



# **FEDERAL ELECTION COMMISSION**

## **2016 CHIEF FOIA OFFICER REPORT**

**2016 Chief FOIA Officer Report**  
**Federal Election Commission**  
**Gregory R. Baker, Deputy General Counsel – Administration**

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

The guiding principle underlying the President's FOIA Memorandum and the Attorney General'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.

***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?*

- *Such training or events can include offerings from OIP, your own agency or another agency or organization.*

Yes. FEC FOIA professionals attended training provided by the Office of Information Policy.

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

100 percent.

*3. 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.

***Outreach:***

***Discretionary Releases:***

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

Yes.

- *If so, please briefly describe this process.*

The FEC does not have a formal process in place to review records for discretionary release in FOIA responses. However, the agency makes discretionary releases of exempt material on a case-by-case basis in consultation with relevant FEC divisions and the Commissioners.

- *If your agency is decentralized, please specify whether all components of your agency have such a process or system in place?*

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

Yes.

6. *What exemption(s) would have covered the material released as a matter of discretion? For a discussion of the exemptions that allow for discretionary releases, please see OIP's guidance on implementing the President's and Attorney General's 2009 FOIA Memoranda.*

Exemption 5.

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

The FEC regularly releases in connection with its public disclosure of closed enforcement cases, intra-agency memoranda (portions of which would be protected by the deliberative process and/or attorney work-product privileges) pursuant to the FEC's Interim Disclosure Policy for Closed Enforcement Cases. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) .

8. *If your agency was not able to make any discretionary releases of information, please explain why. For example, you should note here if your agency did not have an opportunity to make discretionary disclosures because you provided full releases in response to all requests or the only exemptions that were applied were those that do not lend themselves to discretionary release (i.e. Exemptions 1, 3, 4, 6, 7A, 7B, 7C, 7F).*

Not applicable.

***Other Initiatives:***

9. *If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.*

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

None.

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

The Attorney General'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 describes your agency's efforts in this area.

### ***Processing Procedures:***

*1. For Fiscal Year 2015, 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 2015 Annual FOIA Report.*

- *Please note here if your agency did not adjudicate any requests for expedited processing during Fiscal Year 2015.*

5.6 days.

*2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.*

Not applicable.

*3. On July 2, 2015, OIP issued new guidance to agencies on the proper procedures to be used in the event an agency has a reason to inquire whether a requester is still interested in the processing of his or her request. Please confirm here that to the extent your agency may have had occasion to send a "still interested" inquiry, it has done so in accordance with the new guidelines for doing so, including affording requesters thirty working days to respond.*

The FEC's FOIA Requester Service Center did not send any "still interested" inquiries during Fiscal Year 2015.

### ***Requester Services:***

*4. Agency FOIA Requester Service Centers and FOIA Public Liaisons serve as the face and voice of an agency. In this capacity they provide a very important service for requesters,*

*informing them about how the FOIA process works and providing specific details on the handling of their individual requests. The FOIA also calls on agency FOIA Requester Service Centers and FOIA Public Liaisons to assist requesters in resolving disputes. Please explain here any steps your agency has taken to strengthen these services to better inform requesters about their requests and to prevent or resolve FOIA disputes.*

- If your agency has not taken any steps recently to strengthen these services, either because there has been no need to due to low demand or because these services are already robust, please briefly explain that that here.*

The FEC's FOIA Requester Service Center staff and Public Liaison regularly communicate with the FEC's requesters to clarify requests and ensure that requesters are aware of potentially responsive documents that are already available through the Agency's website. The FEC receives a substantial number of requests each year from members of the public who are relatively unfamiliar with the Agency and its processes, as well as the types of information that we routinely disclose on our website. The FOIA Public Liaison and other Agency FOIA staff will reach out to these requesters, provide background information about the Agency to help clarify requests, and offer assistance in how to search the FEC's online databases to locate responsive information when applicable. Through these efforts, the Agency is able to meet these requesters information needs more effectively and efficiently (sometimes immediately) and prevent future FOIA disputes. The help prevent and resolve disputes the FEC also provides contact information for the FOIA Public Liaison in its acknowledgement letters and other communications with requesters.

***Other Initiatives:***

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

The FEC's FOIA Requester Service Center has worked with the Agency's Office of the Chief Information Officer to conduct more centralized searches for emails responsive to FOIA requests, where appropriate, rather than relying on individual employees to search their own documents. The FOIA Requester Service Center also reviewed and updated its internal FOIA processing procedures during 2015 to help improve its efficiency in responding to requests.

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

Both the President's and Attorney General'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.

***Posting Material:***

1. *Describe your agency's process or system for identifying "frequently requested" records required to be posted online under Subsection (a)(2) of the FOIA. For example, does your agency monitor its FOIA logs or is there some other system in place to identify these records for posting.*

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

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.*

- *Please note that this question is directed towards proactive disclosure of records that go beyond frequently requested records required to be posted under Subsection (a)(2) of the FOIA.*

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

3. *When making proactive disclosures of records, are your agency's FOIA professionals involved in coding the records for Section 508 compliance or otherwise preparing them for posting? If so, provide an estimate of how much time is involved for each of your FOIA professionals and your agency overall.*

- *Please note that this question is directed at the efforts of actually posting the records online once all disclosure determinations have been made. For example, efforts to load the records in your web content platform or making the releasable documents accessible in compliance with Section 508 of the Rehabilitation Act.*

No.

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

No.

5. *If so, please briefly explain those challenges.*

Not applicable.

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

In Fiscal Year 2015, 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).

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

- For example, this can be done through social media or with the offering of e-mail subscription services.

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.

***Other Initiatives:***

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

None.

## **Section IV: Steps Taken to Greater Utilize Technology**

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

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 describes your agency's efforts in this area.

***Making Material Posted Online More Usable:***



*1. Beyond posting new material, is your agency taking steps to make the posted information more useable to the public, especially to the community of individuals who regularly access your agency's website?*

- Steps can include soliciting feedback on the content and presentation of posted material, improving search capabilities on your agency website, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.*

Yes.

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

- If your agency is already posting material in its most useful format, please describe these efforts.*

During Fiscal Year 2015, 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.

***Other Initiatives:***

*3. Did your agency successfully post all four quarterly reports for Fiscal Year 2015?*

- Please see OIP's guidance for posting of quarterly reports to ensure that your agency is following all required steps (including using the correct file type and URL structure) so that your quarterly reports are properly appearing on FOIA.gov. (If your reports are posted to your website, but not appearing on FOIA.gov, please contact OIP in order to resolve the issue.)*

Yes. The FEC successfully posted all four quarterly reports for Fiscal Year 2015.

*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 2016.*

Not applicable.

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



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

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

Not applicable.

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

The President's FOIA Memorandum and the Attorney General'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 2015 Annual FOIA Report and, when applicable, your agency's 2014 Annual FOIA Report.*

**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 2015, was the average number of days to process simple requests twenty working days or fewer?*

In Fiscal Year 2015, the average number of days for the FEC to process simple requests was 23.7 days.

*3. Please provide the percentage of requests processed by your agency in Fiscal Year 2015 that were placed in your simple track.*

72.8 percent.

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

Not applicable.

**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 2014 and Fiscal Year 2015 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 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?*

At the close of Fiscal Year 2015, the FEC had 37 backlogged FOIA requests, which is seven more than the FEC had at the end of Fiscal Year 2014.

*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.*

An increase in the complexity of FOIA requests received and limited staff resources contributed to the FEC's inability to reduce its request backlog in FY 2015. While the total number of FOIA requests received by the FEC in FY 2015 was slightly lower than in FY 2014 (91 requests in 2015 versus 98 request in 2014), the Agency experienced a significant increase in the number of complex requests during FY 2015. In FY 2014, the FEC processed only five complex requests, whereas the Agency processed nineteen complex requests in FY 2015. For example, in FY 2015 the Agency received several complex requests for all documents related to closed enforcement cases, some of which were in the agency's enforcement process for up to five years. The Agency also received a request for all documents related to an Information Technology study conducted by an outside contractor, which required the review and processing of over 15,000 pages of responsive documents. With limited agency staff to process and respond to the increased number of complex requests, the Agency was unable to reduce its FOIA backlog in 2015.

*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 2015.*

- *To calculate your agency's percentage, you must divide the number of backlogged requests reported in Section XII.A. of your Fiscal Year 2015 Annual FOIA Report by the*

*number of requests received in Fiscal Year 2015, which can be found in Section V.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.*

40.6 Percent.

## **BACKLOGGED APPEALS**

*8. If your agency had a backlog of appeals at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?*

No. The number of backlogged appeals remained the same.

*9. If not, explain why and describe the causes that contributed to your agency not being able reduce 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 factors that contributed the FEC's inability to reduce its request backlog in FY 2015 also impacted the Agency's ability to reduce its appeal backlog. The group of attorneys who processes FOIA requests also reviews appeals, drafts legal analyses, and makes recommendations to the Commission regarding proper disposition of appeals. Accordingly, the increased number of complex requests received by the FEC in FY 2015 and limited FOIA staff resources also contributed to the Agency's inability 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 2015. If your agency did not receive any appeals in Fiscal Year 2015 and/or has no appeal backlog, please answer with "N/A."*

- *To calculate your agency's percentage, you must divide the number of backlogged appeals reported in Section XII.A. of your Fiscal Year 2015 Annual FOIA Report by the number of appeals received in Fiscal Year 2015, which can be found in Section V.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.*

100 Percent.

**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 2014 and Fiscal Year 2015 when completing this section of your Chief FOIA Officer Report.

## **TEN OLDEST REQUESTS**

*11. In Fiscal Year 2015, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2014 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 2014 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 six of them, you should note that you closed six out of seven "oldest" requests.

During Fiscal Year 2015, the FEC closed one of the ten "oldest" requests pending at the end of Fiscal Year 2014.

*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?*

None.

## **TEN OLDEST APPEALS**

*14. In Fiscal Year 2015, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2014 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 2014 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.*

- *For example, if you only had seven appeals listed as part of your "ten oldest" in Section VII.C.(5) and you closed six of them, you should note that you closed six out of seven "oldest" appeals.*

During FY 2015, the FEC was not able to close the four “oldest” appeals reported in its Fiscal Year 2014 Annual FOIA Report.

## **TEN OLDEST CONSULTATIONS**

*16. In Fiscal Year 2015, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2014 Annual FOIA Report?*

Yes.

*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 2014 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.*

- *For example, if you only had seven consultations listed as part of your "ten oldest" in Section XII.C. and you closed six of them, you should note that you closed six out of seven "oldest" consultations.*

Not applicable.

## ***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 2014.*

In addition to the factors described above in the responses to Questions 6 and 9 in Section V, high staff turnover and a lack of dedicated FOIA staff contributed to the Agency’s inability to close its ten oldest requests and appeals during FY 2015. Since FY 2013 the FEC has experienced substantial turnover in the attorneys working on FOIA matters (in fact, only one attorney who worked on FOIA matters at the FEC in FY 2012 is currently with the Agency), which has necessitated the re-assignment of these requests and appeals (in some cases more than once) and thus delayed the processing of these matters. Additionally, as a small agency, the FEC does not have any staff dedicated full-time to its FOIA program. The Agency’s FOIA Requester Service Center is operated by a small staff of paralegals and attorneys, who also provide legal support to the agency on all other administrative law issues, including matter concerning procurement, personnel, labor relations, and privacy. Therefore, increases in FEC’s workload with respect to these other types of administrative law matters, reduces the amount of staff resources that can be devoted to FOIA requests and appeals.

*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 April 28, 2015. The FEC's eighth oldest FOIA request, which was received on August 28, 2013, also seeks the 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 2016.*

The FEC's Office of General Counsel is in the process of hiring additional attorneys to work on FOIA matters. The FOIA Requester Service Center is also considering restructuring its operations so that the Agency has at least one staff person dedicated full time to FOIA matters.

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

*1. Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2015?*

No.

*2. If so, please provide the total number of times exclusions were invoked.*

Not applicable.