

CHIEF FOIA OFFICER REPORT TO THE ATTORNEY GENERAL
COUNCIL ON ENVIRONMENTAL QUALITY

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March 9, 2015



Section 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.

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.

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? Such training or events can include offerings from OIP, your own agency or another agency or organization.**

Yes, the Chief FOIA Officer/FOIA Public Liaison attended FOIA trainings held by OIP.

Consistent with previous years, all new Council on Environmental Quality (CEQ) entrants – interns, clerks, detailees, and staff – are required to attend training within 30 days of their start date. This training instructs new entrants on their obligations under the FOIA and the Federal Records Act. The training also covers the January 21, 2009, President's FOIA Memorandum, the 2009 Attorney General's FOIA Guidelines, and the presumption of openness. Also, long-term employees must attend an annual refresher training which reiterates CEQ's FOIA obligations and the presumption of openness.

Personnel who work on FOIA issues have reviewed the President's FOIA Memorandum and the Attorney General's FOIA Guidelines. Given CEQ's relatively small size, CEQ provides targeted in-person training and legal counseling to all CEQ staff, detailees, interns, and clerks who help process incoming FOIA requests and consultations.

- 2. Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.**

An estimate of the percentage of CEQ's FOIA professionals who attended substantive FOIA training during this reporting period is 100%.

- 3. In the 2014 Chief FOIA Officer Report Guidelines, OIP asked agencies to provide a plan for ensuring that core, substantive FOIA training is offered to all agency FOIA professionals at least once each year. Please provide the status of your agency's implementation of this plan. Include any successes or challenges your agency has seen in implementing your plan.**

CEQ actively incorporates best practices and guidance for receiving, processing, and responding to FOIA requests into its FOIA administration. Also, in the reporting period, CEQ provided targeted training and legal counseling to the CEQ staff, detailees, and clerks who helped process incoming FOIA requests and consultations with other agencies on their FOIA requests. To enhance training efforts and overall FOIA administration, CEQ has developed a FOIA manual to comprehensively outline internal FOIA procedures and periodically updates this manual to keep abreast of FOIA administration best practices across the Federal Executive Branch.

Discretionary Releases:

- 4. Does your agency have a distinct process or system 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 of your agency have such a process or system in place?**

CEQ conducts a line-by-line review of material proposed for redaction and makes discretionary releases in the furtherance of transparency and openness, when appropriate. CEQ also actively works with requesters to right size the scope of certain broad requests in order to balance CEQ's resources with the information needs of requesters.

- 5. During the reporting period did your agency make any discretionary releases of otherwise exempt information?**

Yes, CEQ did make discretionary releases of otherwise exempt information during the reporting period.

- 6. What exemption(s) would have covered the information released as a matter of discretion? For a discussion of the exemptions that allow for discretionary releases, please see OIP's guidance on implementing the President's and Attorney General's FOIA Memoranda.**

The exemption that would have covered parts of the information that was released as a matter of discretion in Fiscal Year 2014 is exemption 5 U.S.C. § 552b(5), the exemption that applies to interagency or intra-agency communications. CEQ rarely relies on exemptions other than 5 U.S.C. § 552b(5) or b(6).

- 7. Provide a narrative description, as well as some specific examples, of the types of information that your agency released as a matter of discretion during the reporting year.**

Information that CEQ released as a matter of discretion includes certain communications contained in emails between agency or interagency officials that were otherwise subject to a privilege claim under 5 U.S.C. § 552b(5).

- 8. If your agency was not able to make any discretionary releases of information, please explain why.**

This question is inapplicable because CEQ did make discretionary releases during Fiscal Year 2014.

Other Initiatives:

- 9. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here. If any of these initiatives are online, please provide links in your description.**

When possible, CEQ directs FOIA requesters to the information they seek when such information is not contained within agency records subject to disclosure under FOIA. Also, CEQ periodically makes proactive disclosures and discretionary releases to further transparency and apply the presumption of openness.

Section 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." 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 your 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.

Processing Procedures:

- 1. For Fiscal Year 2014, 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 2014 Annual FOIA Report. Please note here if your agency did not adjudicate any requests for expedited processing during Fiscal Year 2014.**

During Fiscal Year 2014, CEQ maintained an average of 6.8 days for adjudicating requests for expedited processing.

- 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.**

This question is in applicable because CEQ did maintain an average of ten or less calendar days to adjudicate requests for expedited processing.

Requester Services:

- 3. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at the National Archives and Records Administration? See OIP Guidance, "Notifying Requesters of the Mediation Services Offered by OGIS." (July 9, 2010)**

CEQ notifies requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA in response letters, when appropriate.

- 4. When assessing fees, does your agency provide a breakdown of how FOIA fees were calculated and assessed to the FOIA requester? For example, does your agency explain the amount of fees attributable to search, review, and duplication? See OIP Guidance, "The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications." (Nov. 22, 2013)**

When assessing fees, CEQ would provide a breakdown of how FOIA fees were calculated and assessed to the requester. A fee estimate that itemizes an estimate of search, review, and/or duplication costs, and the estimated number of hours expected to be spent on these categories would be provided to each requester to whom fees have been assessed. CEQ does not often assess fees, but reserves the right to do so under FOIA.

- 5. If estimated fees estimates are particularly high, does your agency provide an explanation for the estimate to the requester? See id.**

If estimated fees were particularly high, CEQ would provide an explanation for the estimate to the requester.

Other Initiatives:

- 6. If there are 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., please describe them here.**

In 2014, CEQ conducted a self-assessment to improve FOIA processing efficiency and to improve search processes. Additionally, CEQ has implemented new search procedures and information technology tools to ensure adequacy, accuracy, and efficiency of searches.

Section 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.

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.

Posting Material:

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

Yes. CEQ does have a system in place to identify records for proactive disclosure. CEQ maintains guidance on proactive disclosures and categorical areas that can be considered for proactive disclosure such as information on FOIA resources, FOIA responses, FOIA requests, CEQ historical documents, and environmental laws and regulations.

- 2. Does your process or system involve any collaboration with agency staff outside the FOIA office? If so, describe this interaction.**

Yes. The Chief FOIA Officer works with legal and policy staff to identify and review records eligible for proactive disclosure. Also, the interagency consultation process is utilized, if necessary.

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

CEQ periodically determines which information is commonly requested and considers whether the subject matter(s) are appropriate for proactive disclosures.

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

Examples of proactive disclosures by CEQ during Fiscal Year 2014 include providing additional information regarding facilities-related charges when no records were found in response to a requester who sought copies of contracts with service providers and posting a 2014 FOIA log, which is a frequently requested document under FOIA. Additionally, for misdirected requests, CEQ frequently provides suggestions to requesters of where they may be able to find the information.

Other Initiatives:

- 5. If there are any other steps your agency has taken to increase proactive disclosures, please describe them here.**

CEQ posts proactive disclosures and solicits comments through its website. CEQ also maintains an online reading room where it posts and updates agency reports, publications, and documents frequently requested under FOIA. The site also contains historical materials such as the legislative history of NEPA and CEQ's past annual reports on NEPA compliance.

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 describes your agency's efforts in this area.

Making Posted Material 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? Steps can include soliciting feedback on the content and presentation of posted material, improving search capabilities on your agency website, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.**

Yes, CEQ is taking steps to make posted information more useful to the public.

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

CEQ solicits feedback from the public on transparency through the agency's website, posts material in open formats and provides explanatory material. CEQ also sends out email alerts and provides opportunity for the public to stay connected to CEQ through social media. In addition, a FOIA requester is able to track the status of his or her request electronically by emailing or sending a letter to the FOIA Public Liaison who replies with the status of the request. In 2014, CEQ began posting FOIA logs online that allow requesters to track requests.

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

No, CEQ has not encountered challenges that make it difficult to post records that it would otherwise like to post.

- 4. If so, please briefly explain what those challenges are.**

This question is not applicable because CEQ has not encountered challenges that make it difficult to post records that it would otherwise like to post.

Other Initiatives:

- 5. Did your agency successfully post all four quarterly reports for Fiscal Year 2014?**

Yes, CEQ did successfully post to the CEQ website all four quarterly reports for Fiscal Year 2014.

- 6. 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 2015.**

This question is inapplicable because CEQ did post all quarterly reports for Fiscal Year 2014.

- 7. Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? See OIP Guidance, "The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications." (Nov. 22, 2013) If yes, what are the different types of electronic means are utilized by your agency to communicate with requesters?**

In most cases and whenever feasible, CEQ communicates with and provides updates to requesters through email communication. CEQ also communicates with requesters by facsimile, postal mail, and telephone.

- 8. If your agency does not communicate electronically with requesters as a default, are there any limitations or restrictions for the use of such means? If yes, does your agency inform requesters about such limitations?**

In most cases and whenever feasible, CEQ communicates electronically with requesters.

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

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section 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 2014 Annual FOIA Report and, when applicable, your agency's 2013 Annual FOIA Report.

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?

Yes, CEQ employs a separate track for simple requests.

2. If so, for your agency overall, for Fiscal Year 2014, was the average number of days to process simple requests twenty working days or fewer?

Although the average number of days to close a simple request was longer than twenty days, the average number of days to make a determination on a request, notify the requester of the determination, and commence the search process was in many, but not all, cases fewer than twenty days.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2014 that were placed in your simple track.

The percentage of requests processed by CEQ in Fiscal Year 2014 that were placed in the simple track was 83%.

4. If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?

This question is inapplicable because CEQ does track simple requests separately.

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 2013 and Fiscal Year 2014 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 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013?

The FOIA backlog for Fiscal Year 2014 decreased compared with Fiscal Year 2013.

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 2014. If your agency did not receive any requests in Fiscal Year 2014 and/or has no request backlog, please answer with "N/A." To calculate your agency's percentage, you must divide the number of backlogged requests reported in Section XII.A. of your Fiscal Year 2014 Annual FOIA Report by the number of requests received in Fiscal Year 2014, which can be found in Section V.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.

The number of backlogged requests in Fiscal Year 2014 was 35 and the number of requests received in Fiscal Year 2014 was 35. Although the percentage of requests that make up the backlog out of the total number of requests received by CEQ in Fiscal Year 2014 was 100%, CEQ is a small agency and has reduced its backlog in Fiscal Year 2014 from Fiscal Year 2013.

Backlogged Appeals

- 6. If your agency had a backlog of appeals at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013? If not, explain why and describe the causes that contributed to your agency not being able reduce backlog. When doing so, please also indicate if any of the following were contributing factors: an increase in the number of incoming appeal; a loss of staff; or an increase in the complexity of the appeals received.**

CEQ did not have a backlog of administrative appeals in Fiscal Year 2013 or Fiscal Year 2014.

- 7. 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 2014. If your agency did not receive any appeals in Fiscal Year 2014 and/or has no appeal backlog, please answer with "N/A." To calculate your agency's percentage, you must divide the number of backlogged appeals reported in Section XII.A. of your Fiscal Year 2014 Annual FOIA Report by the number of appeals received in Fiscal Year 2014, which can be found in Section VI.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.**

This question is inapplicable because CEQ did not have an appeal backlog for Fiscal Year 2014.

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 2013 and Fiscal Year 2014 when completing this section of your Chief FOIA Officer Report.

Ten Oldest Requests

9. In Fiscal Year 2014, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

CEQ was able to close nine (9) of the ten oldest requests that were reported pending in the Fiscal Year 2013 Annual FOIA Report.

10. 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 2013 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed six of them, you should note that you closed six out of seven "oldest" requests.

As stated above, CEQ was able to close nine (9) of the ten oldest requests that were reported pending in the Fiscal Year 2013 Annual FOIA Report.

11. 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?

Of the requests CEQ was able to close from the ten oldest requests, three (3) requests were closed because the request was withdrawn by the requester. Of the three (3) requests that were withdrawn by the requester, although no determination was made as to whether CEQ had responsive documents, CEQ did acknowledge the requests and began processing them.

Ten Oldest Appeals

12. In Fiscal Year 2014, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

CEQ did not have any administrative appeals that were pending as of the end of Fiscal Year 2013.

13. 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 VII.C.(5) of your Fiscal Year 2013 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that. For example, if you only had seven appeals listed as part of your "ten oldest" in Section VII.C.(5) and you closed six of them, you should note that you closed six out of seven "oldest" appeals.

This question is inapplicable because CEQ did not have any administrative appeals that were pending as of the end of Fiscal Year 2013.

Ten Oldest Consultations

14. In Fiscal Year 2014, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

Yes, CEQ did close the ten oldest consultations that were reported pending in the Fiscal Year 2013 Annual FOIA Report.

15. 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 2013 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that. For example, if you only had seven consultations listed as part of your "ten oldest" in Section XII.C. and you closed six of them, you should note that you closed six out of seven "oldest" consultations.

This question is inapplicable because CEQ did close the ten oldest consultations that were reported pending in the Fiscal Year 2013 Annual FOIA Report.

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

16. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2013.

CEQ did not have any backlogged appeals in Fiscal Years 2013 or 2014. Challenges that CEQ faced in closing all of its ten oldest requests include the receipt of several complex requests and limited resources. However, CEQ was able to close nine of the ten oldest requests and all of the ten oldest consultations reported in the Fiscal Year 2013 Annual FOIA Report.

17. 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

This question is inapplicable.

18. 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 2015.

CEQ will continue to utilize available personnel resources to aid in FOIA request processing. Also, there were no pending appeals from Fiscal Year 2013.

Use of the FOIA's Law Enforcement Exclusions

- 1. Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2014? If so, please provide the total number of times exclusions were invoked.**

CEQ did not invoke a statutory exclusion during Fiscal Year 2014.