



# **FEDERAL ELECTION COMMISSION**

**2017 CHIEF FOIA OFFICER REPORT**

## **Agencies Receiving 50-1,000 Requests in FY 2016**

### **Content of 2017 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 the President's FOIA Memorandum and the DOJ's 2009 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 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 Office of Information Policy.

*2. If yes, please provide a brief description of the type of training attended and the topics covered.*

- FOIA Improvement Act of 2016 Training
- Annual FOIA Report Refresher Training
- FOIA Public Liaison & FOIA Requester Service Center Training
- Chief FOIA Officer Report Refresher Training

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

85 percent.

*4. 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.

### **B. Outreach**

5. *OPTIONAL: Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA?*

No.

### **C. Other Initiatives**

6. *Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA?*

The Agency did not undertake any such efforts in FY 2016.

7. *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**

The DOJ's 2009 FOIA Guidelines emphasized 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 that describes your agency's efforts in this area.

### **A. Processing Procedures**

1. *For Fiscal Year 2016, 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 2016 Annual FOIA Report.*

8 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. OPTIONAL: 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.*

No.

*4. Please provide an estimate of how many requests your agency processed in Fiscal Year 2016 that were from commercial use requesters. If your agency is decentralized, please identify any components within your agency that received a majority of their requests from commercial use requesters.*

Four.

#### **B. Requester Services**

*5. OPTIONAL: Does your agency provide a mechanism for requesters to provide feedback about their experience with the FOIA process at your agency? If so, please describe the methods used, such as making the FOIA Public Liaison available to receive feedback, using surveys posted on the agency's website, etc.*

No.

*6. 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 how often requesters sought assistance from your agency's FOIA Public Liaison.*

Three.

*7. The FOIA Improvement Act of 2016 requires agencies to make their reference material or guide for requesting records or information from the agency electronically available to the public. Please provide a link to your agency's FOIA reference guide.*

<http://www.fec.gov/press/foia.shtml>

### **C. Other Initiatives**

*8. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as improving search processes, eliminating redundancy, etc., please describe them here.*

The FEC did not undertake any such efforts in FY 2016.

### **Section III: Steps Taken to Increase Proactive Disclosures**

Both the President's and DOJ's FOIA memoranda 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.

#### **A. Posting Material**

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

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.

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

Yes, for certain types of matters. For documents concerning closed FEC enforcement cases and other specified matters, the FEC utilizes a formal process, consistent with the FEC's Policy Statement on Disclosure of Certain Documents in Enforcement, Administrative Fines, Alternative Dispute Resolution Cases and Administrative Matters, which was approved by the Commission on August 2, 2016. This policy statement is available at the following link: [http://www.fec.gov/law/cfr/ej\\_compilation/2016/notice2016-06.pdf](http://www.fec.gov/law/cfr/ej_compilation/2016/notice2016-06.pdf). Other types of Agency records are identified for proactive disclosure through an informal process.

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

No.

*4. If so, briefly explain those challenges and how your agency is working to overcome them.*

Not applicable.

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

In FY 2016, 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](http://www.fec.gov/law/procedural_materials.html). 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: <http://www.fec.gov/open/>. 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.

*6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe these efforts.*

The FEC's Press Office issues releases announcing the public disclosure of all closed enforcement cases and provides links to this information through the Agency's Twitter account.

## ***B. Other Initiatives***

*7. If there are any other steps your agency has taken to improve proactive disclosures, please describe them here. For example, has your agency engaged requesters in determining how and what to post? Has your agency used web analytics to inform your proactive disclosures?*

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.

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.

### ***A. 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 2016, the FEC continued work on its 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. The FEC introduced its betaFEC website, which provides members of the public with a first look at a redesign that will bring easier access to the agency's rich data, during the first quarter of FY 2016. The new website is anticipated to go "live" in March 2017.

### ***B. Other Initiatives***

*3. Did your agency successfully post all four quarterly reports for Fiscal Year 2016?*

Yes. The FEC successfully posted all four quarterly reports for Fiscal Year 2016.

*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 2017.*

Not applicable.

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

The President's FOIA Memorandum and the DOJ's 2009 FOIA Guidelines have 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 2016 Annual FOIA Report and, when applicable, your agency's 2015 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?*

Yes.

*2. If so, for your agency overall in Fiscal Year 2016, was the average number of days to process simple requests twenty working days or fewer?*

In Fiscal Year 2016, the average number of days for the FEC to process simple requests was 21.3 days.

*3. Please provide the percentage of requests processed by your agency in Fiscal Year 2016 that were placed in your simple track.*

72.4 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 2015 and Fiscal Year 2016 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 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015? If not, explain why and describe the causes that contributed to your agency not being able reduce its backlog.*

At the close of Fiscal Year 2016, the FEC had 46 backlogged FOIA requests, which is nine more than the FEC had at the end of Fiscal Year 2015.

*6. If not, 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 experienced a significant increase in the number of FOIA requests received and the complexity of those requests in FY 2016, which contributed to the FEC's inability to reduce its request backlog. The total number of FOIA requests received by the FEC in FY 2016 was 41 percent higher than in FY 2015 (129 requests in 2016 versus 91 request in 2015). The Agency also experienced a significant increase in the number of complex requests received during FY 2016. In FY 2015, the FEC processed only nineteen complex requests, whereas the Agency processed 32 complex requests in FY 2016.

*7. 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 2016.*

35.6 percent.

## **BACKLOGGED APPEALS**

8. *If your agency had a backlog of appeals at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015? If not, explain why and describe the causes that contributed to your agency not being able reduce backlog.*

At the close of Fiscal Year 2016, the FEC had five backlogged FOIA appeals, which is one more than the FEC had at the end of Fiscal Year 2015.

9. *If not, 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.*

The same FEC attorneys who process FOIA requests also review appeals, draft legal analyses, and make recommendation to the Commission regarding the disposition of appeals. Therefore, the factors that contributed the FEC's inability to reduce its request backlog in FY 2016 also impacted the Agency's ability to reduce its appeal backlog.

10. *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 2016. If your agency did not receive any appeals in Fiscal Year 2016 and/or has no appeal backlog, please answer with "N/A."*

100 percent.

### **C. Status of Ten 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 2015 and Fiscal Year 2016 when completing this section of your Chief FOIA Officer Report.*

### **TEN OLDEST REQUESTS**

11. *In Fiscal Year 2016, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2015 Annual FOIA Report?*

No.

12. *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 2015 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.*

None.

13. *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.

### **TEN OLDEST APPEALS**

14. *In Fiscal Year 2016, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2015 Annual FOIA Report?*

No.

15. *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 2015 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.*

None.

### **TEN OLDEST CONSULTATIONS**

16. *In Fiscal Year 2016, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2015 Annual FOIA Report?*

Not applicable.

17. *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 2015 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.*

The FEC did not have any pending consultations from Fiscal Year 2015.

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

*18. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2015.*

An increase in the number and the complexity of requests received has contributed to the FEC's inability to reduce its request backlog in FY 2016.

*19. 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 has 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 November 21, 2016. The FEC's eighth oldest FOIA request, which was received on August 28, 2013, also seeks the same documents submitted to the other agency for FOIA consultation in July 2011.

*20. 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 2017.*

The FEC's FOIA Requester Service Center has recently added an additional attorney to its staff to assist with addressing older requests. FOIA Requester Service Center staff have also been working with staff in FEC's Office of the Chief Information Officer on ways to improve automated search processes and have conducted preliminary market research into FOIA processing software that will allow more efficient processing of potentially responsive documents.

***F. Success Stories***

*OPTIONAL: Out of all the activities undertaken by your agency since March 2016 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 key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.*