



UNITED STATES DEPARTMENT *of* JUSTICE

Guidelines for 2014 Chief FOIA Officer Reports



President Obama's FOIA Memorandum

President Obama demonstrated his commitment to the ideals of transparency and openness by issuing a Memorandum calling on agencies to “renew their commitment to the principles embodied in FOIA.”



President Obama's FOIA Memorandum

The President directed all agencies to administer the FOIA with:

- a clear presumption in favor of disclosure,
- to ensure that requests are responded to in “a spirit of cooperation,”
- that disclosures are made timely, and
- that modern technology is used to make information available to the public even before a request is made.



Attorney General Holder's FOIA Guidelines

Attorney General Holder issued FOIA guidelines in 2009 which called on all agencies to reaffirm the government's "commitment to accountability and transparency."

The Attorney General strongly encouraged agencies to make discretionary disclosures of information and to consider making partial disclosures when full disclosures are not possible.⁴



Attorney General Holder's FOIA Guidelines

The Attorney General stressed the importance of agencies ensuring that they:

- have in place an effective system for responding to requests,
- make proactive disclosure of information,
- use technology, and
- respond to requests promptly.



Attorney General Holder's FOIA Guidelines

The Attorney General emphasized that
“[e]ach agency must be fully accountable for
its administration of the FOIA.”



Agency Accountability

The Attorney General directed agency Chief FOIA Officers to review “all aspects of their agencies’ FOIA administration” and to report each year to the Department of Justice on the steps taken “to improve FOIA operations and facilitate information disclosure.”



Agency Accountability

The first Chief FOIA Officer Reports were submitted in March 2010.

Agencies reported on a wide variety of initiatives, big and small, that had been undertaken across the government to improve transparency.



Agency Accountability

Office of Information Policy:

- Prepared an extensive summary of the Chief FOIA Officer Reports, and
- Issued guidance to agencies on steps they could take to achieve even greater transparency in the year ahead.



Summary of Agency Chief FOIA Officer Reports



United States Department of Justice
OFFICE OF INFORMATION POLICY

FOIA Post



SUMMARY OF AGENCY CHIEF FOIA OFFICER REPORTS WITH FINDINGS AND OIP GUIDANCE FOR IMPROVEMENT

Introduction

This Spring marked the first time that agencies submitted to the Department of Justice Chief FOIA Officer Reports describing the steps taken by each agency to improve FOIA operations and facilitate information disclosure. The Attorney General required submission of these reports as part of his new FOIA Guidelines issued on March 19, 2009. The Office of Information Policy (OIP) has conducted a comprehensive review of all ninety-four Chief FOIA Officer Reports and has prepared this summary. Included in the summary are OIP's findings and guidance to agencies on the next steps that should be taken so that even greater transparency can be achieved in the year ahead.

President Obama's FOIA Memorandum

In an unprecedented action that signaled his commitment to the ideals of transparency and openness, President Obama, on his first full day in office, issued a Memorandum to the heads of all Executive Branch Departments and agencies calling on them to "renew their commitment to the principles embodied in FOIA." The President directed all agencies to administer the FOIA with a clear presumption in favor of disclosure, to resolve doubts in favor of openness, and not to withhold information based on "speculative or abstract fears."



Agency Accountability

In March 2011, agencies submitted their second Chief FOIA Officer Reports highlighting particular initiatives that were emblematic of their efforts.



Agency Accountability

Office of Information Policy:

- Compiled and posted a summary of the agencies success stories
- Prepared an assessment of the cabinet agencies' compliance with the Attorney General's FOIA Guidelines



2010-2011 Agency FOIA Success Stories



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2010-2011 Agency FOIA Success Stories: Creating a Culture of Transparency

In the two years since the President issued his FOIA Memorandum directing agencies to apply a presumption of openness to all decisions involving the FOIA, agencies across the government have taken steps to create a more open and accountable government. Attorney General Holder's FOIA Guidelines underscored the President's commitment to open government and provided agencies with guidance on how to apply the presumption of openness. The Attorney General directed all agency Chief FOIA Officers to report each year to the Department of Justice on the steps that they had taken to improve transparency. This week marks the second year since the issuance of both the President's FOIA Memorandum and the Attorney General's FOIA Guidelines that agencies have submitted Chief FOIA Officer Reports to the Department of Justice. These reports outline the wide variety of initiatives, big and small, undertaken over the past year as agencies build upon the concrete steps taken last year to implement the President's directive. The 2011 Chief FOIA Reports reveal that a trend is emerging in the way agencies implement the FOIA, demonstrating that a new culture of transparency is taking hold. The below highlights, from the 2011 Chief FOIA Officer Reports of cabinet and other key agencies, are just some of the success stories that are emblematic of steps taken by all agencies to "renew their commitment to the principles embodied in the FOIA" and to achieve an unprecedented level of transparency.

Key Agency Highlights

Department of Agriculture (USDA): Meeting Public Demand Through Proactive Disclosures

- By making more information available to the public online, USDA's Animal and Plant Health Inspection Service (APHIS) drastically reduced the number of FOIA requests it received in 2010, slashing its incoming requests by 42% after posting a wide variety of agency reports, enforcement actions, and prior FOIA responses.
- USDA's APHIS reduced its overall backlog of FOIA requests by almost 43% from 2009.
- USDA's Farm Service Agency (FSA) followed suit, posting electronic payment information for its farm programs and making it available for download at no charge.





Agency Accountability

In March 2012 and March 2013, agencies continued to submit their Chief FOIA Officer Reports reporting on initiatives undertaken to improve their administration of the FOIA.



Agency Accountability

Office of Information Policy:

- In both 2012 and 2013 prepared an assessment of all 99 agencies and summary of the Chief FOIA Officer Reports, and
- Issued guidance to agencies for further improvement



Agency Accountability

OIP Guidance for Further Improvement:

- 2012: the importance of utilizing advanced technology to process requests, the need to employ multiple processing tracks, and the significance of closing the ten oldest pending requests and appeals each year
- 2013: focus on providing quality FOIA training to staff, improving processing times for simple track requests, and to continue making it a priority to close their ten oldest pending requests, appeals, and consultations.



Agency Accountability

2014 Assessment of Agency Progress:

- OIP intends to expand its scoring system from the three stoplight colors (green, yellow, and red) used in previous assessments to five scores
- For each agency OIP will also assess a score for each topical area as well as an overall score for the agency



Agency Accountability

2014 Assessment of Agency Progress:

- These changes will allow more differentiation to be made and should enhance the value of the assessment
- Because the answers provided in the Chief FOIA Officer Reports form the basis for much of the assessment, agencies are encouraged to provide any additional information that explains the reason for a given answer, when appropriate



Assessment of Federal Departments and Agencies



2013 Chief FOIA Officer Reports
Assessment of Federal Departments and Agencies

U.S. Department of Justice
Office of Information Policy

Agency	Section I: Applying the Presumption of Openness				Section II: Effective Systems for Responding to Requests			Section III: Increasing Proactive Disclosures		Section IV: Utilization of Technology (Tech.)		Section V: Reducing Backlogs & Improving Timeliness in Responding to Requests (Req.) and Appeals (App.)								
	Conducted or Attended FOIA Training or Conferences	Made Discretionary Disclosures of Information	High Release Rate for Req. Processed for Disclosure		FOIA Staff Has Sufficient IT Support	FOIA Staff Works with Open Gov. Team	Taken Steps to Assess if there is Adequate Staffing	Taken Steps to Make Website More Useful to Public	Added New Material to Website	Offers Ability to Make FOIA Requests Electronically	Utilizing Advanced Tech. to Increase FOIA Efficiency	Processed Simple Req. in 20 Working Days or Less			Agency Decreased Number of Backlogged:		Closed All Ten Oldest Req. & App. If not, # closed in FY 2012			
			Score	Release Rate								Simple Track Y/N:	Score	Avg. No. of Days	Req.	App.	Req. Y/N:	If no, # closed	App. Y/N:	If no, # closed
ACUS	●	●	●	100.0%	●	●	●	●	●	●	●	Y	●	2	●	●	●	N/A	●	N/A
ABMC	●	●	●	100.0%	●	●	●	●	●	●	●	N	●	13	●	●	●	N/A	●	N/A
Amtrak	●	●	●	86.6%	●	●	●	●	●	●	●	Y	●	7.87	●	●	●	N/A	●	N/A
AFRH	●	●	●	75.0%	●	●	●	●	●	●	●	Y	●	111	●	●	●	N/A	●	N/A
FRB	●	●	●	91.4%	●	●	●	●	●	●	●	Y	●	3	●	●	●	5/10	●	0/1
BBG	●	●	●	91.3%	●	●	●	●	●	●	●	N	●	N/A	●	●	●	N/A	●	N/A
CIA	●	●	●	41.4%	●	●	●	●	●	●	●	Y	●	32	●	●	●	2/10	●	0/10
CSB	●	●	●	65.5%	●	●	●	●	●	●	●	Y	●	17	●	●	●	7/10	●	N/A
CPPBSD	●	●	●	100.0%	●	●	●	●	●	●	●	Y	●	9.5	●	●	●	N/A	●	N/A
CFTC	●	●	●	90.8%	●	●	●	●	●	●	●	Y	●	46.52	●	●	●	8/10	●	1/2
CNCS	●	●	●	97.4%	●	●	●	●	●	●	●	Y	●	29	●	●	●	4/5	●	N/A
CIGIE	●	●	●	100.0%	●	●	●	●	●	●	●	Y	●	13	●	●	●	N/A	●	N/A



Topics to Be Addressed in 2014 Chief FOIA Officer Reports

OIP is responsible for providing guidance to agencies on the timing and content of agency Chief FOIA Officer Reports to the Attorney General.



Topics to Be Addressed

For 2014, while the overall topics remain the same, the five key areas contain a few more targeted elements that should be addressed.



Topics to Be Addressed

The five key areas:

1. The steps taken to apply the presumption of openness;
2. The steps taken to ensure that the agency has an effective system in place for responding to requests;
3. The steps taken to increase proactive disclosures;



Topics to Be Addressed

The five key areas (continued):

4. The steps taken to greater utilize technology; and
5. The steps taken to improve timeliness in responding to requests and reduce backlogs



Topics to Be Addressed

Additional Areas:

- Report whether your agency used an exclusion during Fiscal Year 2013, and if so, provide the total number of times
- Include a transparency success story that your agency would like to highlight



Format of 2014 Chief FOIA Officer Reports

For decentralized agencies, the Report should be organized by the five topical areas and include within each key area, data and examples for the various components.



Content of 2014 Chief FOIA Officer Reports

Time Frame For Report

The general reporting period for the Chief FOIA Officer Reports is **March 2013** to **March 2014**.



Content of 2014 Chief FOIA Officer Reports

I. Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.



I. Steps Taken to Apply the Presumption of Openness

Describe steps taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.



I. Steps Taken to Apply the Presumption of Openness

Training

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?



I. Steps Taken to Apply the Presumption of Openness

Training (continued)

2. If so, provide the number of conferences or trainings held, a brief description of the topics covered and an estimate of the number of participants from your agency who were in attendance. *(new question for 2014)*
3. Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?



I. Steps Taken to Apply the Presumption of Openness

Training (continued)

4. Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period. *(new question for 2014)*



I. Steps Taken to Apply the Presumption of Openness

Training (continued)

OIP has issued guidance that every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year.

5. Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015.
(new question for 2014)

- Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training.



I. Steps Taken to Apply the Presumption of Openness

New Section for 2014: Outreach

6. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement.



I. Steps Taken to Apply the Presumption of Openness

Discretionary Disclosures

Attorney General Holder's FOIA Guidelines strongly encouraged agencies to make discretionary releases of information, and OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.



I. Steps Taken to Apply the Presumption of Openness

Discretionary Disclosures (continued)

7. Does your agency have a formal process in place to review records for discretionary release. If so, please briefly describe this process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases. *(new question for 2014)*
8. During the reporting period did your agency make any discretionary releases of otherwise exempt information?



I. Steps Taken to Apply the Presumption of Openness

Discretionary Disclosures (continued)

9. What exemptions would have covered the information that was released as a matter of discretion?
10. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.
11. If your agency was not able to make any discretionary releases of information, please explain why.
(new question for 2014)



I. Steps Taken to Apply the Presumption of Openness

Other Initiatives

12. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014. (*new question for 2014*)



Content of 2014 Chief FOIA Officer Reports

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

As the Attorney General emphasized in his FOIA Guidelines, “[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests.”



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

Describe steps taken to ensure that your agency system for responding to requests is effective and efficient.



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

New Section for 2014: Personnel

1. Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series?
2. If not, what proportion of personnel has been converted to the new job series?
3. If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted?



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

New Section for 2014: Processing Procedures

4. For Fiscal Year 2013, did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.
5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective?



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

New Section for 2014: Requester Services

6. Do you use e-mail or other electronic means to communicate with requesters when feasible?
7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS)?



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

8. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc.



Content of 2014 Chief FOIA Officer Reports

III. Steps Taken to Increase Proactive Disclosures

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.



III. Steps Taken to Increase Proactive Disclosures

Describe steps taken to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures.



III. Steps Taken to Increase Proactive Disclosures

Posting Material

1. Do your FOIA professionals have a system in place to identify records for proactive disclosures? *(new question for 2014)*
2. If so, describe the system that is in place. *(new question for 2014)*



III. Steps Taken to Increase Proactive Disclosures

Posting Material (continued)

3. Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.



III. Steps Taken to Increase Proactive Disclosures

Making Posted Material More Useful

4. 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, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities on the site, creating mobile applications, providing explanatory material, etc.?



III. Steps Taken to Increase Proactive Disclosures

Making Posted Material More Useful (continued)

5. If so, provide examples of such improvements.
6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized? (*new question for 2014*)
7. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are. (*new question for 2014*)



III. Steps Taken to Increase Proactive Disclosures

8. Describe any other steps taken to increase proactive disclosures at your agency.



Content of 2014 Chief FOIA Officer Reports

IV. Steps Taken to Greater Utilize Technology

A key component of the President's FOIA Memorandum was the direction to “use modern technology to inform citizens about what is known and done by their Government.”



IV. Steps Taken to Greater Utilize Technology

Online tracking of FOIA requests

1. Can a FOIA requester track the status of his/her request electronically?
2. If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums? (*new question for 2014*)



IV. Steps Taken to Greater Utilize Technology

Online tracking of FOIA requests (continued)

3. Describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.



IV. Steps Taken to Greater Utilize Technology

Online tracking of FOIA requests (continued)

4. In particular, does your agency tracking system provide the requester with an estimated date of completion for his or her request?
5. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability?



IV. Steps Taken to Greater Utilize Technology

Use of technology to facilitate processing of requests

6. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?
7. If so, describe the technological improvements being made.



IV. Steps Taken to Greater Utilize Technology

*Use of technology to facilitate processing of requests
(continued)*

8. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program?
(new question for 2014)



Content of 2014 Chief FOIA Officer Reports

V. Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests.



V. Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

Simple Track Requests

1. Refer to Section VII.A of your Annual FOIA Report for figures on FOIA Requests – Response Time for All Processed Requests
 - a. Does your agency utilize a separate track for simple requests?
 - b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?
 - c. If your agency does not track simple requests separately, was the average number of days to process non-expedited₅₈ requests twenty working days or fewer?



V. Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

Backlogs

2. Refer to Section XII. A of your Fiscal Year 2012 and 2013 Annual FOIA Report for figures on backlogged requests/appeals.
 - a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012?
 - b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year -2012?



V. Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

Ten Oldest Requests

2. Refer to Section VII.E. of your Fiscal Year 2012 and 2013 Annual FOIA Report for figures on your ten oldest requests
 - c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?
 - d. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year.
(new question for 2014)



V. Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

Ten Oldest Appeals

2. Refer to Section VI.C.(5) of your Fiscal Year 2012 and 2013 Annual FOIA Report for figures on your ten oldest appeals
 - e. In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?
 - f. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year.
(new question for 2014)



V. Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

New Section for 2014: Ten Oldest Consultations

2. Refer to Section XII.C. of your Fiscal Year 2012 and 2013 Annual FOIA Report for figures on your ten oldest consultations
 - g. In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012?
 - h. If no, please provide the number of these consultations your agency did close.



V. Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

3. If you answered “**no**” to any question in “item 2,” answer the following questions and include any additional explanation:

Request and/or Backlog:

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals?
- b. Was the lack of reduction in the request and/or appeal backlog caused by a loss of staff?



V. Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

3. If you answered “**no**” to any question in “item 2,” answer the following questions and include any additional explanation:

Request and/or Backlog:

- c. Was the lack of a reduction in the request and/or appeal backlog caused by an increase in the complexity of the requests and/or appeals received?
- d. What other causes, if any, contributed to the lack of a decrease in the request and/or appeal backlog?



V. Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

New Section for 2014: “Ten Oldest” Not Closed

- e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012.
- f. If your agency was unable to close any of its ten oldest requests or appeals because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.



V. Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

New Section for 2014: Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations, and Reducing Backlogs

4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2014.
5. If your agency had a backlog of more than 1,000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency’s plan for achieving backlog reduction in the year ahead.



V. Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

Interim Responses

OIP issued guidance encouraging agencies to make interim releases on requests that involve a voluminous amount of material or require searches in multiple locations.

6. Does your agency have a system in place to provide interim responses to requesters when appropriate?
7. If your agency had a backlog in Fiscal Year 2013, provide an estimate of the number of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.



Use of FOIA's Law Enforcement "Exclusions"

Answer the following questions concerning the use of the FOIA's statutory law enforcement exclusions, 5 U.S.C. § 552(c)(1), (2), (3):

1. Did your agency invoke a statutory exclusion during Fiscal Year 2013?
2. If so, what was the total number of times exclusions were invoked?



Spotlight on Success

Describe at least one success story that you would like to highlight as emblematic of your agency's efforts to increase transparency and improve administration of the FOIA.



Deadlines for Submitting 2014 Chief FOIA Officer Reports

- Departments must submit a draft of their Chief FOIA Officer Report to OIP for review by **no later than January 17, 2014.**
- All other agencies must submit a draft of their Chief FOIA Officer Report to OIP by **no later than February 17, 2014.**



Deadlines for Submitting 2014 Chief FOIA Officer Reports

- The drafts should be submitted by e-mail to DOJ.OIP.FOIA@usdoj.gov. The subject line should read: Draft [insert agency name] Chief FOIA Officer Report.
- Each agency should post its Chief FOIA Officer Report on its website **by March 10, 2014.**