



FEDERAL ELECTION COMMISSION

2019 CHIEF FOIA OFFICER REPORT

High-Volume Agencies Receiving More Than 50 Requests in FY17

Content of 2019 Chief FOIA Officer Reports

Gregory R. Baker, Deputy General Counsel - Administration

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 least at the Assistant Secretary or equivalent level. Is your agency's Chief FOIA Officer at or above this level?

Yes.

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

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B. FOIA Training

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

Yes.

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

- *Continuing FOIA Education on April 26, 2018*
- *Annual FOIA Report Refresher Training on October 9, 2018*

- *Freedom of Information Act Litigation Seminar on November 1, 2018*
- *Freedom of Information Act Training through Skillsoft October 10, 2018 - December 11, 2018*

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

100% compliance

6. OIP has directed agencies to “take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year.” If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency’s plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

Not applicable.

C. Outreach

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

No.

D. Other Initiatives

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

The FEC’s FOIA Requester Service Center has worked with the FEC’s Press Office to ensure better communication and teamwork between these offices—which have sometimes similar public disclosure responsibilities—with respect to FOIA responses. The FEC has included FOIA-related performance standards in work plans for all employees performing work as part of the FOIA Requester Service Center, but not for other employees.

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.

Not applicable.

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 2018, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2018 Annual FOIA Report.

Nine 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.

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

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

No. The FEC has not conducted a self-assessment, but plans to study the OIP FOIA Self-Assessment Toolkit in 2019.

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

During FY 2018, requesters sought assistance from the FOIA Public Liaison in connection with two FOIA requests.

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

The FEC's FOIA Requester Service Center and the Agency's Office of Chief Information Officer (OCIO) jointly developed a procedure for searching Agency email accounts. OCIO could search Agency email accounts and populate a centralized inbox in Outlook with potentially responsive materials. But due to Outlook's limited search capabilities, the FEC has procured a new eDiscovery system, iConect-Xera, which will allow the FOIA Requester Service Center and OCIO to jointly and efficiently search all Agency email accounts and accelerate processing times by automatically removing duplicates from responsive records.

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.

In FY 2018, 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:

https://transition.fec.gov/law/procedural_materials.shtml. More recently, the Agency launched an updated Open Government Page, which highlights efforts to provide new information to the public on how federal campaigns are financed and how the FEC operates. This page can be found at the following link: <https://www.data.gov/open-gov/>. Included on this page are links to

new categories of information that are being released in accordance with the FEC's Policy Statement on Disclosure of Certain Documents in Enforcement, Administrative Fines, Alternative Dispute Resolution Cases and Administrative Matters.

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

Many requests received by the FEC seek documents that are already proactively disclosed on the Agency's website consistent with the requirements of the Federal Election Campaign Act, FEC regulations, and Commission policies. Outside of these requests, 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 if frequently requested records are identified, they will be posted to the Commission's website.

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?

Yes.

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

In May 2017, the FEC launched its new website, which allows members of the public to more easily locate and access documents proactively disclosed by the Agency. Specifically, the new website offers improved navigation, content and readability; is mobile-device friendly; and allows users to access a significantly wider universe of campaign finance data than previously available through the FEC's website. The Agency continues to add new content to the website on a regular basis.

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

As part of an overall initiative to maintain transparency as an agency, the FEC's policy currently proactively discloses a large portion of Agency documents on the Agency's website. These documents are commonly requested by the public and include records such as closed MURs, closed administrative fine cases, RAD reports, ADRs, Audit Reports, and more.

Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information more accessible. In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that that describes your agency's efforts in this area.

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

Yes. The Agency has recently procured and is in the process of integrating an eDiscovery system, iConect-Xera, which will allow the FOIA Requester Service Center to efficiently search all Agency email accounts and accelerate processing times by automatically removing duplicates from responsive records.

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?

Yes.

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

Yes. The FEC successfully posted all four quarterly reports for Fiscal Year 2018.

4. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2019.

Not applicable.

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

<https://www.fec.gov/about/reports-about-fec/foia-reports/>

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

In FY 2018, the Agency procured the eDiscovery system, iConect-Xera, which will allow the FOIA Requester Service Center to efficiently search all Agency email accounts and accelerate processing times by automatically removing duplicates from responsive records. This software is expected to assist in the completion of a large number of backlogged cases. Also in FY 2018, the Agency went paperless in its FOIA process and began storing all files electronically to reduce redundancy.

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

The Department of Justice has emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations.

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2018 Annual FOIA Report and, when applicable, your agency's 2017 Annual FOIA Report.

A. Simple Track

Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

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

Yes. The FEC utilizes a three track system.

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

No. In Fiscal Year 2018, the overall average number of days for the FEC to process simple requests was 46.1 days. The average number of days was higher than usual this fiscal year due to the closure of 17 backlogged cases from prior years.

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

77.3 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.

B. Backlogs

Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2016 and Fiscal Year 2017 when completing this section of your Chief FOIA Officer Report.

BACKLOGGED REQUESTS

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

No, the FEC's backlog did not decrease. At the close of Fiscal Year 2018, the FEC had 72 backlogged FOIA requests, thirteen more than the FEC had at the end of Fiscal Year 2017.

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

Yes, the FEC processed 163 requests during Fiscal Year 2018 and 134 requests during Fiscal Year 2017.

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

- An increase in the number of incoming requests.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

The FEC received more FOIA requests in FY 2018 than the year before. The total number of FOIA requests received in FY 2018 was 9.3 percent higher than FY 2017 (164 requests in 2018 compared to 150 request in 2017). The Agency processed 36 complex requests in FY 2018. A common example of a complex request received is one seeking all emails from one or multiple political appointees, or simply all emails mentioning their names, for multiple years. Due to the volume and complexity of FOIA requests received in FY 2018, as well as the loss of an experienced FOIA attorney and the prolonged leave of the FOIA Public Liaison, the FEC was not able to reduce its backlog. In FY 2018 the FEC hired a new fulltime FOIA attorney and another attorney who actively works on FOIA requests to help remedy this issue.

8. If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2018. If your agency has no request backlog, please answer with “N/A.”

43.9 percent.

BACKLOGGED APPEALS

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

No, the FEC’s backlog did not decrease. At the close of Fiscal Year 2018, the FEC had nine backlogged FOIA appeals, five more than the FEC had at the end of Fiscal Year 2017.

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

No, the FEC did not process more appeals during Fiscal Year 2018 than it did during Fiscal Year 2017.

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

- An increase in the number of incoming appeals.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

Because of deadlocked decisions by the Commission, some appeals were not considered closed. The FEC Requester Service Center is reviewing and reconsidering how it treats such appeals. Additionally, as discussed with respect to backlogged requests, due to the loss of an experienced FOIA attorney and the prolonged leave of the FOIA Public Liaison, the FEC was not able to reduce its backlog. In FY 2018 the FEC hired a new fulltime FOIA attorney and another attorney who actively works on FOIA requests to help remedy this issue.

12. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2018. If your agency did not receive any appeals in Fiscal Year 2018 and/or has no appeal backlog, please answer with "N/A."

128 percent.

C. Backlog Reduction Plans

13. In the 2018 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2017 was asked to provide a plan for achieving backlog reduction in the year ahead. Did you agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2018?

Not applicable.

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

Not applicable.

D. Status of Oldest Requests, Appeals, and Consultations

Section VII.E, entitled “Pending Requests – Ten Oldest Pending Requests,” Section VI.C.(5), entitled “Ten Oldest Pending Administrative Appeals,” and Section XII.C., entitled “Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency,” show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2016 and Fiscal Year 2017 when completing this section of your Chief FOIA Officer Report.

OLDEST REQUESTS

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

No.

16. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2016 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

Five requests were closed by the end of the fiscal year.

17. Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?

Not applicable.

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

During Fiscal Year 2018, the Agency hired a full time FOIA attorney and another attorney who actively works on FOIA requests.

TEN OLDEST APPEALS

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

No.

20. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2017 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

The FEC had five pending appeals at the end of 2017. In Fiscal Year 2018, the FEC closed one of these appeals.

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

During Fiscal Year 2018, the Agency hired a full time FOIA attorney and another attorney who actively works on FOIA requests.

TEN OLDEST CONSULTATIONS

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

Not Applicable. The FEC did not have any consultations pending at the end of Fiscal Year 2017.

23. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2017 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

The FEC did not have any consultations pending at the end of Fiscal Year 2017.

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

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

The increasing volume and complexity of FOIA requests received contributed to the Agency's inability to reduce its backlog in Fiscal Year 2018.

25. If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

The Agency had been unable to close its oldest request because it is waiting to hear back from another agency on a consultation. This FOIA request was received by the FEC on June 9, 2011, and the documents for consultation in this matter were sent to the other agency on July 26, 2011. The FEC's FOIA Requester Service Center last contacted the agency where the consultation was pending on October 5, 2018. The FEC's fourth oldest FOIA request, which was received on August 28, 2013, also sought the same documents submitted to the other agency for FOIA consultation in July 2011. Both of these requests were closed in the first quarter of FY 2019, but only because of the requesters' decision, as we have not received a final response to our consultation from this other agency.

26. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2018.

During Fiscal Year 2018, the Agency hired a full time FOIA attorney and another attorney who actively works on FOIA requests.

F. Success Stories

Out of all the activities undertaken by your agency since March 2018 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas. As noted above, OIP will highlight these agency success stories during Sunshine Week. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

During the 2018 Fiscal Year the Agency hired a dedicated FOIA Attorney and focused on closing out backlogged cases. Because of the allocation of resources toward the reduction of the Agency backlog, seventeen (17) of the oldest backlogged cases for the Agency were closed in the last year. To further assist in clearing the Agency backlog, the Agency purchased a new eDiscovery system, iConect-Xera, which will allow the Agency to more efficiently process high volume cases.