

# 2012 Chief FOIA Officer Report Federal Election Commission

## Section I: Steps Taken to Apply the Presumption of Openness

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

*No.*

2. Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?

*Yes.*

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

3. Did your agency make any discretionary releases of otherwise exempt information?

*In response to specific FOIA requests, none that were specifically noted as such. However, the agency regularly proactively discloses General Counsel's Reports in closed enforcement matters. These materials would otherwise be exempt as predecisional and/or attorney-client privileged.*

4. What exemptions would have covered the information that was released as a matter of discretion?

*N/A*

5. Describe your agency's process to review records to determine whether discretionary releases are possible.

*All of our FOIA professionals are aware of the 2009 FOIA guidelines and the possibility of discretionary release is considered on initial and supervisory review of production in response to each request.*

6. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

*N/A*

In Section V.B.(1) of your agency's Annual FOIA Report, entitled "Disposition of FOIA Requests – All Processed Requests" the first two columns list the "Number of Full Grants" and the "Number of Partial Grants/Partial Denials." Compare your agency's 2011 Annual FOIA Report with last year's Annual FOIA Report, and answer the following questions:

7. Did your agency have an increase in the number of responses where records were released in full?

*Yes, our agency had an increase in the number of responses where records were released in full. The percentage of requests granted in full rose to 42% in FY 2011, up from 30% in FY 2010.*

8. Did your agency have an increase in the number of responses where records were released in part?

*Yes, our agency had an increase in the number of responses where records were released in part. The percentage of requests granted in part rose to 36% during FY 2011, up from 25% in FY 2010. Thus, the percentage of requests granted either in whole or in part rose to 78% in FY 2011, up from 55% in FY 2010.*

## **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."

This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support.

Describe here the steps your agency has taken to ensure that its system for responding to requests is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

1. Do FOIA professionals within your agency have sufficient IT support?

*FOIA recordkeeping requires the manual population of Excel spreadsheets. In fiscal year 2011, the FEC contracted for an integrated FOIA module developed by its enterprise content management provider. FOIA professionals are now reviewing the system purchased to determine what modifications may be necessary in order to make that system work.*

2. Is there regular interaction between agency FOIA professionals and the Chief FOIA Officer?

*Yes. The Chief FOIA Officer is the second level supervisor of all of the agency's FOIA professionals. Because of a vacancy in an Assistant General Counsel's*

*position, the Chief FOIA Officer has been in effect the direct supervisor of all FOIA professionals since June 1, 2011.*

3. Do your FOIA professionals work with your agency's Open Government Team?

*Not usually directly about substantive FOIA or Open Government projects. The agency has delegated Open Government responsibilities to its Information Technology Division, in concert with its Public Information Division. FOIA professionals interact frequently with ITD professionals about IT issues.*

4. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to FOIA administration.

*As noted, the agency has a key vacancy in an Assistant General Counsel's position that is the direct supervisory position over most FOIA professionals. The agency undertook a hiring process for that position in FY 2011 and the beginning of FY 2012, but two strong finalists withdrew. The agency is considering next steps.*

5. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.

*N/A*

### **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.

Describe here the steps your agency has taken both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2011 to March 2012). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

1. Has your agency added new material to your website since last year?

*Yes, a considerable amount.*

2. Provide examples of the records, datasets, videos, etc., that have been posted this past year.

*The FEC completed a project to place on its web site copies of all audit reports produced since the agency opened its doors in 1975, as well as an online search system for these reports. It launched a searchable electronic rulemaking page for rulemaking documents dating to 1999, using a search system more familiar to users who search for closed enforcement matters and advisory opinions on our website. It also launched capability to receive rulemaking comments online. It tied to an interactive map, similar to our popular map-driven system for finding campaign finance disclosure information online, information that would be helpful to political*

*committee treasurers and others concerning reporting dates and the dates (determined by each state's primary and general election dates) during which certain provisions of the campaign finance laws relating to coordinated communications, electioneering communications, and "federal election activity" are operative. It also added a plain writing page to the web site, as required by the Plain Writing Act of 2010, and moved to a separate page (away from the web site's page for agency budget information) all current and historic information about the agency's strategic plans.*

3. Describe the system your agency uses to routinely identify records that are appropriate for posting.

*An interdivisional committee meets periodically to consider improvements and additions to the web site. Some additions are made at the direct instance of operating divisions consistent with their operational needs, or by new statutory requirement.*

4. Beyond posting new material, is your agency taking steps to make the information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities, providing explanatory material, etc.?

*Since 2009, the agency has had an ongoing initiative that has taken a number of steps to solicit user feedback on the web site, including public hearings. A public forum in which users were invited to come to the Commission and speak directly with Commissioners, ITD personnel and Information Division personnel was held February 15, 2012.*

5. Describe any other steps taken to increase proactive disclosures at your agency.

## **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. In 2010 and 2011, agencies reported widespread use of technology in handling FOIA requests. For 2012, the questions have been further refined and now also address different, more innovative aspects of technology use.

*Electronic receipt of FOIA requests:*

1. Can FOIA requests be made electronically to your agency?

*Only by e-mail.*

2. If your agency processes requests on a decentralized basis, do all components of your agency receive requests electronically?

*N/A*

*Online tracking of FOIA requests:*

3. Can a FOIA requester track the status of his/her request electronically?

*No.*

4. If not, is your agency taking steps to establish this capability?

*The software package purchased by the Commission in FY 2011 and still under review and testing may develop this capability in later versions.*

*Use of technology to facilitate processing of requests:*

5. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced 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?

*See answer to II.1.*

6. If so, describe the technological improvements being made.

*See answer to II.1.*

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

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section 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 and appeals. *For the figures required in this Section, please use those contained in the specified sections of your agency's 2011 Annual FOIA Report.*

1. 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. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.

a. Does your agency utilize a separate track for simple requests?

*Yes, our agency uses a separate track for processing simple requests.*

b. If so, for your agency overall, for Fiscal Year 2011, was the average number of days to process simple requests twenty working days or fewer?

*No, our average number of days to process simple requests was forty-four working days; however, we improved our response time compared to FY 2010, when it took fifty-two days to process a simple request.*

- c. If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?

*N/A*

2. Sections XII.D.(2) and XII.E.(2) of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report – Backlogged Requests/Appeals," show the numbers of any backlog of pending requests or pending appeals from Fiscal Year 2011 as compared to Fiscal Year 2010. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition, Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," and Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," from both Fiscal Year 2010 and Fiscal Year 2011 should be used for this section.

- a. If your agency had a backlog of requests at the close of Fiscal Year 2011, did that backlog decrease as compared with Fiscal Year 2010?

*No, our backlog of requests increased from 10 in FY 2010 to 13 in FY 2011.*

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2011, did that backlog decrease as compared to Fiscal Year 2010?

*Our backlog of administrative appeals did not decrease in FY 2011. We had one backlogged appeal in FY 2010 and one backlogged appeal in FY 2011.*

- c. In Fiscal Year 2011, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2010?

*In FY 2011, our agency closed the ten oldest requests that were pending as of the end of FY 2010.*

- d. In Fiscal Year 2011, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2010?

*In FY 2011, Our agency closed two of the three administrative appeals that were pending from FY 2010.*

3. If you answered "no" to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation:

Request Backlog:

- a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?

*No, the lack of a reduction in the request backlog was not a result of an increase in the number of incoming requests. The number of requests received in FY 2010 was 81 and the number of requests received in FY 2011 was 82.*

- b. Was the lack of a reduction in the request backlog caused by a loss of staff?

*Yes, during FY 2011, our FOIA Public Liaison/Assistant General Counsel for Administrative Law was completing an extended leave in the first month of the fiscal year, and then left the agency approximately June 1.*

- c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?

*Yes, during FY 2011 the number of complex requests received grew exponentially. We received one in FY 2010 and six in FY 2011.*

- d. What other causes, if any, contributed to the lack of a decrease in the request backlog?

Administrative Appeal Backlog:

- e. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?

*N/A*

- f. Was the lack of a reduction in the appeal backlog caused by a loss of staff?

*N/A*

- g. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received?

*N/A*

- h. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?

All agencies should strive to both reduce any existing backlogs or requests and appeals and to improve their timeliness in responding to requests and appeals. Describe the steps your agency is taking to make improvements in those areas. In doing so, answer the following questions and then also include any other steps being taken to reduce backlogs and to improve timeliness.

1. Does your agency routinely set goals and monitor the progress of your FOIA caseload?

*Progress is regularly monitored through the agency's internal tracking mechanisms. With respect to goal setting, the FOIA Requester Service staff members have set timelines for various stages of the FOIA response process to ensure that requests are responded to efficiently. The agency's FOIA statistics are also included in quarterly reports to the Commission.*

2. Has your agency increased its FOIA staffing?

*No.*

3. Has your agency made IT improvements to increase timeliness?

*Not that have yet borne fruit, but see II.1 above.*

4. If your agency receives consultations from other agencies, has your agency taken steps to improve the efficiency of the handling of such consultations, such as utilizing IT to share the documents, or establishing guidelines or agreements with other agencies on the handling of particular information to speed up or eliminate the need for consultations?

*The progress for consultations is monitored in the same manner as other FOIA matters (through internal tracking mechanisms), with set deadlines imposed for the assigned staff member. The FOIA Requester Service staff maintains regular contact with the consulting agency's points of contact to provide status updates on the consultations.*

## **Use of FOIA's Law Enforcement "Exclusions"**

In order to increase transparency regarding the use of the FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to "treat the records as not subject to the requirements of [the FOIA]," 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. Did your agency invoke a statutory exclusion during Fiscal Year 2011?

*No. Readers may wish to be aware that the question posed above is not the same as an inquiry about invocation of the exemption at 5 U.S.C. § 552(b)(3) for material required to be kept confidential by statute.*

2. If so, what is the total number of times exclusions were invoked?

*N/A*

## **Spotlight on Success**

Out of all the activities undertaken by your agency since March 2011 to increase transparency and improve FOIA administration, describe here one success story that you would like to highlight as emblematic of your agency's efforts.

*Our FOIA resources were focused this year on responding to several highly complex requests. We were proud that through the cooperation of client offices, the work of our FOIA team, and the lending of resources from other parts of the General Counsel's office we were able to produce thousands of pages of documents in the most sensitive of these requests in a very short turnaround time. We look forward in the coming year to improvements resulting from new technology and new efficiencies in our delegation of final review responsibilities.*