



**National Endowment for the Arts
Freedom of Information Act
2015 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 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. FOIA personnel regularly participated in training opportunities offered by OIP to include the Advanced Freedom of Information Act Seminar, Freedom of Information Act Forum, Annual FOIA Report refresher training.***
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. **100%***
3. *In the 2014 Chief FOIA Officer FOIA Report Guidelines, OIP asked agencies to provide a plan for ensuring that core, substantive FOIA training is all agency FOIA professionals at least once each year. Please provide the status of your agency's implementation of this plan. **In addition to the training objectives that were identified in the 2014 report, FOIA staff attended training conducted by the American Society of Access Professionals.***

Discretionary Releases:

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.

4. *Does your agency have a distinct process or system in place to review records for discretionary release? **Yes, The FOIA Officer reviews all responsive records and if there is a possibility of making a discretionary release, she consults with the Agency's General Counsel.***
5. *During the reporting period did your agency make any discretionary releases of otherwise exempt information? **No***
6. *What exemptions would have covered the information that was released as a matter of discretion? **The primary applicable exemptions are 4, 5 and 6.***
7. *Provide a narrative description, or some examples of the types of information that your agency released as a matter of discretion. **N/A***
8. *If your agency was not able to make any discretionary releases of information, please explain why. **Due to the nature of the records requested the ability to make discretionary releases are limited.***

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. **A variety of social media tool to include but not limited to Facebook, Twitter and YouTube are utilized to engage the public and disseminate information about the NEA and its activities.***

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.

Processing Procedures:

1. *For Fiscal Year 2014 what was the average number of days your agency reported for adjudicating requests for expedited processing. **3***
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***

Requester Services:

3. *Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at the National Archives and Records Administration? **Yes***
4. *When assessing fees, does your agency provide a breakdown of how FOIA fees were calculated and assessed to the FOIA requester? **Yes***

5. *If estimated fees estimates are particularly high, does your agency provide an explanation for the estimate to the requestor. **Yes***

Other Initiatives:

6. *If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc., please describe them here: **The NEA grant management system allows the FOIA officer direct access to requested records thereby allowing for a quicker response time to the requestor.***

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. *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? **Routine assessments are conducted within the FOIA office.***
2. *Does your process or system involve any collaboration with agency staff outside the FOIA office? If so describe this interaction. **Yes. The NEA is a small agency which is conducive to collaboration with division offices through formal and informal meetings.***
3. *Describe your agency's process or system for identifying "frequently requested" records that should be posted online. **When frequently requested records are identified by program offices they are submitted to the FOIA office for review and redaction if necessary prior to being posted online.***
4. *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 <http://arts.gov/news>**
 - **Research reports and other publications <http://arts.gov/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>**

Other Initiatives:

5. *If there are any other steps your agency has taken to increase proactive disclosures, please describe them here. **The NEA continues to regularly post and update 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.

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.

Making Material Posted Online More Useful:

1. *Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website? **Yes***
2. *If yes please provide examples for such improvements. **The NEA completely redesigned its website in order to make the site easier to use and more accessible to public. The website's design was based on accessibility and usability assessment. The NEA grants search engine located on the website provides convenient access to funded grants allowing users to search by name, keywords, date, artistic discipline, location, Congressional districts and NEA grant categories. The search capabilities assists applicants, grantees, researchers and members of the public to retrieve and view grant activity.***
3. *Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? **No***

Other Initiatives:

5. *Did your agency successfully post all four quarterly reports for Fiscal Year 2014? **Yes***
6. *If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2015. **N/A***
7. *Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? See OIP Guidance, “The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications.” (Nov. 22, 2013) If yes, what are the different types of electronic means are utilized by your agency to communicate with requesters? **Yes. E-mail is the primary source of electronic means to communicate with requestors.***
8. *If your agency does not communicate electronically with requesters as a default, are there any limitations or restrictions for the use of such means? If yes, does your agency inform requesters about such limitations? **N/A***

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 2014 Annual FOIA Report and, when applicable, your agency's 2013 Annual FOIA Report.*

Simple Track Requests:

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, for Fiscal Year 2014, was the average number of days to process simple requests twenty working days or fewer? **Yes***
3. *Please provide the percentage of requests processed by your agency in Fiscal Year 2014 that were placed in your simple track. **70%***
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? **N/A***

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

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.

Backlogged Requests:

5. *If your agency had a backlog of requests at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013? **Yes***
6. *If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2014. **5%***

Backlogged Appeal

7. *If your agency had a backlog of appeals at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013? **N/A***

8. *If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2014. 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 2013 and Fiscal Year 2014 when completing this section of your Chief FOIA Officer Report.

Ten Oldest Requests:

9. *In Fiscal Year 2014, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2013 Annual FOIA Report? **No***
10. *If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2013 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. **Two of the four oldest requests were closed.***
11. *Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal? **N/A***

Ten Oldest Appeals:

12. *In Fiscal Year 2014, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2013 Annual FOIA Report? **The NEA did not have any pending appeals in the 2013 Annual FOIA report.***
13. *If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2013 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that. **N/A***

Ten Oldest Consultations:

14. *In Fiscal Year 2014, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2013 Annual FOIA Report? **N/A. The NEA did not have any pending consultations in the 2013 Annual Report.***
15. *If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. Of your Fiscal Year 2013 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that. **N/A***

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

16. *Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2013. **Loss of staff and staff turnover was a contributing factor.***
17. *If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending. **N/A***
18. *If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2015. **Through increased communication with the***

requester and the ability to prioritize FOIA administration due to increased staffing we are confident that we will be able to close the pending oldest requests.

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 2014? **No**

If so, what was the total number of times exclusions were invoked? **N/A**