



**National Endowment for the Arts  
Agency's Chief FOIA Officer:  
India Pinkney, General Counsel  
Reporting Period March 2015-March 2016**

**Section I: Steps Taken to Apply the Presumption of Openness**

The guiding principle underlying the President's FOIA Memorandum and the Attorney General'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.

**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?

***Yes, our primary FOIA professional attended several training events sponsored by DOJ and American Society of Access Professionals to include the Freedom of Information Act for Attorneys and Access Professionals, Advanced Freedom of Information Act Seminar, and the report refresher trainings. The E-FOIA learnings modules were acquired from DOJ and made available for the staff.***

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.

***85% of the primary FOIA professional attended trainings offered by OIP as stated above.***

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.

Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA? *N/A*

**Discretionary Releases:**

4. Does your agency have a distinct process or system in place to review records for discretionary release?

***Yes. It is standard practice in the processing of each FOIA request to review the responsive records and carefully access whether a discretionary release can be made even if the information can be withheld under an exemption.***

5. During the reporting period, did your agency make any discretionary releases of information?

***No.***

6. What exemption(s) would have covered the material 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 2009 FOIA Memoranda. *N/A*

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. *N/A*

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).

***The majority of information withheld by this agency is under exemptions 4 and 6.***

**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.

***The NEA regularly updates its website providing the public with access to various information most located on its Open Government Page to include but not limited to strategic planning & performance, annual financial reports, research data sets etc. Announcements and press releases are updated***

*regularly. Here is a link to our Open Government: [Open Government | NEA](https://www.arts.gov/open) (<https://www.arts.gov/open>)*

## **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 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.

### **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.

***Three days was the average number 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. *N/A*

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.

***Yes, we have incorporated the "still interested" inquiry to our processing procedures for backlogged requests.***

**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.

*Due to the relatively small number of requests we receive the FOIA officer is able to provide on open line of communication and accessibility for the requestors therefore no additional steps have been taken however should the need arise we will make adjustments accordingly.*

**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.

*The Agency's FOIA processes are centralized in the Office of General Counsel and the current caseload is manageable however we are exploring options with our Information & Technology Department as to how the utilization of technology can increase the efficiency of our FOIA program.*

**Section III: Steps Taken to Increase Proactive Disclosures**

Both the President's and Attorney General'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.

**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.

***Yes, the FOIA log is monitored. Incoming requests are reviewed carefully specifically looking for similar or repeat requests. Responsive records are assessed to note if a particular topic or area of concern that should be taken in consideration or addressed when making posted material or information more available 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.

***Yes. Collaboration with the program offices help to identify records for proactive disclosure including but not limited to narratives from grants that have been awarded and current grant guidelines.***

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.

***The NEA website is in compliance with Section 508. The FOIA officer consults with the ITM and Public Affairs to assist with compliance as needed.***

4. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? **No**

5. If so, please briefly explain those challenges. **N/A**

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

***Recently Awarded Grants [Grant Announcements](#) | [NEA](#)***

***Links to current press releases [News](#) | [NEA](#)***

***Publications [Publications](#) | [NEA](#)***

***Media Resources [Resources for Media](#) | [NEA](#)***

***Grant Guidelines [Apply for a Grant](#) | [NEA](#)***

***Workshop Webinars [Webinars](#) | [NEA](#)***

***NEA Celebrates 50 years [NEA 50th Anniversary](#) | [NEA](#)***

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

***We offer e-mail subscription for our e-newsletters, the Art blog on the website encourages open dialogue and comments from the public. Many social media forums are an instrumental tool that is often used by the Office of Public Affairs to update and inform the public about activities that the NEA is involved in.***

**Other Initiatives:**

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

***The NEA is committed to an open and transparent view of the organization and its operations, information is regularly updated and posted on our website.***

**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 Usable:**

1. Beyond posting new material, is your agency taking steps to make the posted information more useable to the public, especially to the community of individuals who regularly access your agency's website? **Yes.**

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

***Feedback is requested from the public when accessing information on the website. This has been helpful in order to gain insight on the usability and the accessibility of posted information on the website, the relevant content and presentation of the information posted. Through this feedback, we identified a need to update our grant search toll and responded accordingly, in addition to***

***posting an instructional video on the website to accompany the updated search tool.***

**Other Initiatives:**

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2015? **No.**

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 2016.

***Although the quarterly reports were posted, the recent upgrade and transition of the agency website inadvertently affected some of the previously posted data, image and media files were lost in the transition. The new platform has posed some technical issues but the web manager is working to resolve these issues. Meanwhile the files are located on our website at <https://www.arts.gov/foia/agency-foia-reports-and-logs> and we are working with OIP to ensure successful posting of the reports in FY16.***

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 that are utilized by your agency to communicate with requesters?

***Yes. The primary means of communication to requesters is via e-mail. Although to date we don't offer online submission of FOIA requests this will be implemented in 2016.***

6. If your agency does not communicate electronically with requests 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? *N/A*

## **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 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 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? **Yes**
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? **No**
3. Please provide the percentage of requests processed by your agency in Fiscal Year 2015 that were placed in your simple track. **90%**
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? **N/A**

**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 2014 and Fiscal Year 2015 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? **Yes.**
6. If not, explain why and describe the causes that contributed to your agency not being able reduce its backlog. When doing so, please also indicate if any of the following were contributing factors: **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 2015. **1.8%**

#### **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?



***NEA appeal backlog remained at zero, there was no backlog in Fy14 or FY15.***

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: *N/A*

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." *N/A*

***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? ***No***

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.

***We closed three out of four of the oldest requests that was listed in Section VII.E of our Fiscal Year 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? *N/A*

#### **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?

***The NEA did not have any pending appeals FY14 or FY 15.***

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. *N/A*

#### **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?

***The NEA did not have any pending consultations in FY14 or FY 15.***

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 2014 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that. *N/A*

#### ***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 2014.

***Requested information to “copy” a database has posed challenges as the contracted services are not able to extract the information satisfactorily for the requestor and thus has contributed to the delay, resulting in the inability to close the oldest backlogged request.***

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. *N/A*

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. ***We are working with the requestor to narrow the scope of his requestor.***

#### **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? **No**

2. If so, please provide the total number of times exclusions were invoked. *N/A*