



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

**Council on Environmental Quality
Chief FOIA Officer Report for 2011**

March 12, 2012

I. Steps Taken to Apply the Presumption of Openness

In accordance with the President's Freedom of Information Act (FOIA) Memorandum and the Attorney General's FOIA Guidelines, the Council on Environmental Quality (CEQ) continues to make significant progress in implementing practices that apply the presumption of openness, through regular training, discretionary releases, and other process improvements.

Currently, all new CEQ employees and interns are required to attend a specially-designed training within 30 days of their start date, which instructs them about their obligations under the Federal Records Act and the FOIA. The training also familiarizes CEQ employees with the President's FOIA Memorandum and the presumption of openness. Long-term employees must attend an annual refresher records training at least once per calendar year. Given that CEQ is a relatively small agency, CEQ's FOIA Public Liaison and Chief FOIA Officer are able to provide targeted training and legal counseling to the CEQ staff and interns who help process incoming FOIA requests, consults, and referrals. In 2011, CEQ staff supplemented their FOIA expertise by taking advantage of training opportunities offered by the American Society of Access Professionals, and by the U.S. Department of Justice.

In accordance with the President's Memorandum and the Attorney General's Guidelines, CEQ also applies the presumption of openness by making discretionary releases of information that might otherwise be technically exempt from disclosure under FOIA, where there is no foreseeable harm from release. Over the past year, CEQ has made progress in identifying opportunities for discretionary release as a routine part of its FOIA processing. As a rough indicator, the percentage of processed FOIA requests that resulted in a full grant increased from 13% in fiscal year (FY) 2010 to 30% of FOIA requests in FY 2011. Similarly, the percentage of processed FOIA requests that resulted in a partial grant increased from 25% in FY 2010 to 43% in FY 2011.

CEQ has also dedicated additional staff resources to making discretionary releases for especially complex FOIA requests. For example, CEQ began in 2009 to review more than 20,000 pages of documents identified for consideration as part of the effort to

respond in the U.S. v. Citizens for Responsibility and Ethics in Washington (“CREW”) litigation, No.0 7-365(D.D.C.) (RMU), regarding climate change science. Within the last year, exercising its discretion, CEQ re-reviewed and determined to release a substantial number of documents that the agency had previously withheld under Exemption (b)(5). CEQ utilized the services of a full-time employee on detail to conduct this comprehensive review of the CREW documents for discretionary release.

CEQ maintains a policy of releasing information to the public, absent any resulting foreseeable harm to the agency’s deliberative process. To implement this policy, when reviewing documents for potential release, CEQ’s FOIA Team meets with the relevant CEQ records custodian – whether he or she is a senior official, employee, detailee, or intern – to explain the presumption of openness standard, and to have the custodian articulate the basis of any foreseeable harm that would justify non-disclosure under FOIA Exemption (b)(5). Further, as part of its counseling and oversight role, CEQ’s FOIA Team ensures that deliberative versus factual information is carefully parsed, and that factors that would tend to mitigate foreseeable harm are included in CEQ’s release determinations.

CEQ’s application of the presumption of openness is not limited to our agency’s FOIA implementation. CEQ was created under the National Environmental Policy Act (NEPA), and was charged with overseeing all Federal agencies’ implementation of NEPA. One of NEPA’s central tenets is to increase transparency and public participation in Federal decisionmaking. Under NEPA, agencies must ensure that environmental information is available to the public and citizens before decisions are made and before actions are taken. In exercising its oversight role for NEPA implementation, CEQ has recently issued guidance that directs agencies to document categorical exclusion determinations and make them available to the public. CEQ convened Federal agencies in February 2011 for a panel on “NEPA and Transparency,” where Federal NEPA specialists shared the experiences and best practices of particular agencies with respect to making NEPA documents and environmental information proactively available on agency websites.

In March 2011, CEQ also launched a NEPA Pilot Program to solicit ideas from Federal agencies and the public about innovative time- and cost-saving approaches to NEPA implementation. Through the Pilot Program, CEQ identified superlative IT tools developed by the National Park Service (NPS) and the U.S. Forest Service that those agencies use to publicly track project development and to more efficiently and comprehensively reply to public comments on NEPA documents. These will be evaluated for wider deployment by CEQ and other federal agencies.

II. Steps Taken to Ensure that CEQ has an Effective System for Responding to Requests

In 2011, CEQ took several steps to ensure that its systems for responding to FOIA requests are effective. Many of these steps involved the use of electronic tools, and are therefore described in more detail in Section IV, below. CEQ continues to work with the Office of Administration in the Executive Office of the President (OA), to ensure adequate information technology (IT) support for CEQ's FOIA operation. CEQ has no IT staff in-house and has historically depended on OA to provide the necessary technical support and expertise. CEQ's FOIA staff interacts on a frequent, informal basis with the Open Government Team at CEQ, in part due to the small size of CEQ's staff. For example, the Open Government Team has, in the past, polled the FOIA Team for ideas of documents or data sets to proactively post online. Overall, coordination with OA's IT staff and CEQ's Open Government Team has yielded improvements in CEQ's FOIA operation and helped our agency implement practices to promote openness.

CEQ has also taken important steps to ensure that adequate staff resources are devoted to FOIA administration. In May 2011, CEQ hired an attorney to serve as the agency's FOIA Public Liaison. Many of CEQ's FY 2011 accomplishments in implementing FOIA practices that apply the presumption of openness reflect the efforts of this new employee. For example, in the summer of 2011, she submitted a new FOIA staffing proposal to CEQ leadership to foster greater participation in records management and search facilitation. Also, as stated previously in Section I, above, CEQ's new FOIA Public Liaison and Chief FOIA Officer are able to provide targeted training and legal counseling to the CEQ staff and legal interns who help process incoming FOIA requests, consults, and referrals. Indeed, CEQ's Chief FOIA Officer and Public Liaison routinely set and meet FOIA processing goals, and communicate daily with staff and interns regarding their records and FOIA responsibilities. In FY 2012, CEQ sees the potential for further improvements to its FOIA operation dependent on the availability of staff and IT tools, key variables to which we attribute our successes over the past years.

III. Steps Taken To Increase Proactive Disclosures

In 2011, CEQ expanded its efforts to proactively post agency documents and reports on the agency's FOIA Requester Service Center (available at www.whitehouse.gov/administration/eop/ceq/foia), in accordance with the President's Memorandum and the Attorney General's Guidelines. New material posted on the Service Center website includes several reports that CEQ issued in 2011 on environment, energy, and natural resources issues.

CEQ is implementing an improved process for routinely identifying records that are appropriate for posting, through periodic meetings with leadership, external affairs staff, and policy teams. CEQ also continues to review the material released in each FOIA response to determine whether it is appropriate for inclusion in the Proactive Disclosure Reading Room. CEQ does not use social media to disseminate information related to FOIA requests.

Instead, CEQ has added a FOIA Handbook to the Service Center website (available at http://www.whitehouse.gov/sites/default/files/microsites/ceq/foia_handbook_2-27-12.pdf) to help the public understand how FOIA works and how to access information on CEQ's website, or in CEQ's records through a FOIA request. The Handbook provides the public with a summary of the key provisions in CEQ's FOIA regulations and a list of our agency's major information systems and record locators.

Finally, CEQ has continued to make proactive disclosure of information a priority in its oversight of federal NEPA implementation. In coordination with the Department of Energy, CEQ maintains a website, www.nepa.gov, where the public can find a broad range of background material and resources related to NEPA. Over the past year, CEQ has proactively updated the website to provide public access to CEQ's quarterly reports on Recovery Act NEPA Implementation; new NEPA procedures approved and adopted by federal agencies; agency NEPA success stories; and updated contact information for NEPA contacts at all federal agencies. All of the NEPA pilot submissions CEQ received for the NEPA Pilot Program have also been posted on the CEQ website.

IV. Steps Taken to Greater Utilize Technology

In 2011, CEQ has taken several steps to make greater use of modern technology in the receipt, tracking, and processing of FOIA requests, and in the preparation of the Annual FOIA Report.

One notable technological improvement allows CEQ, with the assistance of OA, to ingest all forms of electronically stored data into a database so that the data can be filtered analyzed, reviewed and then exported out. This technology is significantly increasing the rate at which CEQ is able to process FOIA requests.

As for FOIA consults and referrals, over the past year CEQ's FOIA Team has encouraged the FOIA staff in other departments and agencies to take advantage of CEQ's capacity to receive and process all of its FOIA requests electronically. As a result, CEQ now receives and responds to the majority of incoming consults and referrals electronically, and we are thus able to conclude consults and referrals on a timelier basis.

We are continuing explore IT tools and practices to make our FOIA operation responsive and efficient. For example, currently, the public and FOIA staff at other agencies may contact CEQ's FOIA Public Liaison to track the status of the requests, consults, and referrals pending with CEQ. In the future, we aim to share more information about CEQ's FOIA docket proactively online, on the CEQ FOIA Requester Service Center.

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

In 2011, CEQ made significant strides in processing complex and long-pending requests, while at the same time handling a 60% increase in the number of FOIA requests received. CEQ reached a resolution of the CREW FOIA litigation with the requester, which will result in the transfer of the requested documents to the National Archives. This matter has been a significant focus of the FOIA staff for several years, and its conclusion will free up staff capacity to handle other pending requests. CEQ also made substantial gains in closing the ten oldest requests that were pending as of the end of FY 2010.

CEQ received almost twice as many requests in FY 2011 than FY 2010, which is part of the reason that CEQ continues to have a backlog of requests. Below are key metrics from CEQ's 2011 Annual FOIA Report:

- CEQ utilizes a separate processing track for simple requests. In FY 2011, a simple request took on average 27.7 days to process from start to finish. This represents an improvement over FY 2010, when the average processing time for a simple FOIA request was 31.9 days.
- CEQ received 41 FOIA requests during FY 2011, processed 23, and had 21 requests pending as of the end of the fiscal year (September 30, 2010). Of the requests processed, seven (7) were granted in full (release of documents with no redactions); ten (10) were granted with partial redactions; and six (6) were denied in full because CEQ had no responsive records.
- By comparison, CEQ received 25 FOIA requests during FY 2010, processed 24, and had six (6) requests pending as of the end of the fiscal year (September 30, 2009). Of the requests processed during FY 2010, three (3) were granted in full (release of documents with no redactions); eight (8) were granted with partial redactions; and thirteen (13) were denied in full because CEQ had no responsive records or because the request was incomplete.
- CEQ did not have any pending administrative appeals at the start of FY 2011, nor did our agency receive any appeals during the fiscal year.
- CEQ did not use FOIA's law enforcement exclusions during FY 2011.

To ensure progress in reducing backlogs, as stated in Section 2, above, CEQ routinely sets goals and monitors the progress of our agency's FOIA caseload. Further, as stated in Sections 1, above, our FOIA Team has been fostering greater participation by all CEQ staff and interns in records management and search facilitation. And, as stated in Section 4, above, in 2011, CEQ's FOIA Team encouraged the FOIA staff in other departments and agencies to take advantage of CEQ's capacity to receive and process all of its FOIA requests electronically. As a result, CEQ now receives and responds to the majority of incoming consults and referrals electronically, and we are thus able to conclude consults and referrals on a timelier basis.

Due to staff turnover and the growing complexity of the requests received during FY 2011, CEQ's FOIA backlog at the end of FY 2011 was greater than the backlog at the end of FY 2010. Mindful of these circumstances, in FY 2011, CEQ worked diligently to maintain the staffing level of its FOIA operation, by recruiting a full-time detailee to work on FOIA and records matters for six months during FY 2011, and by hiring an attorney who has served as the agency's FOIA Public Liaison since May 2011. As stated in Section 1, above, CEQ has also explored ways to optimally engage all CEQ staff and interns in records management and search facilitation. Further, as described in Sections 1 and 4, above, by adopting new IT tools towards the end of the fiscal year, CEQ has started to accelerate its FOIA processing. The practices and IT tools adopted during FY 2011 will help CEQ continue to improve timeliness in FY 2012.

Spotlight on Success

CEQ is pleased to share that we have settled long-standing FOIA litigation. In 2006, CEQ received a FOIA request from CREW (Citizen for Ethics and Responsibility), for electronic or hard copy CEQ documents that refer to climate change science. In 2007, CREW sued CEQ in federal district court in the D.C. Circuit over concerns about CEQ's production and the accuracy and completeness of CEQ's Vaughn index. At the outset of the litigation, CEQ produced more than eleven thousand pages of documents to CREW in response to its FOIA request, but withheld several thousand pages under FOIA Exemption (b)(5) (deliberative process privilege). In early 2009, after the issuance of President Obama's memorandum on transparency and the Holder memorandum, CEQ initiated a "discretionary review" of all responsive documents previously withheld or redacted in this matter to apply a presumption in favor of disclosure and CEQ has released significant additional documents. Out of roughly 20,000 documents processed before 2009, CEQ identified approximately 5,000 pages of documents to be reviewed for discretionary release. CEQ then invited CREW to discuss how the remaining documents should be handled.

After consulting records experts at the National Archives and Records Administration, the parties agreed to a resolution that promotes accountability, openness, and efficiency. Specifically, we agreed that the approximately 5,000 pages of documents will be transferred from CEQ to NARA for expediting processing. NARA will conduct an independent assessment of whether to release or to withhold in whole or in part any

particular portion of the records at issue. Further, CEQ will transfer all George W. Bush administration records so that CREW and other members of the public may access these records through the National Archives.