compliance Officer

From: Kathy A. Buller, Inspector General *Kathy A. Buller*

Subject: Management Advisory Report: Peace Corps' Management of the Freedom of Information Act (FOIA) Process (IG-16-01-SR)

Date: March 10, 2016

The purpose of this report is to bring to your attention concerns the Office of Inspector General (OIG) identified while responding to a recent congressional request to review Peace Corps' management of the FOIA process and determine the extent of the involvement of non-career officials in FOIA decisions, and in particular whether such involvement resulted in undue delay in response to requests under FOIA or improper withholding of information¹. We reported to the congressional committee, that although there were some instances of non-career officials' involvement in the FOIA process, we did not identify instances of improper influence or undue delay resulting from such involvement. However, during the period we reviewed, we noted that the FOIA office did not regularly have sufficient resources to effectively manage the FOIA workload and, as a result, did not consistently provide a timely response to requestors. During the course of our review, the agency informed us that they recently hired temporary staff to assist with the request backlogs and implemented new standard operating procedures. We hope that the information in this report will be useful in continuing to improve the FOIA process.

This report makes two recommendations to improve the agency's FOIA request response timeliness. We are requesting your response to these recommendations by April 25, 2016. Please provide us with an electronic copy of your signed cover memo with your response. Your response should provide your concurrence or non-concurrence with each recommendation.

Background

In June 2015, the Senate Committee on Homeland Security and Governmental Affairs communicated to OIG that it was conducting an oversight review of how Executive Branch departments and agencies respond to FOIA requests. Enacted in 1966, FOIA gives the public the right to request access to records from any federal agency. Federal agencies are required to disclose any information requested under the FOIA unless it falls under one of the nine

¹ June 23, 2015 letter from Chairman Ron Johnson, Senate Homeland Security and Governmental Affairs Committee, to Peace Corps Inspector General Kathy Buller.

exemptions² which protect interests such as personal privacy, national security, and law enforcement.

According to a memorandum issued by President Obama on January 21, 2009:

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 of 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 interest of Government officials at the expense of those they are supposed to serve. In responding to the 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.³

On June 23, 2015, the Senate committee requested OIG analyze the involvement of non-career officials in the FOIA process from January 1, 2007 to present, and determine if their involvement resulted in undue delay in responding to FOIA requests or if any information was improperly withheld. Because federal regulations and Peace Corps records retention policy establish that records relating to FOIA requests should be kept for a maximum of six years⁴, we were only able to assess records from July 2009 to December 2015. We examined the Peace Corps' FOIA log of nearly 1,000 requests and judgmentally sampled 60 for further review. We reviewed the date of receipt for requests; the narrative regarding the nature of each request; the requestor and agency officials that assisted in a response; the current status or date of response. If a request was pending a response for a prolonged time, we followed up with the FOIA office and relevant program officials.

On December 14, 2015, we notified the committee that we did not find any evidence that non-career officials' involvement in the FOIA process caused any undue influence or delay that resulted in providing less information than would have been provided had they not been involved. However, we did find instances where responses to FOIA requests were not timely.

² 5 U.S.C. § 552(b). The nine exemptions are (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 unwarrantedly 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.

³ Memorandum from President 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 Guide to Peace Corps Records Schedule (Headquarters and Recruiting Offices): FOIA Request Files (Disposition Authority: GRS 14.11).

Files created in response to requests for information under the FOIA, consisting of the original request, a copy of the reply thereto, and all related supporting files which may include the official file copy of requested record or copy thereof...

- (1) Granting access to all request records—Disposition: Temporary. Destroy 2 years after date of reply
- (2) Responding to request for nonexistent records; to requestor who provide inadequate descriptions... request not appealed—Disposition: Temporary. Destroy 2 years after date of reply;
- (3) Denying access to all or part of the records requested. ...Request not appealed—Disposition: Temporary. Destroy 6 years after date of reply.

Peace Corps Did Not Consistently Meet the Statutory Deadlines for Processing Requests

Peace Corps policy⁵ and federal regulation 5 U.S.C.552⁶ state that the agency must notify the requestor within 20 business days after receipt of a request as to whether the agency will comply, deny, or forward the request to the OIG. However, for complicated and unusual circumstances⁷, the agency can request an extension up to 10 business days if a written explanation for the extension and an expected delivery date is provided to the requestor.

Contrary to Peace Corps policy, the agency did not always comply with the statutory deadlines. From FY 2010 to 2015, the agency did not provide timely responses for 64% of requests, totaling 551 requests. At the time of our review, the agency had 12 pending requests that had been outstanding for over a year. According to the FOIA officer, Peace Corps received an influx of requests in fiscal year 2014, causing a backlog. Additionally, some of the requests were complex, requiring substantial time and effort to complete. Since priority was placed on processing older requests, responses for newer requests were often delayed. Further, for the last two years, the agency did not have dedicated staff to focus on responding to FOIA full-time. Staffing resources consisted of an officer and one or two specialists to process privacy and FOIA requests and manage other administrative duties. However, these staff members only spend approximately 35% to 50% of their time processing FOIA requests. Although the agency recently hired temporary personnel to assist with the backlog, maintaining a dedicated staff to manage the FOIA workload would help ensure compliance with meeting the statutory deadlines.

The Agency Did Not Maintain an Adequate System to Monitor the FOIA Process

Our recent assessment of the agency's FOIA procedures revealed inadequate practices in providing feedback to both the agency and the requestor. Once a FOIA request was received, FOIA specialists reviewed the request to determine if more clarification was needed, logged it into the FOIA database, and forwarded it to the appropriate office(s). The agency offices were expected to provide responsive documents within seven business days or certify that no records were found. When responses were not received within the appropriate time frame, FOIA specialists individually contacted the agency offices to check the status of the search. After the responsive materials were received, the FOIA specialists reviewed the materials, consulted with the agency offices, and prepared a responsive letter. Following an approval by the FOIA officer and a review by the Office of the General Counsel, the response and documents were provided to the requestor.

⁵ *Peace Corps Manual* Section 893.303.8 (h)(1).

⁶ U.S.C. § 552(a)(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall-
(i) determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination

⁷ U.S.C. § 552(a)(6)(B). In unusual circumstances, the time limit for responding to a request or an appeal may be extended by up to ten working days.

The approach used to complete a FOIA request required significant involvement from multiple entities. Whenever one did not provide timely feedback, the process was delayed. Delays increased because the agency did not have a case management system or other similar mechanism to alert agency offices that responsive materials were not received or additional information was required. Moreover, the requestors were not routinely notified when a request was delayed. Unless the requestor followed-up with the agency, status updates were not provided. Many times, the FOIA specialist did not contact the agency office about outstanding responsive materials until after the requestor asked about the outstanding request. By not having a more effective system (i.e. a tracking system or case management system) to monitor the status of FOIA requests, the agency will most likely continue to fail to meet the statutory deadlines.

We recommend that:

1. The agency ensures that the Office of Management has the necessary permanent personnel dedicated to the Freedom of Information Act workload to ensure compliance with applicable laws and improve the timeliness of FOIA searches and responses.
2. The agency provides the Office of Management with sufficient technological resources to effectively track, monitor, and manage the Freedom of Information Act workload.

cc: Carlos Torres, Deputy Director
Laura Chambers, Chief of Staff
Elizabeth Ogunwo, White House Liaison
Rudy Mehrbani, General Counsel
Alan Price, Associate Director, Management
Denora Miller, FOIA/Privacy Act Officer
Joseph Hepp, Chief Financial Officer
Francisco Reinoso, Chief Information Officer
Patrick Choquette, Director of Innovation
Valery Garrett, Records Management Officer, Management
Linda Brainard, Chief Acquisition Officer
Jeremy Haldeman, Director of Congressional Relations
IGChron
IG

Appendix 1: Letter of response to FOIA Congressional Committee



December 14, 2015

The Honorable Ron Johnson
Chairman
U.S. Senate Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Johnson:

This letter is in response to your request that we determine if any non-career officials at the Peace Corps have been involved in the Freedom of Information Act (FOIA) process. Secondly, we were asked that if non-career officials were involved in this process, to perform an analysis to determine whether such involvement resulted in any undue delay in responding to FOIA requests or the withholding of any information that would have been otherwise provided had a non-career official not been involved.

To accomplish our work on this effort we examined the Peace Corps' FOIA log. The log contained a database of nearly 1,000 requests and related detailed information, including: the date of receipt for requests; a brief narrative regarding the nature of each request; the requestor and agency officials that assisted in a response; and the date of response or current status, if a request was still pending a response. Based on our review of this data we selected a sample of 60 FOIA requests to examine in greater detail.

You requested that we review FOIA requests received by the Peace Corps over the period January 1, 2007, to present. However, for the type of documents within the scope of the review, the Peace Corps' policies establish records retention periods of no greater than six years. Such policies are consistent with federal records retention requirements. Therefore, we reviewed FOIA requests received by Peace Corps from July 2009 to present.

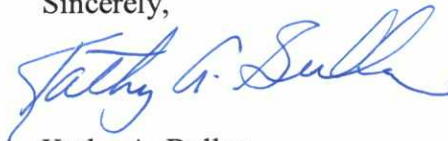
Although the position of the Chief FOIA Officer is presently held by a non-career official, the day-to-day FOIA operation is managed by a career Peace Corps employee. We determined that non-career officials are occasionally involved in Peace Corps' process for reviewing and responding to FOIA requests. Since the Peace Corps is a relatively small federal agency there are fewer management layers and sometimes non-career officials serve in a role to coordinate, assist with responses, and expedite the process. However, we did not find any evidence that non-career officials' involvement in the FOIA process caused any undue influence or delay, or otherwise resulted in providing less information than would have been provided had they not been involved. Attached are the requested certifications from the Chief FOIA Officers for the relevant period of time.

We did find instances where responses to FOIA requests were not timely. However, these instances resulted from receipt of complex requests that required substantial time and effort to fulfill or at times the Peace Corps FOIA office lacked sufficient resourcing to efficiently manage the FOIA workload. We plan to formally communicate inefficiencies found in the FOIA process to Peace Corps management and provide recommendations for remediation of the related issues. We will provide you a copy of the report once it is completed.

If you, committee members, or staff have any questions regarding our results discussed in this letter please contact me or Judy Leonhardt, the Peace Corps Assistant Inspector General for Audit at (202) 692-2914. We would be pleased to provide a briefing on our review at your convenience.

I want to take this opportunity to thank you and Ranking Member Carper for your strong commitment and support of the Inspectors General community and in particular to our oversight work at the Peace Corps.

Sincerely,



Kathy A. Buller
Peace Corps Inspector General

Enclosures: 2

cc: The Honorable Thomas R. Carper
Ranking Member

Certification of Peace Corps Chief FOIA Officer

I, Garry W. Stanberry, Peace Corps Chief Freedom of Information Act (FOIA) Officer, certify that although Peace Corps non-career officials (political appointees) are occasionally involved in the agency's FOIA process, such involvement has not resulted in any undue delay of a FOIA response or caused the response to include less information than would have been otherwise provided had a non-career official not been involved.¹



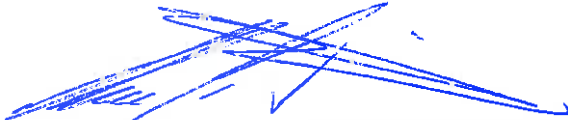
Garry W. Stanberry, Chief FOIA Officer

12/10/2015
Date Signed

¹ Garry W. Stanberry served in the position of the Peace Corps Chief FOIA Officer June 29, 2014 - July 11, 2015.

Certification of Peace Corps Chief FOIA Officer

I, Alan C. Price, Peace Corps Chief Freedom of Information Act (FOIA) Officer, certify that although Peace Corps non-career officials (political appointees) are occasionally involved in the agency's FOIA process, such involvement has not resulted in any undue delay of a FOIA response or caused the response to include less information than would have been otherwise provided had a non-career official not been involved.¹



Alan C. Price, Chief FOIA Officer

12-14-15

Date Signed

¹ Alan C. Price has served in the position of the Peace Corps Chief FOIA Officer since July 12, 2015.