



FEDERAL ELECTION COMMISSION

2015 CHIEF FOIA OFFICER REPORT

**2015 Chief FOIA Officer Report
Federal Election Commission
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Section I: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.

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?

Yes. FEC FOIA professionals attended training provided by the Department of Justice, as well as training provided by the Office of Government Information Services at the National Archives and Records Administration.

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

60 percent.

3. In the 2014 Chief FOIA Officer Report Guidelines, OIP asked agencies to provide a plan for ensuring that core, substantive FOIA training is offered to all agency FOIA professionals at least once each year. Please provide the status of your agency's implementation of this plan.

Consistent with OIP's guidance that every agency make core, substantive FOIA training available to all of their FOIA professionals at least once each year, the FEC has made annual training for its FOIA professionals a priority. In Fiscal Year 2014, 60 percent of the FEC's FOIA professionals attended FOIA training. The remaining FOIA professionals are registered to attend FOIA training in February of 2015. All FEC FOIA professionals have been made aware of the training requirement; and during the next performance appraisal period, mandatory participation in annual FOIA training will be added to each FOIA professional's performance plan.

Discretionary Releases:

4. Does your agency have a distinct process or system in place to review records for discretionary release?

No.

5. *During the reporting period, did your agency make any discretionary releases of information?*

Yes. Although the FEC does not have a formal process in place to review records for discretionary release, the Agency makes discretionary releases of otherwise exempt information on a case-by-case basis in its FOIA responses. Decisions to make discretionary releases are made through an informal process in consultation with the office or division that created the record.

6. *What exemption(s) would have covered the material released as a matter of discretion? For a discussion of the exemptions that allow for discretionary releases, please see OIP's guidance on implementing the President's and Attorney General's FOIA Memoranda.*

Exemption 5.

7. *Provide a narrative description, as well as some specific examples, of the types of information that your agency released as a matter of discretion during the reporting year.*

The FEC discretionarily released certain internal emails (or portions thereof) among FEC staff, which contained information that could have been withheld under the deliberative process privilege, where the Agency did not foresee that disclosure would cause harm to the Agency's operations. The FEC also regularly releases in connection with its public disclosure of closed enforcement cases, intra-agency memoranda (portions of which would be protected by the deliberative process and/or attorney work-product privileges) pursuant to the FEC's Interim Disclosure Policy.

8. *If your agency was not able to make any discretionary releases of information, please explain why.*

Not applicable.

Other Initiatives:

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.*

- *If any of these initiatives are online, please provide links in your description.*

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

As the Attorney General emphasized in his FOIA Guidelines, "[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.

Processing Procedures:

1. *For Fiscal Year 2014, 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 2014 Annual FOIA Report.*

4.6 days.

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.*

Not applicable.

Requester Services:

3. *Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at the National Archives and Records Administration? See OIP Guidance, "Notifying Requesters of the Mediation Services Offered by OGIS." (July 9, 2010)*

Yes. The FEC's FOIA Requester Service Center notifies requesters of the mediation services offered by OGIS as part of the Agency's final response to an administrative appeal.

4. *When assessing fees, does your agency provide a breakdown of how FOIA fees were calculated and assessed to the FOIA requester? For example, does your agency explain the amount of fees attributable to search, review, and duplication? See OIP Guidance, "The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications." (Nov. 22, 2013)*

Not applicable. The FEC did not assess any FOIA fees during Fiscal Year 2014.

5. *If estimated fees estimates are particularly high, does your agency provide an explanation for the estimate to the requester? See id.*

Not applicable.

Other Initiatives:

6. *If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc., please describe them here.*

The FEC's FOIA Requester Service Center has sought assistance from the Agency's Office of the Chief Information Officer to conduct more centralized searches for emails

responsive to FOIA requests, where appropriate, rather than relying on individual employees to search their own documents.

Section III: Steps Taken to Increase Proactive Disclosures

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Posting Material:

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

Yes. The FEC utilizes a formal process, consistent with the Agency's Interim Disclosure Policy, 68 Fed. Reg. 70,426 (Dec. 18, 2003), for proactively disclosing closed Enforcement, Alternative Dispute Resolution, and Administrative Fines cases files within 30 days of case closure. Other types Agency records are identified for proactive disclosure through an informal process.

2. Does your process or system involve any collaboration with agency staff outside the FOIA office? If so, describe this interaction.

No.

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

The FEC generally does not receive many FOIA requests for the same documents.. However, the Agency's FOIA Requester Service Center monitors its FOIA request log, and when frequently requested records are identified, they will be posted to the Commission's website.

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

In Fiscal Year 2014, the FEC continued to proactively post updated information on its website regarding the Agency's enforcement and compliance processes---reporting thresholds, manuals, and other procedural guidance—to make the FEC's processes more transparent to the public. This information is available at the following link: http://www.fec.gov/law/procedural_materials.html.

Other Initiatives:

5. If there are any other steps your agency has taken to increase proactive disclosures, please describe them here.

None.

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.

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?

Yes.

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

During Fiscal Year 2014, the FEC launched a website improvement initiative in partnership with 18F, a digital services delivery team in the General Services Administration, with the goal of enhancing the public's access to and the delivery of campaign finance data. As part of this initiative, on September 17, 2014, the FEC hosted a public forum to seek broad public input for its effort to improve access to information through a redesign of the Agency's website. Members of the public are also able to find information about the website improvement initiative and submit recommendations through a page on 18F's website: <https://github.com/18F/openFEC>.

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

No.

4. If so, please briefly explain what those challenges are.

Not applicable.

Other Initiatives:

5. *Did your agency successfully post all four quarterly reports for Fiscal Year 2014?*

Yes, the FEC successfully posted all four quarterly reports for Fiscal Year 2014.

6. *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 2015.*

Not Applicable.

7. *Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? See OIP Guidance, "The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications." (Nov. 22, 2013) If yes, what are the different types of electronic means are utilized by your agency to communicate with requesters?*

Yes, the FEC's FOIA professionals use email to communicate with requesters whenever feasible.

8. *If your agency does not communicate electronically with requesters as a default, are there any limitations or restrictions for the use of such means? If yes, does your agency inform requesters about such limitations? See id.*

Not Applicable.

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

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section 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.

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?*

Yes.

2. *If so, for your agency overall in Fiscal Year 2014, was the average number of days to process simple requests twenty working days or fewer?*

In Fiscal Year 2014, the average number of days for the FEC to process simple requests was 23.5 days.

3. *Please provide the percentage of requests processed by your agency in Fiscal Year 2014 that were placed in your simple track.*

90.8 Percent.

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?*

Not applicable.

BACKLOGGED REQUESTS

5. *If your agency had a backlog of requests at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013?*

At the close of Fiscal Year 2014, the FEC had 30 backlogged FOIA requests, which is 18 more than the FEC had at the end of Fiscal Year 2013. The increase in the FEC's FOIA request backlog is due to a continued increase in the number of FOIA requests received by the Agency, as well as a decrease in the number of Agency FOIA professionals. The FEC received 98 FOIA requests in Fiscal Year 2014, whereas the Agency had received 87 FOIA requests during Fiscal Year 2013 and only 60 requests during Fiscal Year 2012. The FEC also lost a very experienced FOIA attorney during the second quarter of Fiscal Year 2014, and was unable to fill this position until the beginning of Fiscal Year 2015.

6. *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 2014. If your agency did not receive any requests in Fiscal Year 2014 and/or has no request backlog, please answer with "N/A."*

30.6 percent

BACKLOGGED APPEALS

7. *If your agency had a backlog of appeals at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013?*

At the close of Fiscal Year 2014, the FEC had four backlogged FOIA appeals, which is one more than the FEC had at the end of Fiscal Year 2013. The increase in the FEC's

FOIA appeal backlog is due to a 33 percent increase in the number of appeals received by the Agency, as well as the loss of an experienced FOIA attorney.

8. *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 2014. If your agency did not receive any appeals in Fiscal Year 2014 and/or has no appeal backlog, please answer with "N/A."*

100 percent.

TEN OLDEST REQUESTS

9. *In Fiscal Year 2014, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2013 Annual FOIA Report?*

No.

10. *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 2013 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.*

During Fiscal Year 2014, the FEC closed two of the 10 oldest requests pending at the end of Fiscal Year 2013.

11. *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?*

None.

TEN OLDEST APPEALS

12. *In Fiscal Year 2014, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2013 Annual FOIA Report?*

No.

13. *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 2013 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.*

During Fiscal Year 2014, the FEC closed two of the three "oldest" appeals reported in its Fiscal Year 2013 Annual FOIA Report.

TEN OLDEST CONSULTATIONS

14. In Fiscal Year 2014, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

The FEC did not have any pending consultations at the end of Fiscal Year 2013.

15. 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 2013 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Not applicable.

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

16. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2013.

Seven of the eight oldest FOIA requests from Fiscal Year 2013 that were not closed in Fiscal Year 2014 involved requests for voluminous records. The remaining request related to Agency records that were more than three decades old and required extensive searching to locate information concerning the records. That request was closed by the FEC in early-2015. With respect to one of the oldest pending requests, the FEC is also awaiting a response from another agency on a consultation. More generally, the FEC encountered difficulties in closing its oldest FOIA requests and appeals due to the fact that the Agency's does not have dedicated FOIA professionals, and the attorneys and paralegals that run the FEC's FOIA Requester Service Center had many competing high priority assignments during Fiscal Year 2014.

17. 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.

The FOIA request as to which the FEC is awaiting a response from another agency on a consultation was received by the FEC on June 9, 2011. The consultation was sent to the other agency on July 28, 2011, and the FEC's last documented contact with the agency before the close of Fiscal Year 2014 was on July 29, 2011. The FEC FOIA Requester Service Center contacted the agency again in early-2015.

18. 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 2015.

The FEC's FOIA Requester Service Center has made closing its oldest FOIA requests a top priority for Fiscal Year 2015. FEC's FOIA professionals are actively working on the

Agency's two oldest FOIA requests with a goal of closing both requests by the end of the third quarter, and last month the FEC closed the third oldest request reported in its FOIA Annual Report for Fiscal Year 2014. The FEC then plans to address the remaining five "oldest" requests in the order of receipt. The oldest pending FOIA appeal relates to a FOIA request was closed during Fiscal Year 2014, and as such the FEC anticipates that this appeal will soon be closed.

Use of the FOIA's Law Enforcement Exclusions

Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2014?

No.