

Council on Environmental Quality



2019 Chief FOIA Officer Report to the Attorney General

Section I: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying DOJ's 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.

A. FOIA Leadership

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. Is your agency's Chief FOIA Officer at or above this level?

Answer: Yes.

2. Please provide the name and title of your agency's Chief FOIA Officer.

Answer: Viktoria Z. Seale, General Counsel.

B. FOIA Training

3. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any substantive FOIA training or conference during the reporting period such as that provided by the Department of Justice?

Answer: Yes.

4. If yes, please provide a brief description of the type of training attended or conducted and the topics covered.

Answer: CEQ FOIA professionals attended the Freedom of Information Act for Attorneys and Access Professionals offered by the Department of Justice Office of Information Policy (DOJ OIP) and in-house FOIA and document review software training.

5. Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

Answer: The estimate of the percentage of CEQ FOIA professionals who attended substantive FOIA training during this reporting period is 100 percent.

6. 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.

Answer: N/A.

C. Outreach

7. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

Answer: CEQ's FOIA professionals routinely engage with requesters regarding CEQ's administration of FOIA and on how to provide quality customer service when processing and responding to requests. CEQ follows Open Government standards and has an Associate Director of Communications who engages with the public.

D. Other Initiatives

8. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In 2016, the Department publicized FOIA-related performance standards for employees that have any role in administering the FOIA, including non-FOIA professionals. Please also indicate whether your agency has considered including FOIA-related performance standards in employee work plans for employees who have any role in administering the FOIA.

Answer: All new CEQ entrants – interns, clerks, detailees, and staff – are required to attend records training within 30 days of their start date. This training instructs new entrants on their obligations under the Federal Records Act (FRA). In addition, in 2018, CEQ provided an overview of FOIA and the processing of FOIA requests as part of its annual FRA training, which all staff and detailees were required to attend in-person. CEQ FOIA professionals regularly inform CEQ non-FOIA professionals of their FOIA obligations, the presumption of openness, and provide updates and information on the FOIA process as necessary. Given CEQ's relatively small size, CEQ provides targeted in-person training and legal counseling to all CEQ staff, detailees, contract paralegals, interns, and clerks who help process incoming FOIA requests and consultations. CEQ is considering FOIA-related performance standards for employees who have a role in administering FOIA.

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.

Answer: CEQ directs FOIA requesters to the information they seek when such information is publically available. In addition, CEQ periodically makes proactive disclosures.

Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests

DOJ's FOIA Guidelines emphasize 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.

1. For Fiscal Year 2018, 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 2018 Annual FOIA Report.

Answer: The average number of days that CEQ reported for adjudicating requests for expedited processing for Fiscal Year 2018 was 8.56.

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.

Answer: N/A.

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report data, using active workflows and track management, reviewing and updating processing procedures, etc.

Note: In September 2017, OIP released a FOIA Self-Assessment Toolkit as a resource for agencies conducting a self-assessment of their FOIA program. The Toolkit is available on OIP's website for all agencies to use.

Answer: No. CEQ is planning to conduct a self-assessment using DOJ OIP's toolkit.

4. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2018 (please provide a total number or an estimate of the number).

Answer: There were approximately 10 times during FY 2018 when requesters sought assistance from CEQ's FOIA Public Liaison.

5. Please describe the best practices used to ensure that your FOIA system operates efficiently and effectively and any challenges your agency faces in this area.

In Fiscal Year 2017, CEQ began utilizing new e-discovery software, Ringtail, to search and review documents. CEQ FOIA professionals regularly works with the EOP component that provides technological infrastructure and services to CEQ to ensure that the software's capabilities are being fully utilized. The implementation of Ringtail has made processing requests more efficient by streamlining the search process and reducing the amount of time it takes to perform initial searches of documents. In addition, CEQ regularly reviews its FOIA process to identify ways to further improve its efficiency and effectiveness, and due to its small size, CEQ is able to incorporate these improvements into best practices quickly.

Section III: Steps Taken to Increase Proactive Disclosures

The Department of Justice has long 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.

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

Answer:

Example 1: CEQ posted and periodically updates a list of agency staff names and titles on its FOIA webpage at <https://www.whitehouse.gov/ceq/foia/> (at end of page under “Frequently Requested”).

Example 2: CEQ posted the *CEQ Report on Environmental Impact Statement Timelines* that it issued in December 2018 pursuant to Executive Order 13807 of August 15, 2017, titled “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects,” and a *Fact Sheet* at <https://www.whitehouse.gov/ceq/initiatives/>.

Example 3: CEQ posted materials related to the interagency Ocean Policy Committee established pursuant to Executive Order 13840 of June 19, 2018, titled “Ocean Policy To Advance the Economic, Security, and Environmental Interests of the United States,” including *Guidance for Implementing Executive Order 13840* and the *Inaugural Ocean Policy Committee Meeting Summary* at <https://www.whitehouse.gov/ceq/initiatives/>.

2. Please describe how your agency identifies records that have been requested and released three or more times (and are therefore required to be proactively disclosed pursuant to 5 U.S.C. § 552(a)(2)(D)).

Answer: CEQ identifies these records primarily by evaluating similar FOIA requests. CEQ’s small FOIA staff is familiar with historical FOIA requests. As FOIA requests are received, the staff identifies requests that may have been previously submitted and therefore may contain responsive records previously disclosed.

3. 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?

Answer: CEQ, a component of the EOP, regularly reviews and makes changes to its website, which is part of the White House website, in an effort to improve the usefulness of its website to the public.

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

Answer: CEQ has started the process of reorganizing public information across CEQ's multiple webpages and aims to simplify and streamline the access of CEQ public records. CEQ continues to add new information and links to relevant documents on its current initiatives to its webpage at <https://www.whitehouse.gov/ceq/initiatives/>.

5. Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.

Answer: CEQ staff regularly meet to consider FOIA productions and other agency documents for proactive disclosure on the agency website. Due to CEQ's small agency size, CEQ does not have enterprise software to track and manage previously disclosed records.

Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information more accessible. 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.

1. Is your agency leveraging technology to facilitate efficiency in conducting searches, including searches for emails? If so, please describe the type of technology used. If not, please explain why and please describe the typical search process used instead.

Answer: CEQ utilizes Sharepoint, a network collaboration and records management platform, to enhance recordkeeping integrity and search capabilities. CEQ also uses Ringtail, an enterprise level records review platform, for review of larger and more complex FOIA requests. CEQ continues to use Adobe Reader for most FOIA requests.

2. OIP issued guidance in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

Answer: Yes.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2018?

Answer: 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 2019.

Answer: CEQ's website platform does not allow CEQ to comply with the posting procedures published by OIP. CEQ's plan for compliance is to work directly with OIP in posting quarterly reports.

5. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2017 Annual FOIA Report and, if available, for your agency's Fiscal Year 2018 Annual FOIA Report.

Answer: <https://www.whitehouse.gov/ceq/foia/>

6. Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

Answer: CEQ leverages technology whenever possible, and when practicable, uses e-discovery searches to process FOIA requests. There have been some technical issues with the integration of CEQ's collaboration platform Sharepoint with CEQ's document review platform Adobe.

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs

The Department of Justice has 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 2018 Annual FOIA Report and, when applicable, your agency's 2017 Annual FOIA Report.

A. 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? If your agency uses a multi-track system beyond simple, complex, and expedited to process requests, please describe the tracks you use and how they promote efficiency.

Answer: For reporting purposes, CEQ assigns each FOIA request as simple or complex, and adjudicates requests for expedited processing. CEQ strives to achieve the lowest average wait time of the requesters.

2. If your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2018?

Answer: For Fiscal Year 2018, the average number of days to process simple requests was 30.4 days.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2018 that were placed in your simple track.

Answer: 59.62% of requests processed in Fiscal Year 2018 were adjudicated as "simple" requests. For this calculation, CEQ only considered simple requests that were perfected and processed.

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?

Answer: N/A.

B. 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 2016 and Fiscal Year 2017 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 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

Answer: No. CEQ's backlog of requests at the close of Fiscal Year 2018 increased to 51 as compared with the backlog of 39 reported at the end of Fiscal Year 2017.

6. If not, did your agency process more requests during Fiscal Year 2018 than it did during Fiscal Year 2017?

Answer: No. CEQ processed 156 requests in Fiscal Year 2018, as compared to 216 in Fiscal Year 2017.

7. If your agency's request backlog increased during Fiscal Year 2018, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

An increase in the number of incoming requests.

A loss of staff.

An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.

Any other reasons – please briefly describe or provide examples when possible.

Answer: In Fiscal Year 2018, the primary reason for the increase in CEQ's request backlog was a significant increase in the number of consultations CEQ received and processed. In Fiscal Year 2018, CEQ received twenty-six (26) consultations and processed twenty-nine (29) consultations, while in Fiscal Year 2017, CEQ received five (5) consultations and processed four (4).

8. 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 2018. If your agency has no request backlog, please answer with "N/A."

Answer: The percentage of requests that make up the backlog out of the total number of requests received by CEQ in Fiscal Year 2018 was 30.5% (51 out of 167).

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

Answer: No. CEQ's backlog increased to one (1) in Fiscal Year 2018 from zero (0) in Fiscal Year 2017.

10. If not, did your agency process more appeals during Fiscal Year 2018 than it did during Fiscal Year 2017?

Answer: Yes. CEQ processed three (3) appeals in Fiscal Year 2018, compared to zero (0) appeals in Fiscal Year 2017.

11. If your agency's appeal backlog increased during Fiscal Year 2018, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

An increase in the number of incoming appeals.

A loss of staff.

An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.

Any other reasons – please briefly describe or provide examples when possible.

Answer: CEQ increased its appeal backlog from zero (0) to one (1). The increase is primarily due to the timing of a small number of appeals. In Fiscal Year 2017, CEQ's two (2) appeals were received in September, just before the beginning of Fiscal Year 2018. CEQ received two (2) more appeals in Fiscal Year 2018, and by the close of the Fiscal Year 2018, CEQ had processed all but one (1) appeal.

12. 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 2018. If your agency did not receive any appeals in Fiscal Year 2018 and/or has no appeal backlog, please answer with "N/A."

Answer: The percentage of appeals that make up the backlog out of the total number of appeals received by CEQ in Fiscal Year 2018 was 50% (one (1) out of two (2)).

C. Backlog Reduction Plans

13. In the 2018 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2017 was asked to provide a plan for achieving backlog

reduction in the year ahead. Did you agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2018?

Answer: N/A.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2018, what is your agency's plan to reduce this backlog during Fiscal Year 2019?

Answer: N/A.

D. Status of 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 2016 and Fiscal Year 2017 when completing this section of your Chief FOIA Officer Report.

OLDEST REQUESTS

15. In Fiscal Year 2018, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

Answer: No.

16. 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 2016 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

Answer: In Fiscal Year 2018, CEQ closed four (4) of its ten (10) oldest requests that were reported pending in CEQ's Fiscal Year 2017 Annual FOIA Report.

17. 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?

Answer: Of the requests that CEQ was able to close from its ten oldest requests, one (1) request was closed because it was constructively withdrawn by the requester. No interim response was provided.

18. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

Answer: CEQ improved its in-house FOIA tracker with more robust functionality to calculate and monitor the age of FOIA requests. In addition, CEQ hired temporary paralegals during the reporting period to assist with the agency backlog. Finally, on a weekly basis, CEQ's FOIA professionals allocate specific time to work on aging pending requests.

TEN OLDEST APPEALS

19. In Fiscal Year 2018, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

Answer: Yes.

20. 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 2017 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

Answer: N/A.

21. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

Answer: CEQ had one (1) pending appeal at the end of Fiscal Year 2018 and is working to improve its coordination with other agencies when consultations are a part of processing the appeal.

TEN OLDEST CONSULTATIONS

22. In Fiscal Year 2018, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

Answer: Yes.

23. 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 2017 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

Answer: N/A.

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

24. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2018.

Answer: Challenges that CEQ faced in closing all of its ten oldest requests included the volume of records requested and limited staff resources. CEQ had one backlogged appeal at the end of the year that required consulting with another agency on a large volume of documents.

25. 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.

Answer: N/A.

26. 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 2018.

Answer: CEQ will continue to utilize available personnel resources to aid in FOIA request processing and place emphasis on closing its older pending requests, appeals, and consultations. CEQ has hired one contract paralegal that solely works on FOIA and one attorney who primarily works on FOIA.

F. Success Stories

Out of all the activities undertaken by your agency since March 2018 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, OIP will highlight these agency success stories during Sunshine Week. 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 key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

During this reporting period, CEQ developed a script in Adobe software to automatically count redactions in PDF files, which significantly improved the agency’s ability to conduct FOIA reviews without cumbersome document review software. Instead of hours spent on counting for the different types of redactions and the frequency of each redaction, CEQ is now able to apply this counting script without the need for conversion and ingestion into specialized software. This script significantly reduced human error in counting redactions and accelerated CEQ’s process of producing documents and complying with reporting requirements.

Additionally, CEQ improved its internal FOIA tracker to automatically calculate the number of response days, taking into account the date the request was perfected, days tolled, and Federal holidays. This was also done as a formula in an excel spreadsheet, again obviating the need for cumbersome and potentially expensive proprietary software.