

**NATIONAL ENDOWMENT FOR THE HUMANITIES
2011 CHIEF FOIA OFFICER REPORT**

I. Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.

1. 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.

a. Describe how the President's FOIA Memorandum and the Attorney General's FOIA Guidelines have been publicized throughout your agency.

The National Endowment for the Humanities (NEH) applies the presumption of openness to all agency decisions involving the Freedom of Information Act (FOIA). NEH has posted both the President's FOIA Memorandum and the Attorney General's FOIA guidelines on the agency's website so that they are immediately accessible to agency staff. In addition, the Chief FOIA Officer and all Office of the General Counsel staff who are responsible for processing NEH's FOIA requests and appeals (FOIA staff) have read and understand both the President's Memoranda and the Attorney General's Guidelines.

b. What training has been attended and/or conducted on the new FOIA Guidelines?

Agency FOIA staff have attended several of the U.S. Department of Justice's trainings and conferences on the new FOIA Guidelines, including the March 2009 training on the President's FOIA Memorandum and Attorney General's FOIA Guidelines and the May 2010 training for attorneys and access professionals. In addition, the FOIA staff is currently preparing to train other agency staff on the new guidelines this spring. While the FOIA staff is primarily responsible for processing all agency FOIA requests and appeals, other NEH staff members are sometimes involved in searching for and identifying responsive records. The training will help to ensure that the agency achieves maximum disclosure and transparency in all FOIA decisions.

c. How has your agency created or modified your internal guidance to reflect the presumption of openness?

At this time, NEH is in its final stages of revising its FOIA directive, which reflects the principles of openness emphasized by the President's FOIA Memorandum and the Attorney General's FOIA Guidelines.

d. To what extent has your agency made discretionary releases of otherwise exempt information?

NEH regularly makes discretionary releases of information to FOIA requesters. In FY 2010, the agency used Exemption 5 to redact information in five FOIA requests. This number did not increase from FY 2009, even though the number of FOIA requests received by NEH increased by 20% in the following fiscal year. In addition, the agency only used Exemption 2 in two FOIA requests in FY 2010 to protect “high 2” information and did not use Exemption 2 to protect “low 2” information.

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

As noted in I.1.d. above, NEH made discretionary releases of information that could have been withheld under FOIA Exemptions 2 and 5. Specifically, the agency refrained from using Exemption 2 to protect “low 2” information such as office accounting codes and travel authorization numbers. NEH also made discretionary releases of Exemption 5-type documents after applying the foreseeable harm standard. For instance, in an FY 2010 FOIA request for agency travel records, NEH released draft travel agenda as well as internal agency staff e-mails discussing deliberative matters.

f. How does your agency review records to determine whether discretionary releases are possible?

NEH applies the Attorney General’s guidelines on discretionary releases whenever it reviews records responsive to a FOIA request. Specifically, the agency is mindful that it should only withhold records when it can reasonably foresee that disclosure would harm an interest protected by one of the exemptions or when the disclosure is prohibited by law.

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

The FOIA staff is currently revising the agency’s FOIA regulations to ensure that they are consistent with the FOIA and the President’s FOIA Memorandum and Attorney General’s FOIA Guidelines.

2. Report the extent to which the numbers of requests where records have been released in full and the numbers of requests where records have been released in part has changed from those numbers as reported in your previous year's Annual FOIA Report.

In FY 2009, NEH processed a total of 42 requests. Of these requests, the agency made 13 full grants, 16 partial grants, and 1 full denial. In FY 2010, NEH processed a total of 53 requests and made 3 full grants, 31 partial grants, and no full denials. Although there were fewer full grants in FY 2010 (mainly due to an increase in requests for grant applications, which often contain information protected under Exemption 6), there were no full denials and the number of partial grants increased by nearly 50%. Further, as in FY 2009, NEH primarily withheld information under Exemptions 4 to protect confidential commercial or financial information and under Exemption 6 to protect personal information.

II. Steps Taken to Ensure that Your Agency has an Effective System 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."

Describe here the steps your agency has taken to ensure that your system for responding to requests is effective and efficient. 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. 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.

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

Due to the small size of the agency and the relatively small number of FOIA requests received by NEH each year, the FOIA staff does not work with a broad spectrum of agency staff. However, the FOIA staff does regularly work with its IT office to respond to requests for electronic records, including e-mails and database information. The agency's IT office consistently provides the FOIA staff with valuable support on a timely basis, and both the IT staff and FOIA staff maintain a close and cordial working relationship.

b. Describe how your agency's FOIA professionals interact with your Open Government Team.

Last spring, the FOIA staff assisted the NEH Open Government Team with drafting portions of the agency's Open Government Plan. Members of the FOIA staff also regularly check the NEH open government website for newly posted information.

c. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to responding to FOIA requests.

NEH has allocated its staff resources to ensure that it has an effective system for responding to requests. In FY 2009, the agency assigned two staff members to devote at least 50% of their time on the FOIA. This past year, NEH has added a third staff member to spend at least 25% of her time on the FOIA.

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

As explained in I.1.b. and c. above, NEH is undergoing final revisions of its FOIA directive and is planning to provide training to agency staff who are involved in searching for responsive records. NEH has also assigned one staff member from each agency office and

division to serve as a liaison between that office or division and the FOIA staff. These staff liaisons ensure that all responsive records are provided promptly to the FOIA staff and also respond to any questions from the FOIA staff about responsive records.

NEH has also recently developed an internal electronic routing slip for FOIA requests to replace the previous method of using inter-office mail to notify agency offices and divisions that they need to provide the FOIA staff with responsive records. As a result, this modification should help increase the efficiency of NEH's FOIA operations.

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 to increase the amount of material that is available on your agency website, including providing examples of proactive disclosures that have been made since issuance of the new FOIA Guidelines. In doing so, answer the questions listed below and describe any additional steps taken by your agency to make proactive disclosures of information.

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

NEH has taken affirmative steps to make disclosures to the public by increasing the amount of materials that is available on the agency's website.

b What types of records have been posted?

NEH regularly posts new information about the agency's activities on its website. These include lists of recent grant awards, press releases, examples of funded projects, recent speeches by the agency's Chairman, a grant deadline calendar, names and contact information of new staff members, application guidelines, information on the administration of grants, and the full text of *Humanities*, NEH's bimonthly magazine.

Over the past year, the agency has also posted its FY 2011 Budget request, a new policy for NEH Seminars, Institutes, and Workshop participants, and several administrative reports, including its Open Government Plan, Sustainability Plan, FY 2010 Performance and Accountability Report, and HSPD-12 Implementation Status Report.

c. Give examples of the types of records your agency now posts that used to be available only by making a FOIA request for them.

NEH now posts portions of sample applications for most of its grant programs. Previously, it had only posted narratives from only one of its grant offices. In addition, the agency's Office of the Inspector General has recently revamped its website and has posted many of its recent audit reports, which were only previously available through FOIA requests.

d. What system do you have in place to routinely identify records that are appropriate for posting?

The FOIA staff regularly reviews its FOIA logs for frequently requested records and also works with agency staff to identify records appropriate for posting in the FOIA electronic reading room.

e. How do you utilize social media in disseminating information?

NEH uses social media forums such as Twitter, Facebook, and YouTube to disseminate information about the agency's programs and activities and to connect with people who are interested in the humanities and applying for grants. For example, NEH uses Twitter to announce new grant programs, grant deadlines, staff travel to conferences, and National Council on the Humanities appointments. On its Facebook page, NEH posts press releases, recently awarded grants, and examples of funded projects. NEH also has a YouTube channel where the public can view programming on digital humanities initiatives.

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 agencies reported widespread use of technology in handling FOIA requests. For this section of your Chief FOIA Officer Report for 2011, please answer the following more targeted questions:

1. Electronic receipt of FOIA requests:

a. What proportion of the components within your agency which receive FOIA requests have the capability to receive such requests electronically?

NEH has the capability to receive electronic FOIA requests. As NEH is a small government agency, it does not have separate components that receive FOIA requests. All FOIA directed to the agency are handled by the FOIA staff in the Office of the General Counsel.

b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

Not applicable.

c. What methods does your agency use to receive requests electronically?

NEH receives requests electronically through its online FOIA request form available at <http://www.neh.gov/whoweare/foia/request.asp>.

2. Electronic tracking of FOIA requests:

a. What proportion of components within your agency which receive FOIA requests have the capability to track such requests electronically?

As explained above, NEH is a small government agency without separate components to receive FOIA requests. All FOIA requests directed to the agency are tracked electronically by the agency's FOIA staff.

b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

Not applicable.

c. What methods does your agency use to track requests electronically?

NEH uses commercial data processing software to electronically track its FOIA requests. The agency has determined that this system is sufficient for tracking all FOIA requests and appeals, as the agency receives a limited number of requests each year.

3. Electronic processing of FOIA requests:

a. What proportion of components within your agency which receive FOIA requests have the capability to process such requests electronically?

As explained above, NEH is a small government agency without separate components to receive FOIA requests. The FOIA staff has the capability to process FOIA requests electronically.

b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

Not applicable.

c. What methods does your agency use to process requests electronically?

The FOIA staff uses commercial data processing software and office equipment to electronically process FOIA requests.

4. Electronic preparation of your Annual FOIA Report:

a. What type of technology does your agency use to prepare your agency Annual FOIA Report, i.e., specify whether the technology is FOIA-specific or a generic data-processing system?

NEH currently does not use technology to prepare the agency's annual FOIA report. The agency receives a limited number of FOIA requests each year and accordingly, NEH has determined that it is unnecessary and would not be cost-effective for the agency to utilize technology to prepare the report.

b. If you are not satisfied with your existing system to prepare your Annual FOIA Report, describe the steps you have taken to increase your use of technology for next year.

Not applicable.

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

Improvements to timeliness in responding to pending FOIA requests and reductions in backlogs are both ongoing agency efforts. The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. Section XII of your Annual FOIA Report includes figures that show your agency's backlog of pending requests and administrative appeals for the past two fiscal years. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In this section you should address the following elements.

1. If your agency has a backlog, report here whether that backlog is decreasing. That reduction should be measured in two ways. First, report whether the number of backlogged requests and backlogged administrative appeals that remain pending at the end of the fiscal year decreased or increased, and by how many, when compared with last fiscal year. Second, report whether your agency closed in Fiscal Year 2010 the ten oldest of those pending requests and appeals from Fiscal Year 2009, and if not, report how many of them your agency did close.

At the end of FY 2010, NEH had a backlog of two FOIA requests that were pending at the end of that fiscal year, while in FY 2009, the agency had reported a backlog of three FOIA requests that were pending at the end of that fiscal year. In the FY 2010 report, one backlogged request was 58 days old while the other was 61 days old. In FY 2009, NEH had three backlogged requests, which were 21, 25, and 1052 days old. NEH had no pending backlogged administrative appeals at the end of FY 2009 or 2010. NEH has closed all of its backlogged requests from FY 2009.

2. If there has not been a reduction in the backlog as measured by either of these metrics, describe why that has occurred. In doing so, answer the following questions and then include any other additional explanation:

a. Is the backlog increase a result of an increase in the number of incoming requests or appeals?

Not applicable.

b. Is the backlog increase caused by a loss of staff?

Not applicable.

c. Is the backlog increase caused by an increase in the complexity of the requests received?

Not applicable.

d. What other causes, if any, contributed to the increase in backlog?

Not applicable.

3. Describe the steps your agency is taking to reduce any backlogs and to improve timeliness in responding to requests and administrative appeals. In doing so answer the following questions and then also include any other steps being taken to improve timeliness.

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

NEH is committed to ensuring the timeliness of FOIA requests and appeals and is continually assessing ways to improve its FOIA response times. The FOIA staff regularly reviews the agency's FOIA log to monitor the progress of requests and appeals. In addition, the FOIA staff communicates via e-mail and meets frequently about FOIA requests and appeals to ensure the timeliness of responses.

b. Has your agency increased its FOIA staffing?

Yes, as explained in II.c. above, NEH has added another staff member in the past year to work on the FOIA. The agency now has two staff members who dedicate at least 50% of their time on the FOIA and one staff member who dedicates at least 25% of her time on the FOIA.

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

As noted in II.d. above, the agency has recently developed an internal electronic routing slip to notify agency divisions and offices that they need to provide the FOIA staff with responsive records. This change should help improve the timeliness of responses.

d. Has your agency Chief FOIA Officer been involved in overseeing your agency's capacity to process requests?

NEH's Chief FOIA Officer is the agency's Deputy Chairperson and she is frequently involved in overseeing the agency's FOIA operations. As required by the agency's FOIA regulations, the Deputy Chairperson reviews and signs off on all FOIA requests. The Deputy Chairperson also reviews all reports prepared by the FOIA staff for submission to the U.S. Department of Justice. Further, the FOIA staff updates the Deputy Chairperson, as necessary, on the progress of outstanding FOIA requests and appeals.

Spotlight on Success

NEH regularly receives requests for sample funded grant applications from individuals and organizations interested in applying for funding. Until this past year, applicants to most of the agency's grant programs who wished to view a sample funded application had to contact the individual program offices and divisions. In order to make the applications more accessible and to increase the agency's proactive disclosures, NEH now posts dozens of sample grant narratives for most grant programs on its website. In addition, the agency regularly updates individual grant narratives when there has been a change to a specific grant guideline.