



Office of Inspector General

AUG 27 2015

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

Dear Chairman Johnson:

I write in response to your June 23, 2015, letter requesting that the United States Agency for International Development (USAID) Office of Inspector General (OIG) analyze the involvement of non-career officials¹ in the Freedom of Information Act (FOIA) process at USAID, if any, for the period of January 1, 2007, to present. Specifically, you asked that we ensure USAID is 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 requestor than otherwise would have been provided. Furthermore, your request sought to ensure that honest efforts by USAID to respond to FOIA requests are not frustrated or compromised by the involvement of non-career officials in the FOIA response process.

In response to your request, we reviewed directives and procedures governing FOIA operations at USAID and the Agency's Fiscal Year (FY) 2014 FOIA Annual Report. In addition, we interviewed all staff within USAID's FOIA office who directly receive FOIA requests from the public, process those requests, and release applicable records. Furthermore, as requested, we obtained written certification from the Agency's Chief FOIA officer regarding the Agency's FOIA process. That certification is provided as an enclosure. Because we received this certification, and because nothing came to our attention during the course of our interviews that limited our ability to provide a reasonable response to your request within the requested timeframe, we did not review any FOIA requests, documentation, and or responses.

Based on the above procedures, we found that non-career personnel have a limited role in reviewing FOIA requests and responses and that final release determination is made by the FOIA Public Liaison Officer, a career employee of USAID, or designee. Furthermore, based on

¹ Based on discussions between your staff and the Inspector General community, the term "non-career official" as used here refers to political appointees.

information we gathered as part of our fieldwork, it appears that USAID is taking the appropriate steps to fully respond to FOIA requests and those responses are without compromise or unnecessary delay or withholding of information due to involvement of non-career officials.

Background

FOIA operations at USAID are overseen and managed by USAID's Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD) in Washington, D.C. M/MS/IRD is the centralized processing point for all requests filed under this program and is responsible for receiving and reviewing all requests; tasking relevant bureaus, independent offices, and missions with retrieving records; reviewing all submitted records; and making final release determinations pursuant to FOIA, 5 U.S.C. § 552, and USAID Automated Directives System (ADS) 507, Freedom of Information Act. According to USAID's FY 2014 FOIA Annual Report, 237 FOIA requests were pending at the start of the fiscal year, 373 new requests were received that year, and 315 requests were processed.

Section 552 of Title 5 and ADS 507 establish the roles of FOIA officials at USAID. According to M/MS/IRD's standard operating procedure for FOIA at USAID, the Assistant Administrator for the Bureau for Management, a non-career official, is the designated Chief FOIA Officer and is responsible for ensuring efficient Agency-wide FOIA implementation and compliance with statute. The Division Chief for M/MS/IRD serves as the FOIA Public Liaison Officer and is responsible for making final release determinations. The FOIA Team Lead is the principal operations officer within USAID for processing FOIA requests and oversees FOIA team members, who are responsible for processing requests, reviewing records, and transmitting final releases when authorized under FOIA. Each USAID bureau, independent office, and mission has designated a FOIA Liaison Officer (FLO) or Regional Legal Advisor (RLA) responsible for monitoring the processing of all FOIA requests assigned by M/MS/IRD, coordinating all of the records received, and sending copies to M/MS/IRD. When necessary, the Office of the General Counsel's Office of Ethics and Administration (GC/EA) provides legal advice on matters regarding or resulting from the FOIA and advises on release and denial decisions.

It is the policy of USAID that information about its missions and operations be freely available to the public except for those records that are protected from disclosure by any of the nine exemptions or three exclusions established by Congress. After receiving a request either in writing, by fax, or email, M/MS/IRD initiates a search under FOIA for records by tasking its bureaus, independent offices, and/or missions via the FLO or RLA to search for potentially responsive records, whether they exist in paper or electronic form. When a FOIA request involves former or current employees, a notification is sent to the affected personnel, and the Bureau for Management's Office of the Chief Information Officer (M/CIO) conducts an electronic records search. For all FOIA requests, M/MS/IRD solicits release recommendations from the FLO or the RLA concerning foreseeable harm if a record (or parts of a record) is released. According to USAID personnel we interviewed, recommendations must not be speculative, but rather based on specific concerns. USAID bureaus, independent offices, and missions are permitted to engage in an internal vetting or clearance process pertaining to release recommendations. All internal reviews and clearances, however, must be accurately captured in

the release recommendation transmitted to M/MS/IRD. Routinely, M/MS/IRD collaborates with GC/EA's FOIA backstop attorney advisor on identified concerns to ensure a legally sufficient release in accordance with FOIA; that is, one that can be sustained on appeal or in litigation.

Results of our Review

Based on our review of policies and procedures governing the Agency's FOIA process and interviews with the Agency's FOIA Public Liaison Officer and team members,² we did not find any unjustifiable involvement of non-career officials in the FOIA process at USAID for the period of January 1, 2007, to the present.

Although the current Chief FOIA Officer is a non-career official, her role, as defined by policy, is to ensure efficient FOIA implementation at USAID and compliance with related requirements. According to interviews with FOIA staff, the Chief FOIA Officer is not involved in the day-to-day processing of requests, but provides oversight, facilitates communication, and represents the Agency with regard to FOIA. For example, several interviewees stated that the Chief FOIA Officer ensures M/MS/IRD is properly staffed and resourced; serves as the liaison between M/MS/IRD and senior leadership in communicating about FOIA matters, such as sending e-search notifications when the Administrator, Deputy Administrator, Assistant Administrators, or Mission Directors are affected; and advocates for M/MS/IRD when necessary.

Additionally, FOIA staff members interviewed were asked whether they were aware of any involvement by other non-career officials in a FOIA request, such as the Administrator, Deputy Administrator, and/or Assistant Administrators. While half of the respondents said that they were aware of some involvement, upon further questioning we determined that the non-career officials' roles were either as the requestor of USAID records or as participants in the internal vetting and clearance process that all bureaus, independent offices, and missions are permitted to engage in pertaining to release recommendations prior to submitting records to M/MS/IRD. Two interviewees noted that the internal vetting and clearance process by a particular bureau, which included the involvement of a non-career official, contributed to a delay in the Agency's final response. However, the interviewees attributed the delay to negotiations pertaining to release recommendations in which the bureau expressed concerns about the effects of releasing information on the physical safety of personnel and, despite delays resulting from negotiations, stated that all information was provided to the requestor.

FOIA officials cited a few circumstances in which a non-career official's involvement in response to a FOIA request was, in their view, reasonable: if the non-career official was the requestor of USAID records or if the non-career official was in possession of any records pertaining to the request, for example. In the case of the latter, oftentimes the non-career official is not involved in the search. Instead, the Chief FOIA Officer sends an e-search notification to the individual and a formal search is conducted by M/CIO. However, under USAID's policy, non-career personnel, like all affected personnel, may review the records and, as needed, provide release recommendations before records are released to the public.

² We interviewed 13 FOIA Team Members, including 7 direct-hire Government Information Specialists and 5 personal service contractor FOIA Analysts.

Conclusion

As a result of our review, we found that non-career personnel have a limited role in reviewing FOIA requests and responses within USAID. While non-career personnel are aware of specific FOIA requests as a result of their inherent roles and responsibilities, we did not find any evidence indicating that non-career personnel have a role in determining the Agency's final response to a FOIA request or unreasonably delaying the FOIA process. Rather, we found that the process establishes that all final release determinations are made by the FOIA Public Liaison Officer or designee. During our fieldwork, we found no evidence or cause to believe that non-career officials had compromised any FOIA activities or subjected any FOIA responses to any unnecessary delay or withholdings of information.

Sincerely,

A black rectangular redaction box covering the signature of Catherine M. Trujillo.

Catherine M. Trujillo
Acting Deputy Inspector General

Enclosure

cc: The Honorable Thomas R. Carper
Ranking Member

