

Council on Environmental Quality



2018 Chief FOIA Officer Report to the Attorney General

**Viktoria Z. Seale
Chief FOIA Officer
Deputy General Counsel**

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 Training

1. 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.

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

Answer: Personnel who work on FOIA issues have attended training at the Department of Justice Office of Information Policy (DOJ OIP), including: the Freedom of Information Act for Attorneys and Access Professionals, the Annual FOIA Report Refresher Training, and the FOIA Litigation Seminar.

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

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: N/A.

B. Outreach

5. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA?

Answer: The CEQ FOIA Public Liaison routinely engages with requesters regarding CEQ's administration of FOIA as part of the processing of individual FOIA requests. In

addition, the current Chief FOIA Officer and the FOIA Public Liaison attended a Chief FOIA Officer meeting where members of the FOIA requester community spoke to and engaged with an audience of Chief FOIA Officers and FOIA personnel.

C. Other Initiatives

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under 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. 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, 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: 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

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.

1. For Fiscal Year 2017, 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 2017 Annual FOIA Report.

Answer: The average number of days that CEQ reported for adjudicating requests for expedited processing for Fiscal Year 2017 was eleven (11).

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: CEQ is seeking to hire up to two temporary senior FOIA paralegals to help address its backlog, which in turn, would speed up agency FOIA processing in general.

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.

Answer: No. CEQ is planning to conduct a self-assessment using DOJ OIP's toolkit released in September 2017.

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 2017 (please provide a total number or an estimate of the number).

Answer: There were approximately 400 times during FY 2017 when requesters sought assistance from CEQ's FOIA Public Liaison.

5. Optional Survey Question: If possible, please provide an estimate of the average number of pages that your agency processes for each request. You may provide estimates for each track.

6. 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.

During this reporting period, CEQ has updated its FOIA templates and improved its fee assessment procedures. Additionally, CEQ's FOIA tracking systems were consolidated into a single tracker and enhanced with better sorting and filtering capabilities.

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 Initial List of Actions* that it issued as 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 the *Executive Order 13766 Requests and CEQ Responses* that it issued relating to Executive Order 13766 of January 24, 2017, titled “Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects,” at <https://www.whitehouse.gov/ceq/initiatives/>.

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

Answer: Yes. CEQ published some proactive disclosures in the Federal Register and conducted public outreach to engage with the public regarding proactive disclosures. Additionally, CEQ posted new information to its nepa.gov and sustainability.gov websites.

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: Yes. CEQ, a component of the Executive Office of the President (EOP), has participated in the relaunch and the redesign of the White House website, which includes CEQ’s website, as part of the transition from the 44th to 45th presidential administrations in an effort to maximize the usefulness of its website to the public.

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

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

5. 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 requesters and stakeholders on determining how and what to post.

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. Has your agency identified any best practices to leverage 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? If yes please describe the best practices, the types of technology used and the impact on your agency's processing.

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

2. Did your agency successfully post all four quarterly reports for Fiscal Year 2017?

Answer: No. CEQ did not post all four quarterly reports to its website for Fiscal Year 2017.

3. 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 2018.

Answer: The mechanism for submission is posting on CEQ's website in a specific location. CEQ's website is hosted by the EOP on www.whitehouse.gov. The White House website, including CEQ's website, was relaunched and redesigned during the reporting period as part of the transition from the 44th to 45th presidential administrations. For these reasons, CEQ experienced limitations on website access during the fiscal year that hindered our ability to post quarterly reports. However, CEQ expects to be able to post quarterly reports in Fiscal Year 2018.

4. 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 2016 Annual FOIA Report and, if available, for your agency's Fiscal Year 2017 Annual FOIA Report.

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

5. If there are any other steps your agency has taken to improve use of technology in FOIA, please describe them here.

Answer: CEQ has established an online payment mechanism with EOP, using some of the features of pay.gov. This enables requesters to more easily, more quickly, and more reliably make FOIA fee payments.

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 2017 Annual FOIA Report and, when applicable, your agency's 2016 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 2017, was the average number of days to process simple requests twenty working days or fewer?

Answer: For Fiscal Year 2017, the average number of days to process simple requests was 64 days.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2017 that were placed in your simple track.

Answer: 45.8% of requests processed in Fiscal Year 2017 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: No. The average number of days to process all non-expedited requests was 88. As part of the agency's backlog reduction effort, older requests were resolved and closed which factored into the agency's fiscal year statistics.

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

Answer: Yes. CEQ's backlog of requests at the close of Fiscal Year 2017 decreased to 39 as compared with the backlog of 67 reported at the end of Fiscal Year 2016.

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: N/A.

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 2017.

Answer: The percentage of requests that make up the backlog out of the total number of requests received by CEQ in Fiscal Year 2017 was 20.6% (39 out of 189).

BACKLOGGED APPEALS

8. If your agency had a backlog of appeals at the close of Fiscal Year 2017, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2016?

Answer: N/A.

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: CEQ did not have a backlog of appeals at the close of Fiscal Year 2016 nor did it have a backlog of appeals at the close of Fiscal Year 2017.

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 2017. If your agency did not receive any appeals in Fiscal Year 2017 and/or has no appeal backlog, please answer with "N/A."

Answer: N/A.

C. Backlog Reduction Plans

11. In the 2017 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2016 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 2017?

Answer: N/A.

12. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2017, what is your agency's plan to reduce this backlog during Fiscal Year 2018?

Answer: N/A.

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

TEN OLDEST REQUESTS

13. In Fiscal Year 2017, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2016 Annual FOIA Report?

Answer: No.

14. 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 less than ten total oldest requests to close, please indicate that.

Answer: In Fiscal Year 2017, CEQ closed nine of its ten oldest requests that were reported pending in CEQ's Fiscal Year 2016 Annual FOIA Report.

15. 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 request was closed because it was withdrawn by the requester. No interim response was provided.

TEN OLDEST APPEALS

16. In Fiscal Year 2017, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2016 Annual FOIA Report?

Answer: CEQ had no pending appeals at end of Fiscal Year 2016.

17. 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 2016 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

Answer: N/A.

TEN OLDEST CONSULTATIONS

18. In Fiscal Year 2017, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2016 Annual FOIA Report?

Answer: Yes. CEQ closed the one pending consultation reported in the Fiscal Year 2016 Annual FOIA Report.

19. 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 2016 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Answer: N/A.

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

20. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2017.

Answer: CEQ did not have any backlogged appeals in Fiscal Year 2017. Challenges that CEQ faced in closing all of its ten oldest requests included the volume of records requested, limited staff resources, and a 100% turnover of FOIA professionals. However, CEQ was able to close nine of its ten oldest requests and its one backlogged consultation.

21. 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.

22. 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, and as mentioned, CEQ is seeking to hire up to two temporary senior FOIA paralegals in Fiscal Year 2018.

F. Success Stories

Out of all the activities undertaken by your agency since March 2017 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.

CEQ received 189 FOIA requests in Fiscal Year 2017, an increase of more than 82% from the previous Fiscal Year. CEQ matched this request increase with improved productivity and absorbed the increase in requests, as well as an increase in the complexity of those requests, by working to process FOIA requests more efficiently. As a result, CEQ decreased its FOIA request backlog from Fiscal Year 2016 to Fiscal Year 2017 by 42% and closed all of its backlogged requests for Fiscal Year 2013 and Fiscal Year 2015 by the close of Fiscal Year 2017.