



National Endowment for the Arts Freedom of Information Act 2013 Chief FOIA Officer Report

INTRODUCTION

The National Endowment for the Arts (NEA) is a small agency with approximately 160 staff members and no agency components. The agency's day-to-day FOIA operations are proportionately small. One FOIA Officer processes all of the NEA's FOIA requests. The FOIA Officer is supervised by the NEA General Counsel/Chief FOIA Officer.

During FY 2012, the NEA processed 126 FOIA requests. This represents a decrease from the previous fiscal year wherein the NEA processed 140 requests. Given personnel turnover during this past year that included loss of the FOIA Officer, the Agency cautions that it may be difficult to draw meaningful conclusions based on metrics alone. Personnel factors affecting the FOIA program are addressed below.

The NEA is committed to making its work more transparent and recognizes that FOIA is a fundamental element of Open Government. By applying a presumption of openness and maintaining effective FOIA operations, the agency seeks to expand the availability of its information to the public. The following report describes the steps taken by the NEA to implement the Freedom of Information Act during the past year.

I. STEPS TAKEN TO APPLY THE PRESUMPTION OF OPENNESS

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.

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

During the 2012 reporting period, the NEA did not conduct any training sessions for Agency staff specifically on FOIA. However, the Agency did continue to incorporate information about FOIA in its new-employee orientation, as done in previous years.

2. *Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?*

During 2012, the NEA's Chief FOIA Officer and General Counsel, who had been at the Agency for over 20 years, retired. Additionally, in September of 2012, the NEA's FOIA Officer who handled all of the processing of requests moved to a position at another agency. The opportunity for formal training during the reporting period was not available for new Chief FOIA Officer/General Counsel and an attorney new to the Agency assumed the role of FOIA Officer in late January of 2013. Both FOIA Officers reviewed FOIA training materials included on the Office of Information Policy's website. We will be registering for upcoming FOIA training with the Office of Information Policy as it becomes available in 2013.

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

3. *Did your agency make any discretionary releases of otherwise exempt information?*

Based on the available records, there have been no discretionary releases of otherwise exempt information.

4. *What exemptions would have covered the information that was released as a matter of discretion?*

When a discretionary release can be made at the NEA, exemption (b)(5) would typically apply.

5. *Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.*

N/A (Please see Question #3)

6. *Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.*

There were no additional initiatives being undertaken during the reporting period. However, in the spirit of the presumption of openness, we are discussing initiatives and training in the Office of General Counsel and other NEA offices.

II. STEPS TAKEN TO ENSURE THAT YOUR AGENCY HAS AN EFFECTIVE SYSTEM IN PLACE FOR RESPONDING TO REQUESTS

This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support.

Describe here the steps your agency has taken to ensure that its system for responding to requests is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

1. *Do FOIA professionals within your agency have sufficient IT support?*

Yes, the IT staff is extremely helpful, responsive and prompt.

2. *Do your FOIA professionals work with your agency's Open*

Government Team?

To date, the NEA has not had an Open Government Team. The NEA does have an Open Government Plan, which is easily accessible from the Agency website. Going forward in 2013, the NEA will create an Open Government Team comprised of staff from Information & Technology Management, Public Affairs, Guidelines & Panel Operations, and Research & Analysis. Once the Open Government Team is constituted, the FOIA Officer will work with the group as well.

3. *Has your agency assessed whether adequate staffing is being devoted to FOIA administration?*

During the reporting period, the Agency had one FOIA Officer who processed all of the incoming FOIA requests. This employee departed the Agency during the latter portion of the reporting period. Currently, in the 2013 reporting period, we have an attorney who is now serving as FOIA Officer. We are also filling a paralegal position, with duties that will include FOIA. With that position filled, the staffing level will meet the Agency's needs. However, if the number or complexity of the FOIA requests significantly increased, the need for staffing would become readily apparent.

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

No additional steps have been taken during the reporting period.

III. STEPS TAKEN TO INCREASE PROACTIVE DISCLOSURES

Describe here the steps your agency has taken both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2012 to March 2013). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

1. *Provide examples of material that your agency has posted this past year.*

The National Endowment for the Arts posts new records to its website as they become available. Some examples include the following:

- Grants awarded by the Agency
- Press Releases
- Research reports and other publications
- Annual updates to grant guidelines, in addition to updates when additional grant opportunities become available
- Webcasts of select Agency meetings, events, and forums, such as meetings of the National Council on the Arts

- Recipients of the NEA's lifetime achievement awards, such as NEA Jazz Masters, NEA Heritage Fellows, as well as the recipients of the National Medal of the Arts

The NEA also continues to regularly post content designed for online audiences. The "Features" section of the website provides a comprehensive look at NEA-funded projects. Electronic versions of the NEA quarterly magazine includes material not available in the print edition, such as video segments and audio interviews. The Agency also provides free audio podcasts featuring interviews with arts in various disciplines and arts administrators.

2. *Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities on the site, creating mobile applications, providing explanatory material, etc.?*

Yes, the NEA is continually working to make more information available and more useful to the public.

3. *If so, provide examples of such improvements.*

On an ongoing basis, the Agency continues to work to ensure that website text is in accordance with the Plain Writing Act, so that there is clear communication for the public. In addition, based upon a 2011 website assessment, the NEA is working on a complete redesign of its website which will be unveiled during the 2013 reporting period. The NEA has also improved the search capabilities for grants on www.arts.gov, which will soon be available to the public.

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

Through periodic NEA publications, the Agency provides information about programs and activities. The NEA also maintains two blogs: the ArtWorks blog and the Big Read blog. The ArtWorks blog has become a "go-to" forum for organizations involved in the arts and the general public. The Big Read blog highlights the NEA's Big Read program by featuring program activities and discussing literacy issues. In addition, the ArtsWork podcast features interviews with a range of artistic individuals, including National Medal of Arts Winners and NEA Jazz Masters.

In addition to the two blogs and podcast, the NEA is very active with respect to utilizing social media to proactively disseminate information in order to broaden awareness of the Agency and its mission. In 2012, the NEA has continued to maintain a visible and active presence on Facebook, Twitter, and YouTube, and the NEA's iTunes U channel. Through extensive use of these tools, the NEA is able to raise more public awareness and increase website traffic. The social media tools have become instrumental to promotion of Agency grants, events, publications, and website content.

The Agency also hosts webinars, which provide an opportunity for the NEA to provide useful information to the public and for the public to engage with the NEA. There is a list of scheduled webinars on www.art.gov.

Moreover, the NEA webcasts a wide range of meetings, forums, and events in an effort to ensure broad dissemination of Agency activities. For example, the Agency webcast a program called

"Improving Arts Learning through Standards and Assessment," among many others during the reporting period.

IV. STEPS TAKEN TO GREATER UTILIZE TECHNOLOGY

Electronic receipt of FOIA requests:

1. *Can FOIA requests be made electronically to your agency?*

Yes, FOIA requests may be made electronically to the NEA using the following e-mail address: FOIA@arts.gov. However, the NEA does not use a web form to receive FOIA requests.

2. *If your agency is decentralized, can FOIA requests be made electronically to all components of your agency?*

N/A

Online tracking of FOIA requests:

3. *Can a FOIA requester track the status of his/her request electronically?*

No, a FOIA requester may not track the status of a request electronically. However, immediately upon receipt of a FOIA request, the Agency provides an acknowledgment of receipt to the requester.

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

N/A

5. *In particular, does your agency tracking system provide the requester with an estimated date of completion for his or her request?*

N/A

6. *If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability?*

The NEA is not taking steps to establish this capability at the present time. Currently, all of the requests are processed by the FOIA Officer, who communicates regularly with FOIA requesters

as to the status of the requests. FOIA requesters may also contact the FOIA Officer directly for status updates.

Use of technology to facilitate processing of requests:

7. *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?*

The NEA is not taking steps to establish this capability at the present time. The Agency's FOIA processes are centralized in the Office of General Counsel and the current caseload is manageable currently without the additional technology.

8. *If so, describe the technological improvements being made.*

N/A

V. STEPS TAKEN TO IMPROVE TIMELINESS IN RESPONDING TO REQUESTS AND REDUCE BACKLOG

For the figures required in this Section, please use those contained in the specified sections of your agency's 2012 Annual FOIA Report.

1. *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. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.*

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

Yes – the NEA utilizes both a "very simple" and "simple" track. The "very simple" track was created in 2011 for those requests that require little to no processing time.

- b. *If so, for your agency overall, for Fiscal Year 2012, was the average number of days to process simple requests twenty working days or fewer?*

Yes. The average number of days was 2.1 days for Very Simple Requests and 17 days for Simple Requests.

- c. *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?*

Not applicable.

2. *Sections XII.D.(2) and XII.E.(2) of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report – Backlogged Requests/Appeals," show the numbers of any backlog of pending requests or pending appeals from Fiscal Year 2012 as compared to Fiscal Year 2011. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition, Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," and Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," from both Fiscal Year 2011 and Fiscal Year 2012 should be used for this section.*

a. If your agency had a backlog of requests at the close of Fiscal Year 2012, did that backlog decrease as compared with Fiscal Year 2011?

No

b. If your agency had a backlog of administrative appeals in Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011?

Not applicable. The NEA did not have a backlog of administrative appeals either year.

c. In Fiscal Year 2012, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2011?

Yes

d. In Fiscal Year 2012, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2011?

Not applicable. The NEA did not have a backlog of administrative appeals in either FY2011 or FY2012.

If you answered "no" to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation:

Request Backlog:

a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?

No, see below.

b. Was the lack of a reduction in the request backlog caused by a loss of staff?

Yes. During the 2012 Fiscal Year the NEA's Chief FOIA Officer and General Counsel who had been with the agency 20+ years retired, and in September of 2012 the NEA's FOIA officer who handled all of the FOIA requests at the Agency moved to a position at another agency. The FOIA officer position has been filled as of the end of January 2013 and the agency is working to quickly decrease the backlog.

c. *Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?*

No.

d. *What other causes, if any, contributed to the lack of a decrease in the request backlog?*

See answer above, apart from the small size of the office and only one person devoted to FOIA, the backlog was mainly due to the large staff changes that occurred in the office throughout FY2012.

Administrative Appeal Backlog:

a. *Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?*

Not applicable.

b. *Was the lack of a reduction in the appeal backlog caused by a loss of staff?*

Not applicable.

c. *Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received?*

Not applicable.

d. *What other causes, if any, contributed to the lack of a decrease in the appeal backlog?*

Not applicable.

OIP has issued **guidance** encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information. *If your agency had a backlog in Fiscal Year 2012, please provide an estimate of the number of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.*

Of the backlogged requests at the end of the Fiscal Year 2012, there were approximately three (3) instances where an interim response was provided during the Fiscal Year even though the entire request was not closed.

USE OF FOIA'S LAW ENFORCEMENT "EXCLUSIONS"

In order to increase transparency regarding the use of the FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to "treat the records as not subject to the requirements of [the FOIA]," 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. *Did your agency invoke a statutory exclusion during Fiscal Year 2012?*

No.

2. *If so, what was the total number of times exclusions were invoked?*

Not applicable.

SPOTLIGHT ON SUCCESS

Out of all the activities undertaken by your agency since March 2012 to increase transparency and improve FOIA administration, describe here 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.

The NEA proactively releases sample application narratives in the Agency's FOIA reading room, located on the NEA website, on an ongoing basis. The objective is to promote transparency in the grant-making process through proactive disclosures in order to provide the public with information about the types of efforts that the Agency funds through its grants and to provide potential applicants with information about the types of projects that the Agency funds. Currently, the Agency has sample application narratives from six disciplines, including Challenge America Fast-Track, Design, Museums, Our Town, Presenting, and Visual Arts. The NEA is continuing to work to expand the number of disciplines that have sample application narratives in the FOIA reading room. This type of proactive disclosure extends the NEA's reach to a very broad audience and provides insight into the application process. These narratives coupled with increased efforts to conduct webinars on various aspects of the grant process have tooled the public with information about the NEA's mission and work.