



FEDERAL ELECTION COMMISSION

2014 CHIEF FOIA OFFICER REPORT

**2014 Chief FOIA Officer Report
Federal Election Commission
Gregory R. Baker, Deputy General Counsel - Administration**

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.

FOIA Training:

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

No.

2. If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.

N/A.

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

Yes.

4. Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period.

50 %.

5. OIP has issued guidance that every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year. Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year.

The FEC's FOIA professionals have all been informed of the training requirement, and have been instructed to provide their supervisor with information regarding the training(s) they plan to attend in satisfaction of this requirement. All FEC FOIA

professionals are expected to register for appropriate training for calendar year 2015 by no later than April 1, 2014.

Outreach:

6. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement.

The FEC did not engage in any formal outreach with the requester community or open government groups regarding our administration of FOIA. However, we regularly communicate with requesters, including many who work for open government groups, on a case-by-case basis to ensure that we can meet their information needs as efficiently as possible.

Discretionary Disclosures:

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.

7. Does your agency have a formal process in place to review records for discretionary release? If so, please briefly describe this process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases.

No.

8. During the reporting period did your agency make any discretionary releases of otherwise exempt information?

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

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

Exemption 5.

10. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.

The FEC discretionarily released internal emails or portions thereof between FEC staff regarding enforcement matters, where those emails contained information that could have been withheld under the deliberative process privilege, but the Agency did not foresee that disclosure of the information would cause harm to the Agency. In its public disclosure of closed enforcement records, the FEC regularly releases General Counsel's Reports (portions of which would be protected by the deliberative process and/or attorney work-product privileges) in connection with its Interim Disclosure Policy.

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

N/A.

Other Initiatives:

12. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014.

Yes.

13. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please provide links in your description.

None.

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

Describe here the steps your agency has taken to ensure that your management of your FOIA program 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.

Personnel:

During Sunshine Week 2012 OPM announced the creation of a new job series entitled the Government Information Series, to address the work performed by FOIA and Privacy Act professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

1. Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series?

The FEC's Office of Human Resources is evaluating whether any positions would be properly reclassified in the GS-0306 Government Information Specialist series. The FEC does not have any employees dedicated full-time to FOIA or Privacy Act work. The Agency's FOIA Program operations are managed by paralegal specialists and attorneys classified in the GS-905 Occupation Series, who perform work in various areas including FOIA. Therefore, we do not anticipate that the FEC's FOIA professionals will be converted to the new Government Information Specialist job series.

2. If not, what proportion of personnel has been converted to the new job series?

N/A.

3. If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted?

N/A.

Processing Procedures:

4. For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Yes. In Fiscal Year 2013, the FEC adjudicated requests for expedited processing in an average of 3 calendar days. All requests for expedited processing received by the Agency were adjudicated in ten or less calendar days.

5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.

No. The FEC typically receives few consultations and referrals each year and currently processes those received efficiently.

Requester Services:

6. Do you use e-mail or other electronic means to communicate with requesters when feasible?

Yes.

7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?

No. The Agency is taking steps to ensure this language is included in all future final response letters in administrative appeals.

8. Describe 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.

The FEC's FOIA Office has been working extensively with the Agency's Office of the Chief Information Officer to develop a new electronic case management system for tracking FOIA requests and appeals. Once this system is complete, the FEC will be able to more easily track the progress of FOIA matters and ensure that matters are processed as efficiently as possible.

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 2013 to March 2014). 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.

Posting Material:

1. Do your FOIA professionals have a system in place to identify records for proactive disclosures?

No.

2. If so, describe the system that is in place.

N/A.

3. Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.

*In the past year, the FEC has continued to post updated information online regarding its enforcement and compliance processes—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.shtml.*

Making Posted Material More Useful:

4. 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, such as soliciting feedback on the content and presentation of posted material, improving search capabilities on the site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.?

Yes.

5. If so, provide examples of such improvements.

*Since 2009, the FEC has had an ongoing initiative to solicit user feedback on its website and to make the website more user-friendly. In June 2013, the FEC’s Press Office launched a revamped website designed to help the public, including researchers, academics and media, find information on the Commission and campaign finance law and to locate statistical data more quickly and easily. A news release regarding the launch of the revamped Press Office website is available at the following link:
<http://www.fec.gov/press/press2013/20130620NewPressSite.shtml>.*

6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized?

The FEC regularly uses news releases to make the public aware of the availability of draft Advisory Opinions and closed Enforcement case files on the Agency’s website. These releases appear on the “What’s New on Fec.gov” page on the Agency’s website. The FEC also has a Twitter account through which it publicizes this information, as well as other noteworthy items taking place at the Agency.

7. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.

No.

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

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. Over the past several years agencies have reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2014, as we have done over the past years, the questions have been further refined and now also address different, more innovative aspects of technology use.

Online tracking of FOIA requests:

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

No.

2. If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?

N/A.

3. Describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.

N/A.

4. In particular, does your agency tracking system provide the requester with an estimated date of completion for his/her request?

N/A.

5. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability? If not, please explain why.

As a small agency, which generally receives less than 100 FOIA requests per year, the costs of establishing an online tracking system is relatively high compared to the number of requesters seeking information from the FEC. Although the FEC does not have an

online tracking system, the Agency strives to provide requesters with detailed status update information as quickly as possible.

Use of technology to facilitate processing of requests:

6. 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?

Yes.

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

As mentioned in the response to Part II, Question 8, the FEC's FOIA Office has been working on a new electronic case management system for tracking FOIA requests and appeals, which will enable the matters to be more easily tracked and efficiently processed. This system will also eventually serve as a platform for FEC FOIA professionals to share documents within the FOIA Office.

8. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program?

Yes. The availability of software to sort and de-duplicate documents would be helpful in achieving further efficiencies in the FEC's FOIA Program.

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, appeals, and consultations. *For the figures required in this Section, please use those contained in the specified sections of your agency's 2013 Annual FOIA Report and, when applicable, your agency's 2012 Annual FOIA Report.*

Simple Track Requests:

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.

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

Yes.

- b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?

During FY 2013, the FEC processed simple requests in an average of 16.3 days.

- 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.

Backlogs and "Ten Oldest" Requests, Appeals and Consultations:

2. 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. 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 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.

Backlogs

- a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012?

At the close of Fiscal Year 2013, the FEC had twelve backlogged FOIA requests, which is seven more than the FEC had at the end of Fiscal Year 2012.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?

At the close of Fiscal Year 2013, the FEC had three backlogged administrative appeals, which is two more than the FEC had at the end of Fiscal Year 2012.

Ten Oldest Requests

- c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?

No.

- d. 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 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed two of them, you should note that you closed two out of seven "oldest" requests.

Of the eight "oldest" requests pending at the end of Fiscal Year 2012, six were closed during Fiscal Year 2013.

Ten Oldest Appeals

- e. In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?

No.

- f. If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C.(5) of your Fiscal Year 2012 Annual FOIA Report.

The FEC had one administrative appeal pending at the end of Fiscal Year 2012 and it was not closed in Fiscal Year 2013. The FEC received three administrative appeals during Fiscal Year 2013; and of those appeals, one was closed during Fiscal Year 2013.

Ten Oldest Consultations

- g. In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012?

The FEC did not have any pending consultations at the end of Fiscal Year 2012.

- h. If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report.

N/A.

Reasons for Any Backlogs:

3. If you answered “no” to any of the questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:

Request and/or Appeal Backlog

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals?

Yes. The FEC experienced an increase in the number of incoming FOIA requests. The FEC received 87 FOIA requests in Fiscal Year 2013, whereas the Agency had received only 60 FOIA requests during Fiscal Year 2012. The FEC did not experience an increase in the number of incoming administrative appeals. The FEC received three appeals in Fiscal Year 2013, whereas the Agency had received four appeals in Fiscal Year 2012.

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

Yes. During Fiscal Year 2013, the FEC’s FOIA Public Liaison and an experienced attorney who worked on FOIA matters left the Agency. These losses represented a 25 percent reduction in the number of Agency staff processing FOIA requests and appeals.

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

Yes. The lack of reduction in both request and the appeal backlog was caused by an increase in the complexity of the requests received.

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

N/A.

“Ten oldest” Not Closed

- e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012.

The two “oldest” FOIA requests from Fiscal Year 2012 that were not closed during Fiscal Year 2013 both involved requests for voluminous records. With respect to one of the requests, the FEC was also awaiting a response from

another agency on a consultation and did not receive the response until just before the close of FY 2013. The “oldest” FOIA appeal relates to the “oldest” request for which the agency was awaiting a consultation response at the end of FY 2013.

- f. If your agency was unable to close any of its ten oldest requests or appeals 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 request as to which the FEC was awaiting a response from another agency on a consultation was received by the FEC on November 18, 2011. The consultation was sent to the other agency on May 21, 2013 and the FEC received a response on September 27, 2013. This FOIA request was closed by the FEC in November 2013.

Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:

Given the importance of these milestones, it is critical that Chief FOIA Officers assess the causes for not achieving success and create plans to address them.

4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2014.

In November 2013, the FEC closed one of the two “oldest” pending requests from FY 2012. With respect to the other outstanding “oldest” request from FY 2012, the FEC’s FOIA Office has made this matter a top priority for 2014, and anticipates that it will be closed by the end of FY 2014. The “oldest” pending administrative appeal was an appeal of the agency’s failure to provide records in response to the request mentioned above that was closed in November 2013, so we anticipate that the appeal will soon be closed.

5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency’s plan for achieving backlog reduction in the year ahead.

N/A.

Interim Responses:

OIP has issued guidance encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in

multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information.

6. Does your agency have a system in place to provide interim responses to requesters when appropriate?

Yes.

7. If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

At the end of Fiscal Year 2013, the FEC had provided one or more substantive, interim responses to the requester in 58 percent of backlogged FOIA requests.

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 2013?

No.

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

N/A.

Spotlight on Success

Out of all the activities undertaken by your agency since March 2013 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, these agency success stories will be highlighted during Sunshine Week by OIP. 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 a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

Since March 2013, the FEC's FOIA Office has made communication with FOIA requesters a priority. To this end, we have undertaken efforts with respect to several FOIA requests that were ambiguous and/or extremely broad in scope to reach out to the requesters and provide additional information about the FEC's organizational structure

and operations, and the way in which the FEC's records are maintained. By engaging in these conversations with requesters, we have been able to more accurately target the specific records the requesters would like to receive and to provide these records to the requesters more quickly. These efforts have also reduced the amount of time the FEC's FOIA Office spends processing records that are of little or no interest to the requester. In the coming year, we plan to continue reaching out to requesters, particularly those who frequently file requests with the Agency, to ensure that we are meeting their information needs as efficiently as possible.