

**CHIEF FOIA OFFICER REPORT TO THE ATTORNEY GENERAL**

**COUNCIL ON ENVIRONMENTAL QUALITY**

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February 01, 2017



**Council on Environmental Quality 2017 Chief FOIA Officer Report**

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**Section 1: Steps Taken to Apply the Presumption of Openness**

The guiding principle underlying the President's **FOIA Memorandum** and the DOJ's **2009 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 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?**

Answer: Yes.

**2. If yes, please provide a brief description of the type of training attended and the topics covered.**

Answer: Personnel who work on FOIA issues have reviewed the relevant policies and guidelines on implementing the FOIA.

**3. 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: An estimate of the percentage of CEQ's FOIA professionals who attended substantive FOIA training during this reporting period is 50%.

**4. 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: Both the FOIA Public Liaison and the Chief FOIA Officer departed their positions during this reporting period. The Chief FOIA Officer (Acting) and the new FOIA Public Liaison will attend OIP FOIA training in April 2017.

***C. Other Initiatives***

**6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA?**

Answer: As stated above, consistent with previous years, all new CEQ entrants – interns, clerks, detailees, and staff – are required to attend training within 30 days of their start date. This training instructs new entrants on their obligations under the FOIA and the Federal Records Act. The training also covered the January 21, 2009, President’s FOIA Memorandum, the 2009 Attorney General’s FOIA Guidelines, and the presumption of openness. Also, long-term employees must attend an annual refresher training which reiterates CEQ’s FOIA obligations and the presumption of openness.

Personnel who work on FOIA issues have reviewed the President’s FOIA Memorandum and the Attorney General’s FOIA Guidelines. Given CEQ’s relatively small size, CEQ provides targeted in-person training and legal counseling to all CEQ staff, detailees, interns, and clerks who help process incoming FOIA requests and consultations.

**7. 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: When possible, CEQ directs FOIA requesters to the information they seek when such information is not contained within agency records subject to disclosure under FOIA. Also, CEQ periodically makes proactive disclosures and when there is a possibility of making a release under the foreseeable harm standard to further transparency and apply the presumption of openness.

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

**The DOJ’s 2009 FOIA Guidelines emphasized 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.**

***A. Processing Procedures***

**1. For Fiscal Year 2016, 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 2016 Annual FOIA Report.**

Answer: The average number of days that CEQ reported for adjudicating requests for expedited processing for Fiscal Year 2016 was ten (10).

**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: This question is inapplicable because CEQ's average number of days to adjudicate requests for expedited processing did not exceed ten calendar days.

**4. Please provide an estimate of how many requests your agency processed in Fiscal Year 2016 that were from commercial use requesters. If your agency is decentralized, please identify any components within your agency that received a majority of their requests from commercial use requesters.**

Answer: Of the total number of requests that CEQ processed in Fiscal Year 2016, 5% or less were from commercial use requesters.

***B. Requester Services***

**6. 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 how often requesters sought assistance from your agency's FOIA Public Liaison.**

Answer: At CEQ, the FOIA Public Liaison also processes requests and acts as the main point of contact for requesters. The FOIA Public Liaison worked with every requester who submitted a request in Fiscal Year 2016 by sending acknowledgment of receipt correspondence, answering questions of requesters, providing interim responses, providing

status updates, and providing final responses. Requesters sought assistance from CEQ's FOIA Public Liaison 100% of the time.

**7. The FOIA Improvement Act of 2016 requires agencies to make their reference material or guide for requesting records or information from the agency electronically available to the public. Please provide a link to your agency's FOIA reference guide.**

Answer: The link to CEQ's FOIA Handbook is [https://www.whitehouse.gov/sites/default/files/microsites/ceq/foia\\_handbook\\_2-27-12.pdf](https://www.whitehouse.gov/sites/default/files/microsites/ceq/foia_handbook_2-27-12.pdf). CEQ is in the process of updating its FOIA Handbook. Currently, many agency and component websites on the WhiteHouse.gov platform are inaccessible due to scheduled maintenance.

### *C. Other Initiatives*

**8. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as improving search processes, eliminating redundancy, etc., please describe them here.**

### **Section III: Steps Taken to Increase Proactive Disclosures**

Both the **President's** and **DOJ's** FOIA memoranda 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.

#### *A. Posting Material*

**1. Describe your agency's process or system for identifying "frequently requested" records that should be posted online.**

Answer: CEQ monitors its FOIA logs to identify "frequently requested" material for posting and determines whether requests are likely to become the subject of subsequent requests for substantially the same records.

**2. Does your agency have a distinct process or system in place to identify other records for proactive disclosure? If so, please describe your agency's process or system.**

Answer: CEQ frequently posts information to its website. CEQ also manages the content of and posts information to <https://ceq.doe.gov>, a website hosted by the Department of Energy pertaining to the National Environmental Policy Act. Also, CEQ periodically reviews its records management system to identify records that, among other things, may be (1) statements of policy and interpretations which have been adopted by CEQ and are not published in the Federal Register and (2) administrative staff manuals and instructions to staff that affect a member of the public. Finally, CEQ identifies categorical areas that can be considered for proactive disclosure such as information on FOIA resources, FOIA responses, FOIA requests, CEQ historical documents, and environmental laws and regulations. The Office of Federal Sustainability (OFS), a component of CEQ, posts information to <https://sustainability.gov>.

**3. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?**

Answer: No, CEQ did not encounter challenges that make it difficult to post records that it would otherwise like to post.

**4. If so, briefly explain those challenges and how your agency is working to overcome them.**

Answer: This question is inapplicable because CEQ did not encounter challenges that make it difficult to post records that it would otherwise like to post.

**5. 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 the *Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews* at [https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/nepa\\_final\\_ghg\\_guidance.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/nepa_final_ghg_guidance.pdf)

Example 2: CEQ posted the *Guidance for Federal Agency Implementation of Workplace Charging Pursuant to the Fixing America's Surface Transportation act: Level 1 Charging Receptacles* at

[https://www.whitehouse.gov/sites/default/files/guidance\\_for\\_federal\\_agency\\_implementation\\_of\\_workplace\\_charging\\_-\\_11\\_ch....pdf](https://www.whitehouse.gov/sites/default/files/guidance_for_federal_agency_implementation_of_workplace_charging_-_11_ch....pdf).

Example 3: CEQ posted the *Guidance for Federal Agency Implementation of Workplace Charging Pursuant to the Fixing America's Surface Transportation Act: Electric Vehicle Supply Equipment* at

[https://www.whitehouse.gov/sites/default/files/guidance\\_for\\_federal\\_agency\\_implementation\\_of\\_workplace\\_charging\\_electric\\_vehicle\\_supply\\_equipment.pdf](https://www.whitehouse.gov/sites/default/files/guidance_for_federal_agency_implementation_of_workplace_charging_electric_vehicle_supply_equipment.pdf).

**6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe these efforts.**

Answer: CEQ published some proactive disclosures in the Federal Register, released press releases and fact sheets, and posted blogs to highlight important proactive disclosures for public awareness. CEQ also conducted public outreach to engage with the public regarding proactive disclosures.

***B. Other Initiatives***

**7. If there are any other steps your agency has taken to improve proactive disclosures, please describe them here. For example, has your agency engaged requesters in determining how and what to post? Has your agency used web analytics to inform your proactive disclosures?**

Answer: Yes, CEQ engaged with the public and stakeholders on determining how and what to post and received public comment and feedback concerning proactive disclosures.

**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.

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.

***A. 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?**

Answer: Yes, CEQ took steps to make posted information more useful to the public, especially to the community of individuals who regularly access CEQ's website.

**2. If yes, please provide examples of such improvements.**

Answer: CEQ took steps to ensure that information posted to its website was compliant with Section 508 of the Rehabilitation Act of 1973.

***B. Other Initiatives***

**3. Did your agency successfully post all four quarterly reports for Fiscal Year 2016?**

Answer: Yes, CEQ successfully posted all four quarterly reports to its website for Fiscal Year 2016.

**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 2017.**

Answer: This question is inapplicable because CEQ did successfully post all quarterly reports, with information appearing on FOIA.gov, to its website.

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

The President's **FOIA Memorandum** and the DOJ's **2009 FOIA Guidelines** have 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 2016 Annual FOIA Report and, when applicable, your agency's 2015 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?**

Answer: CEQ does utilize a separate track for simple requests.

**2. If so, for your agency overall in Fiscal Year 2016, was the average number of days to process simple requests twenty working days or fewer?**

Answer: For Fiscal Year 2016, the average number of days to process simple requests was 135 days.

**3. Please provide the percentage of requests processed by your agency in Fiscal Year 2016 that were placed in your simple track.**

Answer: The percentage of requests processed by CEQ in Fiscal Year 2016 that were placed in the simple track was 18%.

**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: This question is inapplicable because CEQ does track simple requests separately.

### ***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 2015 and Fiscal Year 2016 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 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015? If not, explain why and describe the causes that contributed to your agency not being able reduce its backlog.**

Answer: CEQ did have a backlog at the close of Fiscal Year 2016 and that backlog increased as compared with the backlog reported at the end of Fiscal Year 2015. CEQ

received 125% more requests in Fiscal Year 2016 than it had in Fiscal Year 2015 and many of the requests received in Fiscal Year 2016 were complex.

**6. If not, 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: See the response to question number 5 above.

**7. 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 2016.**

Answer: The percentage of requests that make up the backlog out of the total number of requests received by CEQ in Fiscal Year 2016 was 63%.

## **BACKLOGGED APPEALS**

**8. If your agency had a backlog of appeals at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015? If not, explain why and describe the causes that contributed to your agency not being able reduce backlog.**

Answer: CEQ did not have a backlog of appeals at the close of Fiscal Year 2016.

**9. If not, 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: This question is in applicable because CEQ did not have a backlog of appeals at the close of Fiscal Year 2016.

**10. 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 2016. If your agency did not receive any appeals in Fiscal Year 2016 and/or has no appeal backlog, please answer with "N/A."**

Answer: N/A. This question is in applicable because CEQ did not have a backlog of appeals at the close of Fiscal Year 2016.

*C. 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 2015 and Fiscal Year 2016 when completing this section of your Chief FOIA Officer Report.**

**TEN OLDEST REQUESTS**

**11. In Fiscal Year 2016, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2015 Annual FOIA Report?**

Answer: In Fiscal Year 2016, CEQ closed 9 of 10 of its oldest requests that were reported pending in CEQ's Fiscal Year 2015 Annual FOIA Report.

**12. 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 2015 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.**

Answer: As stated above in response to Question 11, CEQ closed 9 of 10 of its oldest requests that were reported pending in CEQ's Fiscal Year 2015 Annual FOIA Report.

**13. 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, two of them were closed because the request was withdrawn by the requester.

#### **TEN OLDEST APPEALS**

**14. In Fiscal Year 2016, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2015 Annual FOIA Report?**

Answer: There were no pending appeals reported in the Fiscal Year 2015 Annual FOIA Report.

**15. 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 2015 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.**

Answer: As stated above, there were no pending appeals reported in the Fiscal Year 2015 Annual FOIA Report.

#### **TEN OLDEST CONSULTATIONS**

**16. In Fiscal Year 2016, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2015 Annual FOIA Report?**

Answer: There were no pending consultations reported in the Fiscal Year 2015 Annual FOIA Report.

**17. 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 2015 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.**

Answer: As stated above, there were no pending consultations reported in the Fiscal year 2015 Annual FOIA Report.

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

**18. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2015.**

Answer: CEQ did not have any backlogged appeals or consultations in Fiscal Year 2015. Challenges that CEQ faced in closing all of its ten oldest requests include the receipt of several complex requests and limited resources. However, CEQ was able to close nine of its ten oldest requests.

**19. 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: This question is inapplicable.

**20. 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 2017.**

Answer: CEQ will continue to utilize available personnel resources to aid in FOIA request processing. Also, there were no pending appeals or consultations from the Fiscal Year 2015 Annual FOIA Report.