



**National Endowment for the Arts
Freedom of Information Act
2014 Chief FOIA Officer Report
NEA General Counsel/Chief FOIA Officer, India Pinkney**

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, India Pinkney.

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.

FOIA Training

- 1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this 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. If so please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance. **N/A***
- 3. Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice? **Yes, two attorneys and one paralegal attended the FOIA training held at DOJ in November 2013.***
- 4. Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this period. **60%***
- 5. OIP has issued guidance that every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year. Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask all FOIA professionals attended substantive FOIA training in the past year.
**Advanced Freedom of Information Act Seminar Mar 26, 2014 (FOIA Officer)
OIP Requestor Roundtable Workshop April 24, 2014 (Paralegal & FOIA Officer)
Freedom of Information Act Forum June 11, 2014 (Paralegal)
Annual FOIA Report refresher training for 2015 (TBD(FOIA Officer & Paralegal)***

Outreach:

- 6. *Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so briefly discuss that engagement.* **No**

Discretionary Disclosures :

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.

- 7. *Does your agency have a formal process in place to review records for discretionary release? If so please briefly described this process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary disclosures?* **Yes, upon initial rev**
- 8. *During the reporting period did your agency make any discretionary releases of otherwise exempt information?* **No**
- 9. *What exemptions would have covered the information that was released as a matter of discretion?* **N/A**
- 10. *Provide a narrative description, or some examples of the types of information that your agency released as a matter of discretion.* **N/A**
- 11. *If your agency was not able to make any discretionary releases of information, please explain why.* **Based on the available records, there have been no discretionary releases of otherwise exempt information.**

Other Initiatives :

- 12. *Did your agency post all of the required quarterly reports for the Fiscal Year 2013? If not please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014.* **No, now that we are fully staffed, deadlines and notifications have been placed on all calendars to make all aware of reporting requirements and deadlines. In house training for all OGC staff to prepare quarterly reports.**
- 13. *Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.* **We are currently in the process of assembling an Open Government Team in order to bring compliance and increase awareness of the Open Government Initiative throughout the whole agency. We also have an Open Government tab on the NEA website that is a central location for the proactive disclosure.**

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.

Personnel:

During Sunshine Week 2012 OPM announced the creation of a new job series entitled the Government Information Series , to address the work performed by FOIA and Privacy Act professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

1. Has your agency converted all of its professionals to the new Government Information Specialist job series? **N/A**
2. If not, what proportion of personnel has been converted to the new job series? **N/A, the personnel that's handle FOIA for the agency are and attorney and a paralegal.**
3. If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted? **FOIA work is properly identified in the position descriptions of appropriate staff members, however at this time the FOIA work is not the primary responsibility of said position. If and when the situation changes then a change in the classification will result.**

Processing Procedures:

4. For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not , describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten days or less calendar days or less. **Yes**
5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps. **No**

Requester Services:

6. Do you use e-mail or other electronic means to communicate with requesters when feasible? **Yes, the majority of the FOIA requests received/responded are via e-mail.**
7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA? **Yes**
8. 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, eliminating redundancy, etc. **Increased training opportunities for FOIA personnel. In conjunction with the Paper Reduction Act of 2011 more efforts are taken by this agency to convert more records electronically thereby streamlining the search process.**

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.

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 2013 to March 2014). 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.

Posting Material:

1. Do your FOIA professionals have a system in place to identify records for proactive disclosures. **Yes**
2. If so, describe the system that is in place. **Reviews of FOIA requests are conducted quarterly to identify records for proactive disclosures.**
3. Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.
 - Grants awarded by the Agency <http://apps.nea.gov/GrantSearch/>
 - Press Releases
 - Research reports and other publications
 - Annual updates to grant guidelines, in addition to updates when additional grant opportunities become available <http://arts.gov/grants/recent-grants>
 - 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 <http://arts.gov/honors>

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.

We have added more narratives in our FOIA reading room
<http://arts.gov/foia/reading-room>

Making Posted Material More Useful:

4. 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 posted material, improving search capabilities on the site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.? **Yes**
5. If so, provide examples of such improvements. **NEA has recently revamped and released its website to include more searchable features..** <http://arts.gov/>
6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized? **Yes updates are regularly posted and disseminated using social media such as Twitter and Facebook.**
7. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are. **No**
8. Describe any other steps taken to increase proactive disclosures at your agency. **We are in the**

process of creating an Open Government Team comprised of staff from Information & Technology Management, Public Affairs, Guidelines & Panel Operations, and Research & Analysis, with more proactive disclosures remaining a high priority task.

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. Over the past several years agencies have reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2014, as we have done over the past years, the questions have been further refined and now also address different, more innovative aspects of technology use.

Online tracking of FOIA requests:

1. Can a FOIA requester track the status of his/her request electronically? **No**
2. If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums? **N/A**
3. 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**
4. In particular, does your agency tracking system provide the requester with an estimated date of completion for his/her request? **N/A**
5. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability? If not, please explain why. **Yes we are currently testing out an internal tracking system which we hope to offer to our external clients and FOIA requestors.**

Use of technology to facilitate processing of requests:

6. 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.**
7. If so, describe the technological improvements being made. **N/A**
8. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program? **No**

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 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 those contained in the specified sections of your agency's 2013 Annual FOIA Report and, when applicable, your agency's 2012 Annual FOIA Report.*

Simple Track Requests:

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.
 - a. Does your agency utilize a separate track for simple requests? **Yes**
 - b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer? **No, however due to a change in personal the average turnaround was increased during a short period of time.**
 - 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? **N/A**

Backlogs and "Ten Oldest" Requests, Appeals and Consultations:

2. 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. 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 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.

Backlogs

- a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012? **Yes**
- b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012? **N/A**

Ten Oldest Requests

- c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012? **No**
- d. 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 2012 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 two of them, you should note that you closed two out of seven "oldest" requests. **Six were closed four are still pending.**

Ten Oldest Appeals

- e. In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012? **N/A**
- f. If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C.(5) of your Fiscal Year 2012 Annual FOIA Report. **N/A**

Ten Oldest Consultations

- g. In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012? **N/A**
- h. If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report. **N/A**

Reasons for Any Backlogs:

3. If you answered “no” to any of the questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:

Request and/or Appeal Backlog

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals? **No**
- b. Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff? **Yes**
- c. Was the lack of a reduction in the request and/or appeal backlog caused by an increase in the complexity of the requests received? **Yes**
- d. What other causes, if any, contributed to the lack of a decrease in the request and/or appeal backlog? **N/A**

“Ten oldest” Not Closed

- e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012. **The obstacles faced were as a result of loss of staff and the complexity of the request.**
- f. If your agency was unable to close any of its ten oldest requests or appeals 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. **Initial request received December 2, 2011, Initial consultation sent January 25, 2012. Last contact July 8, 2013.**

Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:

Given the importance of these milestones, it is critical that Chief FOIA Officers assess the causes for not achieving success and create plans to address them.

- 4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2014. **Better communication with requestors, specifically in complex matters. Office wide internal tickler system to avoid older cases falling through the cracks particularly during transition or loss of personnel.**
- 5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency’s plan for achieving backlog reduction in the year ahead. **N/A**

Interim Responses:

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.

- 6. Does your agency have a system in place to provide interim responses to requesters when appropriate? **Yes if additional time is needed to process the FOIA or we are able to provide an interim response with a smaller volume of records released then we do so.**

7. If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed. **70%**

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 2013? **No**
2. If so, what was the total number of times exclusions were invoked? **N/A**

Spotlight on Success

Out of all the activities undertaken by your agency since March 2013 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas. As noted above, these agency success stories will be highlighted during Sunshine Week by OIP. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

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.