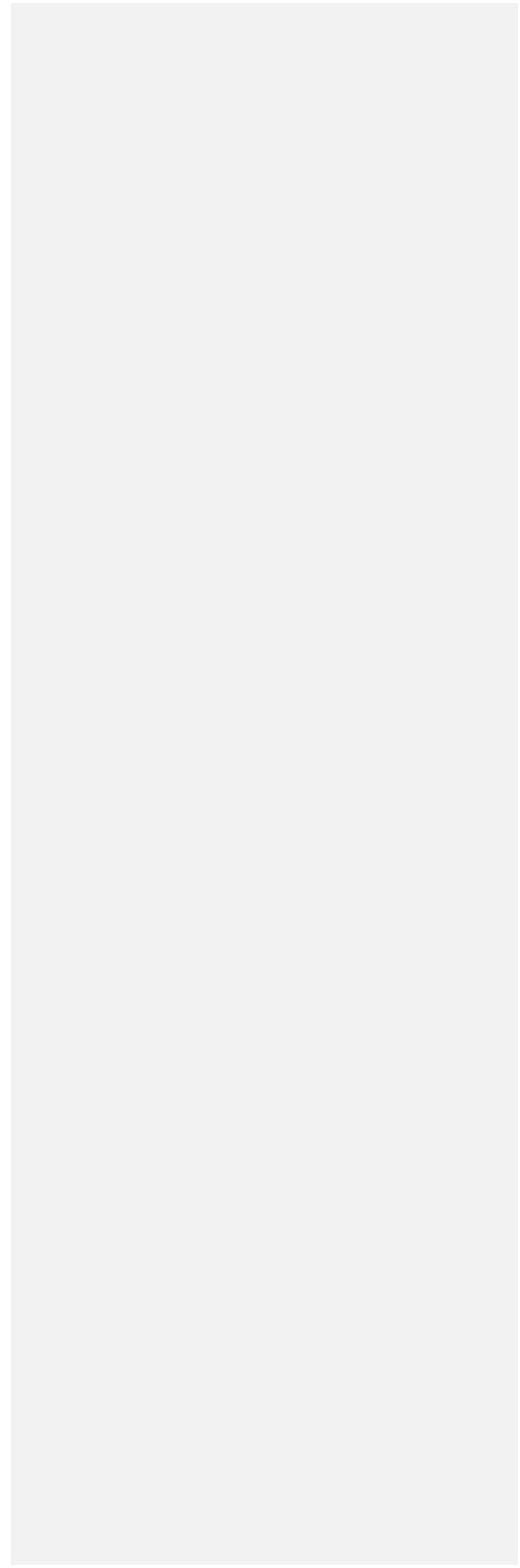


Council on Environmental Quality



2021 Chief FOIA Officer Report to the Attorney General



Section 1: 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 the Assistant Secretary or equivalent level. See 5 U.S.C. § 552(j)(1) (2018). Is your agency's Chief FOIA Officer at this level?

Answer: Yes

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

Answer: Viktoria Z. Seale, Chief of Staff and General Counsel.

B. FOIA Training

3. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

Answer: The CEQ Chief FOIA Officer actively encourages FOIA Personnel to attend training offered by the Department of Justice Office of Information Policy. Additionally, the CEQ FOIA Public Liaison provided in-house FOIA refresher training to all FOIA personnel during the reporting period.

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

Answer: Yes.

5. 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 Department of Justice Office of Information Policy FOIA Best Practices Workshop, as well as in-house FOIA and document review software training.

6. Please 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.

7. 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

8. 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 FOIA professionals routinely communicate with requesters regarding CEQ’s administration of FOIA and continually work to improve 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.

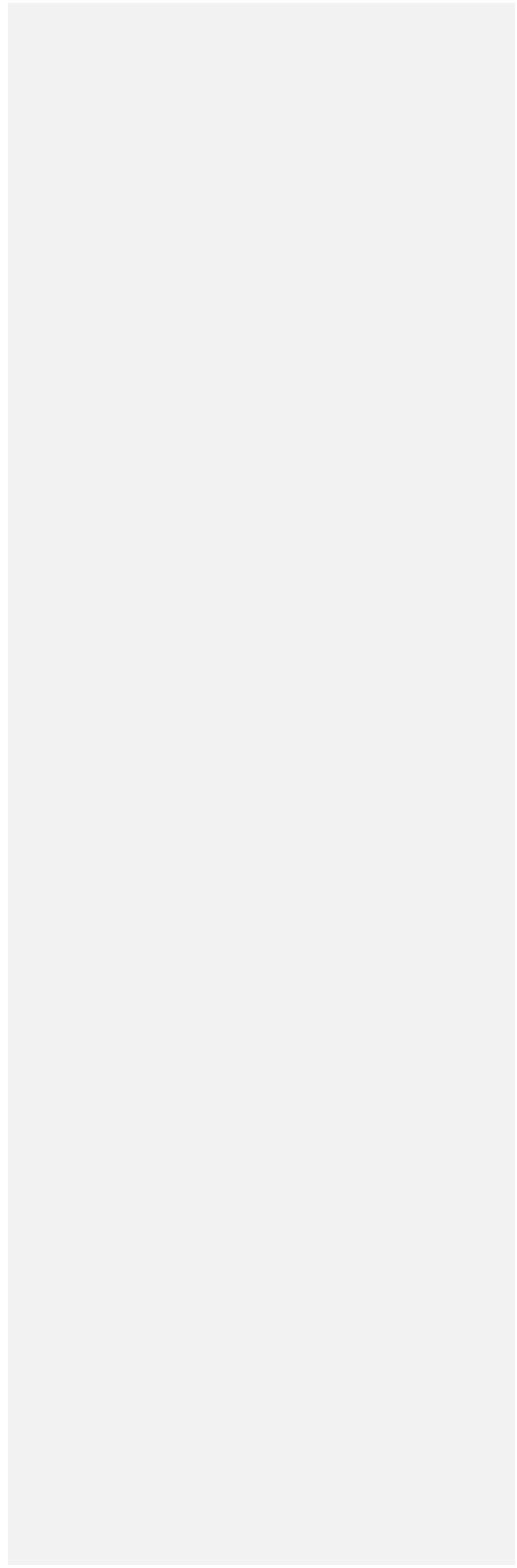
D. Other Initiatives

9. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff.

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 2020, 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. 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.

10. Optional – 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 are seeking when such information is publicly 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 describes your agency's efforts in this area.

1. For Fiscal Year 2020, 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 2020 Annual FOIA Report.

Answer: The average number of days that CEQ reported for adjudicating requests for expedited processing for Fiscal Year (FY) 2020 was 3.71.

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2020 Annual FOIA Report, 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 or raw 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: Yes. A self-assessment of CEQ's FOIA program was conducted. The self-assessment included review of Annual Report data, using active workflows and queue management, and reviewing processing procedures. As a result, CEQ made updates to the organization of its master FOIA tracker to better track the processing of similar requests.

4. Standard Operating Procedures (SOPs): Having SOPs can improve the consistency and quality of an agency's FOIA process. In addition, describing an agency's standard practices for handling FOIA requests on agency FOIA websites can help requesters better understand how their request will be handled.

a) Does your agency have SOPs that outline general processes for handling FOIA requests and appeals?

Answer: Yes

b) If not, does your agency have plans to create FOIA SOPs?

Answer: N/A

c) If yes, how often are they reviewed/updated to account for changes in law, best practices, and technology?

Due to CEQ's small size, the agency is able to continuously adapt to more efficient workflows as deficiencies are identified and better practices are developed. CEQ's FOIA handbook was last updated in 2016, and its FOIA Workflow was last updated in 2017. CEQ is currently drafting revisions to its FOIA regulations.

d) In addition to having SOPs, does your agency post or otherwise describe your standard processes for handling requests on your website?

Answer: Aside from referencing the CEQ FOIA regulations, CEQ does not publish on its website a separate document that describes its internal FOIA process. CEQ has a robust FOIA section on its website, including instructions on how to submit a request, a reading room, proactive disclosures, data and information going as far back as 1970, and additional resources for FOIA requesters.

5. 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 2020 (please provide a total number or an estimate of the number).

Answer: There were approximately 15 times during FY 2020 when requesters sought assistance from the CEQ FOIA Public Liaison.

6. Does your agency frequently receive common categories of first-party requests? If so, please describe the types of requests and if your agency has explored establishing alternative means of access to these records outside of the FOIA process?

Answer: CEQ did receive first-party requests during the reporting period but these requests were predominantly invalid requests or requests for documents that do not exist at this agency, such as requests for various types of military records.

7. The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within 180 days. Has your agency updated its FOIA regulations in accordance with the FOIA Improvement Act of 2016? If not, what is your agency's plan to update your regulations?

Answer: CEQ is currently drafting its new FOIA regulation that complies with the FOIA Improvement Act of 2016. In its Fall 2020 Unified Agenda of Regulatory and Deregulatory Actions, CEQ projected that it will publish its NPRM for public comment in March 2021.

8. Please explain how your agency worked to mitigate the impact of the COVID-19 pandemic on FOIA processing. Examples could include, but are not limited to: altering workflows, implementing new technology, providing notices and instructions or otherwise communicating directly with requesters.

The COVID-19 pandemic had minimal impact on the processing of FOIA requests by CEQ. The CEQ FOIA workflow continued with little disruption, as CEQ FOIA personnel were able to seamlessly transition to teleworking. However, the processing and handling of paper records took additional planning and could not always be handled expeditiously when employees were teleworking.

9. Optional -- Please describe:

**Best practices used to ensure that your FOIA system operates efficiently and effectively
Any challenges your agency faces in this area**

CEQ FOIA professionals regularly work with the Office of Administration, a component of the Executive Office of the President (EOP) that provides technological infrastructure and services to CEQ including for e-discovery review. CEQ utilizes NUIX Discover which makes processing requests more efficient by streamlining the search process and reducing the amount of time it takes to perform initial searches of documents. CEQ regularly reviews its FOIA process to identify further efficiencies and is able to incorporate these improvements into best practices quickly. As with previous years, CEQ's biggest challenge in FY 2020 was processing voluminous FOIA requests and managing FOIA-related litigation with its limited resources.

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 any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

Answer:

Example 1: CEQ posts 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 periodically posts information related to the work of the interagency Ocean Policy Committee at <https://www.whitehouse.gov/ceq/initiatives/ocean-policy/>.

Example 3: CEQ posted a number of documents providing information to the public on the CEQ final rule issued in 2020 that comprehensively updates and modernizes its National Environmental Policy Act regulations at <https://www.whitehouse.gov/ceq/nepa-modernization/>.

2. 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: In addition to posting new material, CEQ regularly reviews and makes changes to the organization of the materials on its websites, in an effort to make the information more useful and accessible to the public.

3. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

Answer: In the past reporting year, CEQ has added a webpage that provides information to the public on Federal agencies’ work to improve the management of our Nation’s water resources and infrastructure at <https://www.whitehouse.gov/ceq/initiatives/federal-water-resources/>.

4. Optional -- Please describe:

**Best practices used to improve proactive disclosures
Any challenges your agency faces in this area**

Answer: CEQ staff regularly meet to consider proactively disclose FOIA productions and other agency documents that the agency expects will be of public interest. 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. Please briefly describe the types of technology your agency uses to support your FOIA program. In addition, please highlight if your agency is leveraging or exploring any new technology that you have not previously reported. If so, please describe the type of technology.

Answer: CEQ utilizes SharePoint, a network collaboration and records management platform to enhance recordkeeping integrity and search capabilities. CEQ also uses NUIX Discover, 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 2020?

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

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 2021.

Answer: CEQs quarterly reports were not posted to FOIA.gov in FY20, however CEQ is working with OIP to ensure the FY21 quarterly reports will appear on FOIA.gov

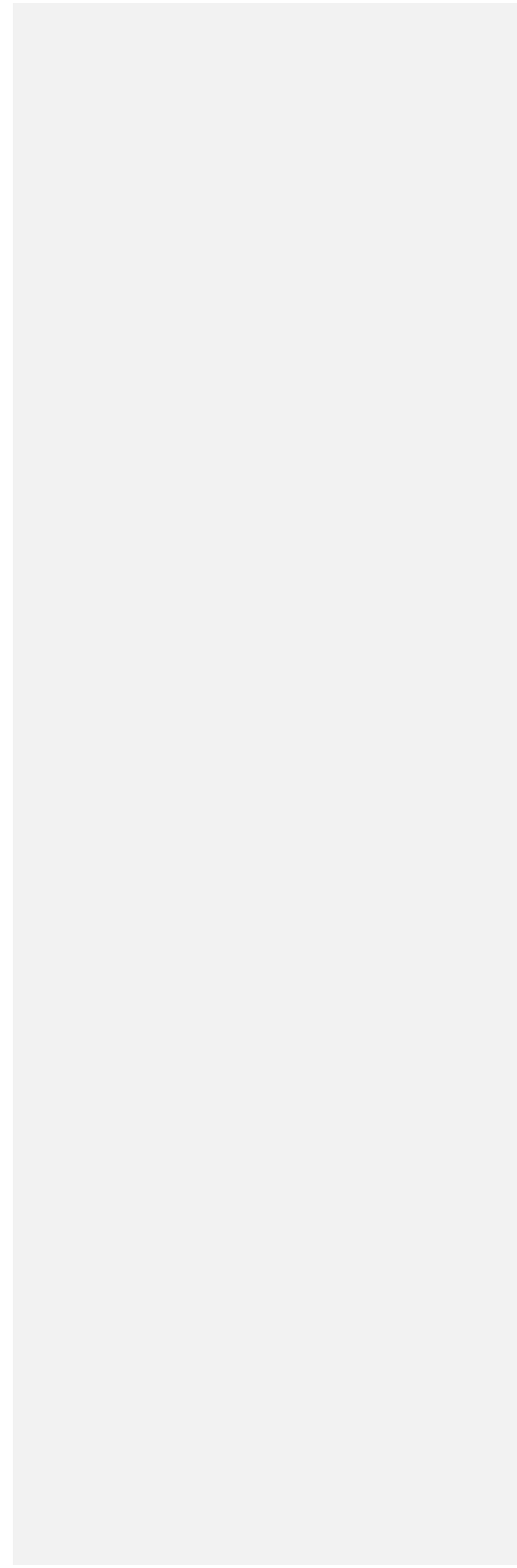
5. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2019 Annual FOIA Report and, if available, for your agency's Fiscal Year 2020 Annual FOIA Report.

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

6. Optional -- Please describe:

**Best practices used in greater utilizing technology
Any challenges your agency faces in this area**

Answer: CEQ has modest resources and must coordinate with the EOP Office of Administration on the adoption of any new technologies.



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 FY 2019 and 2020 Annual FOIA Reports.

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: 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, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2020?

Answer: For FY 2020, the average number of days to process simple requests was 30.38 days.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2020 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100.

Answer: Sixty-one percent of requests processed in FY 2020 were adjudicated as "simple" requests. For this calculation, CEQ only considered simple requests that were perfected and adjudicated on complexity (the number of simple cases divided by the number of all processed requests).

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 2019 and Fiscal Year 2020 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 2020, according to Annual FOIA Report Section XII.A, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

Answer: No.

6. If not, according to Annual FOIA Report Section V.A, did your agency process more requests during Fiscal Year 2020 than it did during Fiscal Year 2019?

Answer: Yes.

7. If your agency's request backlog increased during Fiscal Year 2020, 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 FY 2020, CEQ experienced a 39 percent increase in the number of incoming requests compared to the previous fiscal year. Despite this increase, CEQ processed 8 percent more requests than the previous fiscal year. Additionally, CEQ experienced an increase in litigation activity and complied with various FOIA litigation-related court orders during the reporting period.

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 2020. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. 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 FY 2020 was 33.1 percent (55 out of 166).

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2020, according to Section XII.A of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

Answer: No. CEQ's backlog in FY 2020 remained the same as compared with the backlog in FY 2019.

10. If not, according to section VI.A of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2020 than it did during Fiscal Year 2019?

Answer: No. CEQ processed four (4) appeals in FY 2020, compared to four (4) appeals in FY 2019.

11. If your agency's appeal backlog increased during Fiscal Year 2020, 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: N/A.

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 2020. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. If your agency did not receive any appeals in Fiscal Year 2020 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 FY 2020 was 33 percent (one (1) out of three (3)).

C. Backlog Reduction Plans

13. In the 2020 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2019 was asked to provide a plan for achieving backlog

reduction in the year ahead. Did your 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 2020?

Answer: N/A.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2020, please explain your agency's plan to reduce this backlog during Fiscal Year 2021.

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 2019 and Fiscal Year 2020 when completing this section of your Chief FOIA Officer Report.

OLDEST REQUESTS

15. In Fiscal Year 2020, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2019 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 2019 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

Answer: In FY 2020, CEQ closed one (1) of its ten (10) oldest requests that were reported pending in CEQ's Fiscal Year 2019 Annual FOIA Report.

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

CEQ employed a temporary FOIA specialist during the reporting period to assist with the agency backlog. Additionally, on a weekly basis, CEQ's FOIA professionals allocate specific time to work on aging pending requests.

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TEN OLDEST APPEALS

18. In Fiscal Year 2020, did your agency close the ten oldest appeals that were reported pending in Section VII.C.5. of your Fiscal Year 2019 Annual FOIA Report?

Answer: Yes.

19. 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 2019 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

Answer: N/A.

20. 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 FY 2020 and continues to work to improve its coordination with other agencies when consultations are a part of processing the appeal.

TEN OLDEST CONSULTATIONS

21. In Fiscal Year 2020, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2019 Annual FOIA Report?

Answer: Yes.

22. 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 2019 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

23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2019.

Answer: CEQ's ten oldest requests not closed in FY 2020 contain voluminous amounts of records (tens of thousands). During the reporting period, much of CEQ's modest FOIA resources were diverted to addressing ongoing FOIA litigation and complying with court orders.

24. 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.

25. 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 2021.

Answer: CEQ will continue to utilize available personnel resources to process FOIA requests and place emphasis on closing its older pending requests, appeals, and consultations. CEQ has renewed its contract for a FOIA specialist and hired a second specialist to solely work on FOIA.

F. Success Stories

Out of all the activities undertaken by your agency since March 2020 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, but should not be something that you have reported in a prior year. 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 processed more FOIA requests in FY 2020 than the previous fiscal year despite a 39 percent increase in incoming FOIA requests received.

In FY 2020, CEQ implemented additional training to improve its response time when adjudicating requests for expedited processing. As a result, CEQ’s average response time was reduced by 69 percent from the previous fiscal year, from an average of 12 days to an average of 3.71 days.

CEQ’s FOIA team deftly adapted to the COVID pandemic and seamlessly transitioned to teleworking with minimal impact to FOIA requesters. CEQ FOIA requests continued to be received through normal channels and processed using existing workflows, and correspondences with requesters continued without disruption.