

CHIEF FOIA OFFICER REPORT TO THE ATTORNEY GENERAL

COUNCIL ON ENVIRONMENTAL QUALITY

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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.**

Answer: 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.**

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

- 3. 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: This question is inapplicable because CEQ's response to the previous question was greater than 80%.

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?**

Answer: 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?**

Answer: 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.**

Answer: The exemption that would have covered parts of the information that was released as a matter of discretion in Fiscal Year 2015 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.**

Answer: 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. For example, you should note here if your agency did not have an opportunity to make discretionary disclosures because you provided full releases in response to all requests or the only exemptions that were applied were those that do not lend themselves to discretionary release (i.e. Exemptions 1, 3, 4, 6, 7A, 7B, 7C, 7F).**

Answer: This question is inapplicable because CEQ did make discretionary releases during Fiscal Year 2015.

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.**

Answer: 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

The Attorney General'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 your management of your FOIA program is effective and efficient. You should also include any additional information that describes your agency's efforts in this area.

Processing Procedures:

- 1. For Fiscal Year 2015, 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 2015 Annual FOIA Report. Please note here if your agency did not adjudicate any requests for expedited processing during Fiscal Year 2015.**

Answer: During Fiscal Year 2015, CEQ maintained an average of 17.33 days for adjudicating requests for expedited processing. CEQ only received a few requests for expedited requests and all but one of those was adjudicated within ten calendar days.

- 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: CEQ will work to ensure that expedited requests are adjudicated within ten calendar days by evaluating the workflow for expedited requests. As stated above, CEQ only received a few requests for expedited requests and all but one of those was adjudicated within ten calendar days.

- 3. On July 2, 2015, OIP issued new guidance to agencies on the proper procedures to be used in the event an agency has a reason to inquire whether a requester is still interested in the processing of his or her request. Please confirm here that to the extent your agency may have had occasion to send a “still interested” inquiry, it has done so in accordance with the new guidelines for doing so, including affording requesters thirty working days to respond.**

Answer: When CEQ had occasion to send “still interested” inquiries in 2015, it did so in compliance with OIP’s guidance. For example, CEQ ensured there were reasonable grounds to send the inquiry, did not make multiple inquiries absent good cause, used the requester’s preferred method of communication, memorialized any decision by the requester that was made by telephone to withdraw, provided at least 30 days - and in most cases more - to respond to the inquiry, and advised the requester that if they did not respond within the timeframe that their request would be administratively closed.

Requester Services:

- 4. Agency FOIA Requester Service Centers and FOIA Public Liaisons serve as the face and voice of an agency. In this capacity they provide a very important service for requesters, informing them about how the FOIA process works and providing specific details on the handling of their individual requests. The FOIA also calls on agency FOIA Requester Service Centers and FOIA Public Liaisons to assist requesters in resolving disputes. Please explain here any steps your agency has taken to strengthen these services to better inform requesters about their requests and to prevent or resolve FOIA disputes. If you agency has not taken any steps recently to strengthen these services, either because there has been no need due to low demand or because these services are already robust, please briefly explain that here.**

Answer: CEQ shares the contact information of its FOIA Public Liaison with each requester and invites requesters to contact the FOIA Public Liaison with questions regarding their request. The FOIA Public Liaison works with requesters to right-size the scope of the requests and to provide status updates on the processing of requests.

Other Initiatives:

- 5. 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.**

Answer: In Fiscal Year 2015, CEQ conducted a self-assessment to improve FOIA processing efficiency and to improve search processes.

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. Describe your agency's process or system for identifying "frequently requested" records required to be posted online under Subsection (a)(2) of the FOIA. For example, does your agency monitor its FOIA logs or is there some other system in place to identify these records for posting.

Answer: CEQ monitors its FOIA logs to identify "frequently requested" material for posting.

2. 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. Please note that this question is directed towards proactive disclosure of records that go beyond frequently requested records required to be posted under Subsection (a)(2) of the FOIA.

Answer: 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.

3. When making proactive disclosures of records, are your agency's FOIA professionals involved in coding the records for Section 508 compliance or otherwise preparing them for posting? If so, provide an estimate of how much time is involved for each of your FOIA professionals and your agency overall. Please note that this question is directed at the efforts of actually posting the records online once all disclosure determinations have been made. For example, efforts to load the records in your web content platform or making the releasable documents accessible in compliance with Section 508 of the Rehabilitation Act.

Answer: Yes, the staff who process requests at CEQ have worked to enable documents posted to the CEQ website to be Section 508 compliant. CEQ has spent 3-5 days posting to the website and ensuring that posted material is 508 compliant.

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

Answer: Yes.

- 5. If so, please briefly describe those challenges.**

Answer: CEQ posted the quarterly reports to its website but the information was not posted to FOIA.gov. CEQ worked with DOJ to resolve the issues.

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

Answer: An example of a proactive disclosure by CEQ includes posting a 2015 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.

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

Answer: Besides posting to our website, CEQ did not use any additional means to publicize or highlight proactive disclosures.

Other Initiatives:

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

Answer: 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 that describes your agency's efforts in this area.

Making Material Posted Online More Useable:

- 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.**

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

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

Answer: 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. CEQ has continued posting FOIA logs online that allow requesters to track requests.

Other Initiatives:

- 3. Did your agency successfully post all four quarterly reports for Fiscal Year 2015?**

Answer: Yes, CEQ did successfully post to the CEQ website all four quarterly reports for Fiscal Year 2015.

- 4. 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.**

Answer: This question is inapplicable because CEQ did post all quarterly reports for Fiscal Year 2015.

- 5. 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?**

Answer: 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.

- 6. 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?**

Answer: 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's *FOIA Memorandum* and the Attorney General's *2009 FOIA Guidelines* 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 2015 Annual FOIA Report and, when applicable, your agency's 2014 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?**

Answer: Yes, CEQ employs a separate track for simple requests.

- 2. If so, for your agency overall in Fiscal Year 2015, was the average number of days to process simple requests twenty working days or fewer?**

Answer: 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 2015 that were placed in your simple track.**

Answer: The percentage of requests processed by CEQ in Fiscal Year 2015 that were placed in the simple track was 67%.

- 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?**

Answer: 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 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?**

Answer: No, the backlog of requests at the close of Fiscal Year 2015 increased compared with the backlog reported at the end of Fiscal Year 2014.

- 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 indicate whether 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 with examples or a brief description of the types of complex requests contributing to your backlog increase, or any other reasons with brief descriptions or examples, when possible.**

Answer: The backlog increased in FY2015 due to an increase in the number of incoming requests.

- 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 2015. To calculate your agency's percentage, you must divide the number of backlogged requests reported in Section XII.A. of your Fiscal Year 2015 Annual FOIA Report by the number of requests received in Fiscal Year 2015, 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.**

Answer: The number of backlogged requests in Fiscal Year 2015 was 56 and the number of requests received in Fiscal Year 2015 was 83. Therefore, the percentage of requests that make up the backlog out of the total number of requests received by CEQ in Fiscal Year 2015 is approximately 67%.

Backlogged Appeals

- 8. If your agency had a backlog of appeals at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?**

Answer: This question is inapplicable because CEQ did not have a backlog of administrative appeals at the close of Fiscal Year 2015.

- 9. 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 appeals, a loss of staff, an increase in the complexity of the requests received with examples or a brief description of the types of complex requests contributing to your backlog increase, or any other reasons with brief descriptions or examples, when possible.**

Answer: This question is inapplicable because CEQ did not have a backlog of administrative appeals in either Fiscal Year 2014 or Fiscal Year 2015.

- 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 2015. If your agency did not receive any appeals in Fiscal Year 2015 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 2015 Annual FOIA Report by the number of appeals received in Fiscal Year 2015, 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.**

Answer: N/A. This question is inapplicable because CEQ did not have an appeal backlog for Fiscal Year 2015.

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 2014 and Fiscal Year 2015 when completing this section of your Chief FOIA Officer Report.

Ten Oldest Requests

- 11. In Fiscal Year 2015, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2014 Annual FOIA Report?**

Answer: CEQ was able to close five (5) of the ten oldest requests that were reported pending in the Fiscal Year 2015 Annual FOIA Report.

- 12. 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 2014 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.

Answer: As stated above, CEQ was able to close five (5) of the ten oldest requests that were reported pending in the Fiscal Year 2014 Annual FOIA Report.

- 13. 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: Of the requests CEQ was able to close from the ten oldest requests, none were closed because the request was withdrawn by the requester.

Ten Oldest Appeals

- 14. In Fiscal Year 2015, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2014 Annual FOIA Report?**

Answer: CEQ did not have any administrative appeals that were pending as of the end of Fiscal Year 2014.

- 15. 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 2014 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.**

Answer: This question is inapplicable because CEQ did not have any administrative appeals that were pending as of the end of Fiscal Year 2014.

Ten Oldest Consultations

- 16. In Fiscal Year 2015, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2014 Annual FOIA Report?**

Answer: Yes, CEQ only had five (5) pending consultations at the end of Fiscal Year 2014 and did close all five of these pending consultations during Fiscal Year 2015. At the end of Fiscal Year 2015, there were no pending consultations at the agency.

- 17. 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.**

Answer: As stated above, CEQ only had five (5) pending consultations at the end of Fiscal Year 2014 and did close all five of these pending consultations during Fiscal Year 2015. At the end of Fiscal Year 2015, there were no pending consultations at the agency.

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

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

Answer: CEQ did not have any backlogged appeals in Fiscal Years 2014 or 2015. 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 five (5) of the ten oldest requests and all five of the pending consultations from the Fiscal Year 2014 Annual FOIA Report.

19. 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: This question is inapplicable.

20. 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 2016.

Answer: CEQ will continue to utilize available personnel resources to aid in FOIA request processing. Also, there were no pending appeals from Fiscal Year 2014.

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 2015?

Answer: CEQ did not invoke these statutory exclusions during Fiscal Year 2015.

2. If so, please provide the total number of times exclusions were invoked.

Answer: This question is inapplicable because CEQ did not invoke these exclusions during Fiscal Year 2015.