National Endowment for the Humanities
2016 Chief FOIA Officer Report

Time frame for 2016 Chief FOIA Officer Reports

Unless otherwise noted, the agency's 2016 Chief FOIA Officer Report addresses agency activities that have occurred since the filing of last year's Report, which was March 16, 2015, up until the filing of the 2016 Report (March 14, 2016). Thus, the general reporting period for the Chief FOIA Officer Reports is March 2015 to March 2016.

Content of 2016 Chief FOIA Officer Reports (Low-Volume Agencies)

Name of Agency: **National Endowment for the Humanities (NEH)**

Name and Title of your Agency's Chief FOIA Officer:
Margaret F. Plympton, Deputy Chairman

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.)

Answer: Yes. During the reporting period, our primary FOIA professional attended the *Best Practices for Small Agencies* workshop offered by OIP in August 2015. Also, our new staff attorney with FOIA responsibilities, who started working at NEH in September 2015, attended the *FOIA for Attorneys and Access Professionals* seminar in November 2015.

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.

Answer: Approximately 70%. During the reporting period, NEH had three FOIA professionals in the Office of the General Counsel (OGC) assigned to process FOIA requests and work on FOIA matters (all OGC staff). The FOIA professional with primary FOIA responsibility and our new attorney attended training held by OIP, as described

above. One of the FOIA professionals who helped with FOIA on an ad-hoc basis left half-way through the reporting period and did not attend substantive FOIA training (which accounts for the less than 100% response).

3. OIP has <u>directed agencies</u> 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.

Answer: Each year NEH ensures that its FOIA professionals, the three OGC staff members with part-time FOIA responsibilities, receive substantive training. During the next reporting period, NEH's primary FOIA professional will attend at least two OIP-facilitated workshops. Also, all OGC staff working on FOIA routinely review the OIP website and other sources to keep apprised of training opportunities and attend training when possible. NEH continues to make training available and encourage its FOIA professionals to take training.

Outreach:

Not required of agencies such as NEH which received less than 1,000 FOIA requests in Fiscal Year 2015.

Discretionary Releases:

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

Answer: Yes. As part of NEH's standard practice in processing each FOIA request we receive, NEH FOIA professionals review the responsive records and carefully assess whether NEH may make discretionary disclosures of information, even if NEH could properly withhold the information under one or more FOIA exemptions.

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

    Answer: Not Applicable.

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

Answer: No. Please see the answer to Question 8 below for further explanation.

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 <u>implementing the President's and Attorney General's 2009 FOIA Memoranda</u>.

Answer: Not Applicable.

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.

Answer: Not Applicable.

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).

Answer: During the reporting period, NEH had little opportunity to make discretionary releases. NEH primarily withheld agency records under Exemptions 4 (such as prospective donor lists) and 6 (such as personally identifiable information), under which discretionary release is often not appropriate due to the nature of the records protected by these two exemptions. NEH withheld fewer agency records under Exemption 5 (which does allow leeway for discretionary releases) than under Exemptions 4 and 6; however, NEH did not make any discretionary releases of records, or parts of records, protected by Exemption 5 because NEH determined that the records at issue discussed sensitive deliberative and pre-decisional material which, if released, could chill open and frank discussion on policy matters.

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.

Answer: NEH regularly posts new information about agency activities on its website. For example, it posts press releases about funded projects, lists of recent grant awards, sample grant application narratives, speeches by the NEH Chairman, information on grant administration, application guidelines, annual agency reports (e.g., Performance and Accountability reports, Service Contract Inventory reports, etc.) and the full text of *Humanities***, NEH's bimonthly magazine.**

NEH also maintains on its website its organizational chart and staff directory; biographies and photographs of some of its senior staff; webpages for its Office of Communications and Public Affairs, and its Office of Congressional Affairs; a social media index, which contains NEH as well as office and division specific RSS feeds and Twitter page links; a section called *Explore***, which contains an interactive database of websites, applications, and NEH-supported digital projects; and guidelines on using NEH's logo (e.g., how to use it in print and electronic communications).**

http://www.neh.gov/about/legal/reports (budget and performance reports)
http://www.neh.gov/news/press-release/2015-12-14 (grants awarded)
http://www.neh.gov/about/foia/library (credit card holders)
http://www.neh.gov/about/staff (searchable staff directory)

http://www.neh.gov/grants/research/awards-faculty-hispanic-serving-institutions (sample of grant guidelines)
http://www.neh.gov/humanities (*Humanities* magazine)
http://www.neh.gov/about/chairman (biography of Chairman, links on this site include those to the Chairman's speeches, the biography of the Deputy Chairman, Offices of Communications and Congressional Affairs)
http://www.neh.gov/brand-materials (guidelines for use of NEH logo)

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 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.

Answer: NEH received one request for expedited processing. NEH did not make a determination on the request for expedited processing because NEH processed this FOIA request in two 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.

Answer: 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.

Answer: NEH did not have occasion to send any "still interested" inquiries to requesters in Fiscal Year 2015. Requesters whose requests took longer than the statutory 20 days

maintained contact with NEH throughout the time NEH took to complete processing of their request.

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.

Answer: NEH did not take any recent steps to strengthen its requester services because our primary FOIA professional is in direct contact with all FOIA requesters and currently offers robust and timely service to requesters. No requester called on our FOIA Public Liaison to assist them.

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.

Answer: Our FOIA professionals are in regular contact with the various NEH divisions and offices responsible for searching for records responsive to a FOIA request, to offer assistance or advice.

Also, our primary FOIA professional conducts one-on-one training in the form of conversations and clarification e-mails with approximately twelve NEH employees, all of whom are staff members in our various program divisions tasked with handling FOIA requests for records from their divisions.

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.

Answer: Our FOIA professionals regularly review the NEH FOIA log and automatically evaluate any record that has been requested twice as a potential "frequently requested" record.

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.

Answer: Yes. Program officers in the various NEH divisions select samples of grant application narratives from projects NEH has funded, and forward them to the OGC FOIA professionals for review before NEH posts them online with agency grant guidelines, and in NEH's electronic FOIA Library.

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.

Answer: No. NEH's FOIA professionals are not involved in coding records for Section 508 compliance.

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

Answer: No.

5. If so, please briefly explain those challenges.

Answer: Not Applicable.

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

Answer: On a regular basis, we proactively release sample grant narratives and other documents we feel will be of interest to the public. NEH also regularly releases financial

reports concerning NEH's grant-making and budget; maintains a list of NEH credit card holders and our complete staff directory on our website. Please see Question 9, in Section I, above, for more information.

http://www.neh.gov/about/foia/freedom-information-act-sample-grant-application-narratives (sample grant narratives)
http://www.neh.gov/files/dmp_from_successful_grants.zip (a file of data management plans submitted by successful grantees)

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

Answer: Yes. The NEH Office of Communications uses social media to publicize important proactive disclosures. Also, some NEH program divisions and offices publicize proactive disclosures through their program blog, unique social media account, and/or through newsletters they send to program's e-mail subscribers.

Other Initiatives:

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

Answer: Starting with Fiscal Year 2016, NEH will post in the NEH FOIA Library most nearly all records NEH releases in response to FOIA requests. Also, we have encouraged program officers and divisional staff to review their records for documents they feel would be of interest to the public, and to work with NEH FOIA professionals to review and release these records.

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.

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?

Answer: Yes. NEH continues to fine-tune the search feature of its website. Furthermore, NEH ensures that every page of the website, including materials posted, is accessible on mobile devices.

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.

Answer: The search feature for the NEH website provides results with search term suggestions and search results that include "stemmer" algorithms, thus providing users with more results (e.g., a search for "walk" will result in "walks", "walker", "walked", etc.). Also, NEH has implemented a search results interface which allows users to sort results by various fields (date, author, relevancy, etc.); users can also filter results by document type, divisions and offices, subject matter, etc.

Use of Technology to Facilitate Processing of Requests:

Not required of agencies such as NEH which received less than 1,000 FOIA requests in Fiscal Year 2015.

Other Initiatives:

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

Answer: Yes.

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.

Answer: 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?

Answer: Yes. NEH FOIA professionals use e-mail to communicate with requesters in every case unless the requester does not provide an email address or prefers not to communicate via email.

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*.

Answer: Not applicable.

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

The President's <u>FOIA Memorandum</u> and the Attorney General's <u>2009 FOIA Guidelines</u> have emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report addesses 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?

Answer: 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?

Answer: In Fiscal Year 2015, the NEH spent an average of 11.3 days to process simple requests.

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

Answer: 83.6%.

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?

Answer: 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?

Answer: NEH had no backlogged requests at the end of Fiscal Year 2014 or 2015.

6. If not, explain why and describe the causes that contributed to your agency not being able reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

Answer: Not applicable: NEH had no backlog of FOIA requests at the end of Fiscal Year 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.

Answer: Not Applicable.

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?

Answer: **NEH had no backlog of appeals at the end of Fiscal Year 2014 or 2015.**

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:

Answer: Not applicable: NEH had no backlog of FOIA appeals at the end of Fiscal Year 2015.

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."

Answer: Not Applicable.

Backlog Reduction Plans:

Not required of agencies such as NEH which received less than 1,000 FOIA requests in Fiscal Year 2015.

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?

Answer: Yes. NEH closed the three requests reported as pending in our Fiscal Year 2014 Annual FOIA Report.

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.

Answer: Not Applicable. See Question 11, above.

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?

Answer: Not Applicable. NEH completed processing and responded to the three requests reported as pending at the end of Fiscal Year 2014.

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?

Answer: NEH did not have pending appeals in our Fiscal Year 2014 report.

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.

Answer: Not Applicable.

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?

Answer: NEH did not have pending consultations in our Fiscal Year 2014 report.

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.

Answer: 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.

Answer: NEH did not face obstacles in this regard; NEH closed its three pending requests from Fiscal Year 2014 in Fiscal Year 2015, and did not have pending appeals or consultations at the end of Fiscal year 2014.

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.

Answer: Not Applicable.

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.

Answer: Not Applicable.

Interim Responses:

Not required of agencies such as NEH which received less than 1,000 FOIA requests in Fiscal Year 2015.

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?

Answer: No.

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

Answer: Not Applicable.

Success Story

Not required, but agencies may answer the questions for this section from the <u>high-voume guidelines</u> if they have information they would like to include.

During the reporting period, NEH maintained a robust electronic FOIA library and agency website which made it easier for FOIA professionals and agency staff to refer potential FOIA requesters to our website for the information they sought, and for members of the public to find that information.

90% of our FOIA requests were processed within 20 days or less.

During the reporting period, NEH received a request for data management plans submitted by successful grantees in the agency's Digging into Data Challenge program. Because there is growing interest in this aspect of digital humanities projects, in addition to preparing a response to the requester, our FOIA professionals worked with NEH's Office of Digital Humanities to post and publicize that these records are now available to the public on the NEH's website at <u>http://www.neh.gov/files/dmp_from_successful_grants.zip</u>.