

2017 Chief FOIA Officer Report

National Archives and Records Administration

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Section 1: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's FOIA Memorandum and the DOJ's 2009 FOIA Guidelines is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

A. FOIA Training

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

Answer: Yes.

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

Answer: NARA FOIA professionals attended the Department of Justice's *The Freedom of Information Act for Attorneys and Access Professionals*, various training programs sponsored by the American Society of Access Professionals (ASAP), and FOIA/Privacy Training program organized by the International Association of Privacy Professionals (IAPP). The topics covered included fee waivers, privacy balance test, proper administrative record keeping, dispute resolution, and timeliness of response.

3. 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: 80%

4. 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: NARA attained 80% - However, NARA’s FOIA Council is in the process of assessing FOIA training programs. The training intended will include webinars for those staff not in the headquarters area.

B. Outreach

5. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA?

Answer: Yes. The Archivist of the United States (“Archivist”) requested the continuation of the Freedom of Information Act (“FOIA”) Advisory Committee (“Committee”) in 2016 to advise on improvements to the FOIA and study the current FOIA landscape across the Executive Branch. The Committee is subject to the Federal Advisory Committee Act, and allows the public an opportunity to ask questions.

(See <https://ogis.archives.gov/foia-advisory-committee.htm>)

The Archivist and the General Counsel/Chief FOIA Officer have regular meetings with representatives of the requester community to discuss issues related to access to records at the National Archives, including access through the FOIA.

The General Counsel/Chief FOIA Officer and an archivist from the Presidential Materials Staff spoke at the Privacy and Confidentiality Roundtable at the Society of American Archivists.

“Know Your Records” presentation on FOIA at NARA (see: [https://youtu.be/ - BvsaK8GaQ?list=PLC641EF0E3F8AFDF9](https://youtu.be/-BvsaK8GaQ?list=PLC641EF0E3F8AFDF9))

6. If you did not conduct any outreach during the reporting period, please describe why.

Answer: N/A – See above.

C. Other Initiatives

7. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA.

Answer: The Office of General Counsel and the Office of Research Services conducted multiple webinars for those NARA employees who are not in the Washington Capital region with a focus on the application of FOIA exemptions in archival collections. This training is available to all NARA staff through an internal agency webpage. The two offices also gave four presentations for the public, volunteers and NARA staff regarding an overview of the FOIA and the many ways the FOIA intersects with the mission of the agency. These presentations are available online through the “Know Your Records” program (see <http://www.archives.gov/calendar/know-your-records/>).

The Office of General Counsel is expanding an internal knowledge repository for FOIA related information, e.g., court opinions, white papers, etc.

8. 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: Through its core statutory mission, NARA makes the vast majority of its archival records available to the public without having to make FOIA requests. Furthermore, due to the age of most of the records in the National Archives, NARA routinely makes discretionary releases in the processing of

any access requests to our archival holdings. NARA's holdings are described in the National Archives Catalog (see <http://www.archives.gov/research/catalog/>).

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

The DOJ's 2009 FOIA Guidelines emphasized that "[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." It is essential that agencies effectively manage their FOIA program.

Please answer the following questions to describe the steps your agency has taken to ensure that the management of your FOIA program is effective and efficient. You should also include any additional information that that describes your agency's efforts in this area.

A. Processing Procedures

1. For Fiscal Year 2016, 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 2016 Annual FOIA Report.

Answer: 2.06

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, 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

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report data, using active workflows and track management, reviewing and updating processing procedures, etc.

Answer: Yes. The Office of General Counsel conducted an assessment of the Operational FOIA and Appeals programs in their office, which included workflow analysis, triage of open cases, and case assignment based on specific FOIA types (simple or complex). This resulted in an improvement of response times for all cases.

4. Please provide an estimate of how many requests your agency processed in Fiscal Year 2016 that were from commercial use requesters. If your agency is decentralized, please identify any components within your agency that received a majority of their requests from commercial use requesters.

Answer: Eight. (Note, however, that NARA is not able to track requests from commercial users that do not involve charging FOIA fees.)

B. Requester Services

5. Does your agency provide a mechanism for requesters to provide feedback about their experience with the FOIA process at your agency? If so, please describe the methods used, such as making the FOIA Public Liaison available to receive feedback, using surveys posted on the agency's website, etc.

Answer: Yes. NARA posts the contact information of all offices that process FOIAs at <https://www.archives.gov/foia/contacts.html>.

6. 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 how often requesters sought assistance from your agency's FOIA Public Liaison.

Answer: Approximately 45 times

7. The FOIA Improvement Act of 2016 requires agencies to make their reference material or guide for requesting records or information from the agency electronically available to the public. Please provide a link to your agency's FOIA reference guide.

Answer: <https://www.archives.gov/foia/foia-guide.html>

C. Other Initiatives

8. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as improving search processes, eliminating redundancy, etc., please describe them here.

Answer: The Chief FOIA Officer has continued the NARA FOIA Council meetings on a monthly basis, and has included various guest speakers from around the agency to brief the Council on their office's duties, and to ask questions of the FOIA Council.

Section III: Steps Taken to Increase Proactive Disclosures

Both the President's and DOJ's FOIA memoranda focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

A. Posting Material

1. Describe your agency's process or system for identifying "frequently requested" records that should be posted online.

Answer: The Office of General Counsel FOIA team monitors its FOIA log for requests for operational records on a regular basis to determine if there are additional sets of records that should be posted on our reading room (see <http://www.archives.gov/foia/electronic-reading-room.html>). NARA's archival holdings continue to be processed according to our Strategic Goal (see <http://www.archives.gov/digitization/strategy.html>) to digitize our holdings for greater access to the public.

2. Does your agency have a distinct process or system in place to identify other records for proactive disclosure? If so, please describe your agency's process or system.

Answer: No. Because the mission of the National Archives has always been to release records to the public, even predating the FOIA, and because most of NARA's archival records are open and available to the public without the need to use FOIA, there is not a distinct process in place to identify additional records for disclosure.

3. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?

Answer: Yes. Due to the massive volume of our archival records, we are only able to digitize a limited percentage.

4. If so, briefly explain those challenges and how your agency is working to overcome them.

Answer: In accordance with NARA's Digitization Strategy, NARA is digitizing our holding using a five-prong approach: Partnerships, Crowd Sourced Digitization, Agency Transfers, Culture of Digitization, and NARA Digitization Projects. (See <http://www.archives.gov/digitization/pdf/digitization-strategy-2015-2024.pdf>)

5. Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material

Answer:

Prior to the multiple FOIA requests for records regarding Merrick Garland, the Special Access and FOIA staff searched, processed and posted records in anticipation of the President submitting Mr. Garland's name for the vacant Supreme Court position.

https://catalog.archives.gov/search?q=*.garland&f.ancestorNalids=1402143

Update on NARA's Activities and Communications Related to Email Management at the Department of State <https://www.archives.gov/press/press-releases/2016/nr16-29.html>

Financial Crisis Inquiry Commission Records <https://www.archives.gov/press/press-releases/2016/nr16-45.html>

6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe these efforts.

Answer: Yes. NARA engages the public on 13 digital engagement platforms, including Flickr, Foursquare, Facebook, Twitter, Youtube, Blogs, Tumblr, iTunes U, Google+, Instagram, Giphy, GitHub, Instagram, Storify, and Pinterest. For additional information regarding our social media content, statistics, and strategy, please see <http://www.archives.gov/social-media>.

B. Other Initiatives

7. If there are any other steps your agency has taken to improve proactive disclosures, please describe them here. For example, has your agency engaged requesters in determining how and what to post? Has your agency used web analytics to inform your proactive disclosures?

Answer: N/A

Section 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." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that that describes your agency's efforts in this area.

A. Making Material Posted Online More Useful

1. 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

2. If yes, please provide examples of such improvements.

Answer: The public's access to our holdings and the information about these holdings is accomplished through the online NARA Catalog. The Catalog allows the public to participate directly in contributing information about the holdings as a way to improve accessibility of our records. Crowd sourcing of digitization and metadata creation is critical to our success in making access happen.

Furthermore, in early FY 2016 the National Archives launched the History Hub. History Hub is a pilot crowdsourcing platform sponsored by the [National Archives](#). It is a place to share information, work together, and find people based on their experience and interests. Experts from the National Archives as well as other experts, history enthusiasts, and citizen archivists are available to help with your research.

3. Have your agency's FOIA professionals interacted with other agency staff (such as technology specialists or public affairs or communications professionals) in order to identify if there are any new ways to post agency information online?

Answer: Yes. NARA's Web Program and Social Media presence is operated, monitored and regulated by the Office of Innovation. All content that will be posted to NARA's Catalog or Social Media outlets must meet the requirements produced by this office, so therefore all FOIA professionals work closely with that office.

B. Use of Technology to Facilitate Processing of Requests

4. Did your agency conduct training for FOIA staff on any new processing tools during the reporting period, such as for a new case management system, or for search, redaction, or other processing tools?

Answer: No

5. 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? If yes please describe:

The technological improvements being made.

The impact of using these technologies on your agency's request processing.

Answer: No

6. Are there additional tools that could be utilized by your agency to create further efficiencies?

Answer: N/A

C. Other Initiatives

7. Did your agency successfully post all four quarterly reports for Fiscal Year 2016?

Answer: No. (See <http://www.archives.gov/foia/reports/quarterly.html>)

8. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2017.

Answer: During FY 2016, NARA inadvertently failed to upload the Quarterly FOIA Report. An automatic calendar announcement has been implemented so that reporting will be timely in the future.

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs

The President's FOIA Memorandum and the DOJ's 2009 FOIA Guidelines have emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations.

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2016 Annual FOIA Report and, when applicable, your agency's 2015 Annual FOIA Report.

A. Simple Track

Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

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

Answer: Yes

2. If so, for your agency overall in Fiscal Year 2016, was the average number of days to process simple requests twenty working days or fewer?

Answer: 11.5 days

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2016 that were placed in your simple track.

Answer: 97.5%

4. 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

B. Backlogs

Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2015 and Fiscal Year 2016 when completing this section of your Chief FOIA Officer Report.

BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015? If not, explain why and describe the causes that contributed to your agency not being able reduce its backlog.

Answer: NARA's backlog decreased.

6. If not, 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.

Any other reasons – please briefly describe or provide examples when possible.

Answer: N/A

7. 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 2016.

Answer: 5.8%

BACKLOGGED APPEALS

8. If your agency had a backlog of appeals at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015? If not, explain why and describe the causes that contributed to your agency not being able reduce backlog.

Answer: NARA's backlog increased

9. If not, 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.

Any other reasons – please briefly describe or provide examples when possible.

Answer: The Office of General Counsel, which supports NARA's appellate authority, was understaffed for several months during the past fiscal year. Furthermore, the appeal backlog increased because NARA has now become the appeal authority for FOIA requests of archival records that contain classified national security information instead of the agency with the classification equity. NARA does not have authority to declassify the information contained in our classified holdings. All FOIA requests that involve classified material require consultation with the creating/originating agency, and often with multiple other agencies/components. This process inevitably adds to the number of days needed for the review and processing of appeals for the withholding of classified information.

10. 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 2016. If your agency did not receive any appeals in Fiscal Year 2016 and/or has no appeal backlog, please answer with "N/A."

Answer: 161%

C. Backlog Reduction Plans

11. In the 2016 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2015 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 2016?

Answer: The Chief FOIA Officer submitted a report to NARA's senior management concerning NARA's FOIA backlog, which recommended increased resources for FOIA staff and upgraded IT systems. During FY 16, NARA managed to reduce our backlog from 4,396 to 2,932.

12. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2016, what is your agency's plan to reduce this backlog during Fiscal Year 2017?

Answer: NARA's backlog reduction plan will likely require additional staff to work FOIAs. NARA continues to maintain our goal to reduce the FOIA backlog by a minimum of 10% per year.

D. Status of Ten Oldest Requests, Appeals, and Consultations

Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2015 and Fiscal Year 2016 when completing this section of your Chief FOIA Officer Report.

TEN OLDEST REQUESTS

13. In Fiscal Year 2016, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

Answer: Yes

14. 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 2015 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

Answer: N/A

15. Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?

Answer: Therein all three instances a large percentage of documents had already been released to the requester(s).

TEN OLDEST APPEALS

16. In Fiscal Year 2016, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

Answer: No.

17. 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 VI.C.(5) of your Fiscal Year 2015 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

Answer: Three. 2013-08-23; 2014-01-23; and 2014-03-24.

TEN OLDEST CONSULTATIONS

18. In Fiscal Year 2016, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

Answer: N/A

19. 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 2015 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Answer: N/A

E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans

20. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2015.

Answer: NARA will continue its efforts to contact those originating agencies that possess the classification equities and press them to complete the declassification review of the remaining records responsive to each appeal, including by contacting the Chief FOIA Officer of each agency. The Office of

General Counsel, which supports the Deputy Archivist's appellate responsibilities, has added an additional archivist, and hopes to add a government information specialist (GIS) to the staff, which should help reduce the appeal backlog.

21. If your agency was unable to close any of its ten oldest requests 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.

Answer: N/A

22. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2017.

Answer: NARA will continue its efforts to contact those originating agencies that possess the classification equities and press them to complete the declassification review of the remaining records responsive to each request, including by contacting the Chief FOIA Officer of each agency.

F. Interim Responses

23. Does your agency have a system in place to provide interim responses to requesters when appropriate? See OIP Guidance, "The Importance of Good Communication with FOIA Requesters." (Mar. 1, 2010)

Answer: Yes

24. If your agency had a backlog in Fiscal Year 2016, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

Answer: 65%

G. Success Stories

Out of all the activities undertaken by your agency since March 2016 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas. As noted above, these agency success stories will be highlighted during Sunshine Week by OIP. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

Answer:

In June of 2015 leadership of the National Personnel Records Center) met with representatives from the National Employment Opportunity Network (NEON) . Members from this organization are responsible for processing paperwork to support the Work Opportunity Tax Credit (WOTC). Under this program, employers receive tax credit for hiring veterans. To qualify for this program, employers need to verify that the employee served in the military. As a result, there are a number of requests generated by

NEON members each year and sent to the NPRC. During the it was agreed that implementing a standardized template for requesting this information under the Freedom of Information Act would improve the cycle time and the likelihood of identifying a responsive record. NPRC leadership worked with staff and NEON to develop and deploy a standardized request form. In addition, the leadership at NEON worked with their members to conduct training and promote the use of the template for FOIA requests in support of the WOTC. As a result of these efforts, the volume of FOIA requests generated by members of NEON increased significantly in 2016. However, thanks to our partnership, we were able to process the vast majority of these requests well ahead of the 20-day requirement. The increase in FOIAs can be seen in the 2016 Annual Report.