

**COUNCIL ON ENVIRONMENTAL QUALITY
REPORT UNDER EXECUTIVE ORDER 13,392
ON CEQ'S ADMINISTRATION OF THE
FREEDOM OF INFORMATION ACT
(September 12, 2006)**

This is the report of the Council on Environmental Quality (CEQ) issued pursuant to Section 3(c) of Executive Order 13,392 of December 14, 2005, "Improving Agency Disclosure of Information."¹

In accordance with the Executive Order, this report summarizes the results of the review that CEQ has conducted (under Section 3(a) of the Order) of its Freedom of Information Act (FOIA) operations, and includes the plan that CEQ has developed (under Section 3(b) of the Order) for ensuring that CEQ's administration of the FOIA is in accordance with applicable law and the policies set forth in Section 1 of the Order. This plan addresses CEQ's implementation of the FOIA during fiscal years (FYs) 2006 and 2007, and the plan has been approved by the Chairman of CEQ.

The outline of this report follows the template that was provided by the Department of Justice (DOJ) in the government-wide guidance that DOJ issued on April 27, 2006 ("Executive Order 13,392 Implementation Guidance," Part II, Plan/Report Template), and which is found at <http://www.usdoj.gov/oip/foiapost/2006foiapost6.htm>.

A. CEQ FOIA Operations

In accordance with Executive Order 13392, the Chairman and staff of CEQ are committed to supporting the effective functioning of our constitutional democracy by facilitating the participation in public life of a citizenry that is well informed. The Freedom of Information Act, 5 U.S.C. § 552, (FOIA) provides an important means through which the public can obtain information regarding the activities of Federal agencies. CEQ regards FOIA requesters as entitled to a service from the Federal Government. Accordingly, in responding to a FOIA request, CEQ responds courteously and appropriately. CEQ provides FOIA requesters, and the public in general, with citizen-centered ways to learn about the FOIA process, about CEQ records that are publicly available (including on the agency's website at <http://www.whitehouse.gov/ceq>), and about the status of FOIA request and appropriate information about the agency's response.

At CEQ, FOIA implementation is overseen by the CEQ Chief of Staff, acting as the agency's Chief FOIA Officer. Day-to-day administration of the FOIA program is managed by

¹ The Executive Order was published in the Federal Register at 70 FR 75373 (December 19, 2005), and is found on the White House website at <http://www.whitehouse.gov/news/releases/2005/12/20051214-4.html>.

the FOIA Requester Service Center with supervision by the FOIA Public Liaison. Agency determinations in response to individual FOIA requesters are made by the agency FOIA officer, with administrative appeals of those determinations reviewed by the agency FOIA appeals officer. The specific duties of each of these positions are as follows:

1) Chief FOIA Officer.

Pursuant to Section 2(a) of Executive Order 13392, CEQ has designated the Chief of Staff to the Chairman of CEQ as agency's Chief FOIA Officer.

(<http://www.whitehouse.gov/ceq/officer-memo.html>) Subject to the authority of the Chairman of CEQ, the Chief FOIA Officer has the following duties and authorities:

- (i) CEQ-wide responsibility for efficient and appropriate compliance with the FOIA;
- (ii) Monitoring FOIA implementation throughout CEQ, including through the use of meetings with the public to the extent deemed appropriate, and keeping the Chairman of CEQ, the CEQ General Counsel, and the Attorney General appropriately informed of CEQ's performance in implementing the FOIA, including the extent to which the agency meets the milestones in Section D of this CEQ FOIA Plan and training and reporting standards established consistent with applicable law and Executive Order 13392;
- (iii) Recommending to the Chairman of CEQ such adjustments to CEQ practices, policies, personnel, and funding as may be necessary to carry out the policies set forth in Executive Order 13392 and this CEQ FOIA Plan;
- (iv) Reviewing and reporting, through the Chairman of CEQ, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing the FOIA; and
- (v) Facilitating public understanding of the purposes of the FOIA's statutory exemptions by including concise descriptions of the exemptions in both CEQ's FOIA handbook issued under section 552(g) of title 5, United States Code, the CEQ's annual FOIA report, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply.

Through implementation of this CEQ FOIA Plan, the CEQ Chief FOIA Officer shall consider what other FOIA-related assistance to the public should appropriately be provided by the agency and ensure that the FOIA Requester Service Center has appropriate staff to receive and respond to inquiries from FOIA requesters. The Chief FOIA Officer, in consultation with the CEQ FOIA Public Liaison, shall ensure that appropriate information about the CEQ FOIA Center is posted on the agency's website, including contact information for its FOIA Public Liaison. The agency Chief FOIA Officer shall ensure that the agency has in place a method (or methods), including through the use of the Center, to receive and respond promptly and appropriately to inquiries from FOIA requesters about the status of their requests.

2) FOIA Requester Service Center and FOIA Public Liaisons.

In order to ensure appropriate communication with FOIA requesters, pursuant to Section 2(c) of Executive Order 13392, CEQ's Chief FOIA Officer has:

(i) Established CEQ Records Office (4th Floor, 722 Jackson Place) and the CEQ FOIA Home Page (<http://www.whitehouse.gov/ceq/foia.html>) as CEQ FOIA Requester Service Center (CEQ FOIA Center), which serves as the first place that a FOIA requester can contact to seek information concerning the status of the person's FOIA request and appropriate information about the agency's FOIA response.

(ii) Designated the CEQ Deputy General Counsel as CEQ FOIA Public Liaison, who shall serve as the supervisory official to whom a FOIA requester can raise concerns about the service the FOIA requester has received from the CEQ FOIA Center, following an initial response from the CEQ FOIA Center staff. FOIA Public Liaisons shall seek to ensure a service-oriented response to FOIA requests and FOIA-related inquiries. The FOIA Public Liaison shall assist, as appropriate, in reducing delays, increasing transparency and understanding of the status of requests, and resolving disputes. FOIA Public Liaison shall report to the agency Chief FOIA Officer on his/her activities and shall perform his/her duties consistent with applicable law and agency regulations.

3) CEQ FOIA Officer and CEQ FOIA Appeals Officer

Pursuant to CEQ's FOIA regulations, 40 CFR 1515.5(a), the Chairman of CEQ has appointed the CEQ Deputy General Counsel as the agency Freedom of Information Officer responsible for overseeing CEQ's day-to-day administration of the FOIA and for receiving, routing, and overseeing the processing of all FOIA requests. The Chairman of CEQ has also appointed the CEQ General Counsel as the agency Appeals Officer who is responsible for processing any appeals of FOIA request decisions made by the Freedom of Information Officer.

B. Areas Selected for Review

CEQ reviewed the following potential improvement areas:

- (1) Public information to guide FOIA requests of on topics of general interest.
- (2) FOIA request status tracking.
- (3) Training for CEQ personnel regarding roles of CEQ FOIA Officers and staff responsibilities.
- (4) CEQ FOIA regulations.
- (5) FOIA webpage and reading room
- (6) Electronic Records search process

C. Narrative Statement Summarizing Results of Review

Pursuant to Executive Order 13,392, CEQ's Chief FOIA Officer, FOIA Public Liaison, and FOIA Center staff reviewed CEQ FOIA operations for opportunities to increase efficiency and effectiveness. CEQ typically processes about 40 FOIA requests per year, though the number can vary widely depending on a variety of factors such as the extent of public interest in CEQ work during a given year. CEQ efforts to reduce the median numbers of days requests were pending have paid off with a reduction, as of the end of the last fiscal year, of nearly forty percent (40 days in FY05 versus 67 days in FY04). The median number of days to process a

request does not fully reflect the time CEQ must spend on complex requests. For example, six of the forty requests received in FY05 were quite complex. Those complex requests accounted for five of the nine requests pending at the end of FY05. In 2004, CEQ adopted a “first in – first out” policy for managing an increasing number of complex requests. Under this policy, objectively simple requests may receive expedited processing. CEQ received no formal requests for expedited processing during FY2005.

Within existing staffing levels, CEQ FOIA officers and staff identified a need for improving our communication with the public regarding the nature of CEQ’s work and the availability of documents. This assessment was generally confirmed by comments received from members of the public and FOIA community who attended a May 10, 2006, open meeting held to allow members of the public to present their views and recommendations to FOIA agencies in the Executive Office of the President. The open meeting underscored the importance of communicating how CEQ implements FOIA, the documents that are available through FOIA, and information regarding CEQ’s processing of FOIA requests and its consultations or referrals to other agencies. Attention to the 1996 e-FOIA Amendments also underscored the need for an update of CEQ’s FOIA regulations. Finally, our review confirmed the essential role of training for CEQ staff in the related areas of FOIA and records management under the Federal Records Act.

Based upon this internal review of CEQ FOIA operations, CEQ has adopted the following FOIA Plan to make CEQ FOIA operations more results-oriented and to produce the performance described below. Pursuant to this FOIA Plan, CEQ will process requests under the FOIA in an efficient and appropriate manner and achieve tangible, measurable improvements in FOIA processing. When CEQ’s FOIA program does not produce such results, CEQ’s Chief FOIA Officer will take appropriate corrective action to ensure that it is reformed, consistent with available resources appropriated by the Congress and applicable law, to increase efficiency and better reflect the policy goals and objectives of Executive Order 13392.

D./E. CEQ FOIA Plan

Pursuant to Section 3(b) of Executive Order 13392, CEQ’s Chief FOIA Officer has developed, in consultation with CEQ staff, the Attorney General, and the OMB Director, the following plan to ensure that the agency's administration of the FOIA is in accordance with applicable law and the policies set forth in Section 1 of Executive Order 13392. During fiscal years 2006 and 2007, CEQ shall implement the following specific activities to eliminate or reduce the agency's FOIA backlog, make the processing of FOIA requests more streamlined and effective, and increase reliance on the dissemination of records that can be made available to the public through a website or other means that do not require the public to make a request for the records under the FOIA:

1. Public information to guide FOIA requests of on topics of general interest.
Goal: Website postings to assist the public in making FOIA requests and tracking FOIA responses. Target Completion: starting June 14, 2006.
Steps:
 - CEQ will post this FOIA Plan

- CEQ will post copies of records that have been released under FOIA and that CEQ determines have become or are likely to become the subject of subsequent requests for substantially the same records.

2. Website Revision.

Goal: The CEQ FOIA Home Page (<http://www.whitehouse.gov/ceq/foia.html>) will be revised and monitored to ensure that it includes accurate information regarding CEQ FOIA Officers and their contact information, instructions on submitting FOIA requests, information on the status of requests, and information regarding the scope of CEQ records and available information on the activities of CEQ and related agencies. Target Completion: by September 29, 2006.

Steps:

- Redesign website to reflect information in this FOIA Plan and add a FOIA Reading Room
- Coordinate with the Office of Administration and other jurisdictional offices regarding implementation of website revisions.

3. FOIA Regulations Revision.

Goal: Federal Register publication of draft and final revised FOIA regulations, incorporating the requirements of Executive Order 13392 and the 1996 Amendments to FOIA. Target Completion: Draft revised FOIA regulations published by January 5, 2007, Final FOIA regulations by June, 2007.

Steps:

- Review other agency regulations and public input provided in response to this FOIA Plan.
- Coordinate with the Department of Justice Office of Information and Privacy and the Office of Management and Budget regarding implementation of regulation revisions.
- Submit draft FOIA regulations to Federal Register in December of 2006.

4. CEQ FOIA Handbook and Training.

Goal: Develop a CEQ Handbook on FOIA and Records Management for training CEQ staff. Target Completion: within three months of the revision of CEQ FOIA regulations.

Steps:

- Redesign website to reflect information in this FOIA Plan and add a FOIA Reading Room
- By September 18, 2006, CEQ's Chief FOIA Officer will advise all CEQ staff of their responsibilities under the FOIA and the CEQ FOIA Plan.
- Develop a CEQ Handbook on FOIA and Records Management for training CEQ staff.

5. CEQ FOIA Information Technology Development and Maintenance.

Goal: Advise the Office of Management and Budget and the Office of Administration of CEQ FOIA backlog and its needs and proposals for more effective implementation of Executive Order 13392, the e-FOIA provisions of the 1996 FOIA Amendments and other relevant authorities. Target Completion: continuous, on a monthly basis.

Steps:

- Establish points of contact with OA and OMB
- Communication at the beginning of each month regarding status information on implementation of this FOIA plan and coordination on FOIA requests.
- Completion of CEQ response to backlogged FOIA requests within ninety days of CEQ's receipt of requested email searches and administrative support.

F. FOIA Plan Milestones

1. Areas to be completed by December 31, 2006.

- Website postings to assist the public in making FOIA requests and tracking FOIA responses.
 - a. CEQ will post this FOIA Plan
 - b. CEQ will post copies of records that have been released under FOIA and that CEQ determines have become or are likely to become the subject of subsequent requests for substantially the same records.
- The CEQ FOIA Home Page (<http://www.whitehouse.gov/ceq/foia.html>) will be revised and monitored to ensure that it includes accurate information regarding CEQ FOIA Officers and their contact information, instructions on submitting FOIA requests, information on the status of requests, and information regarding the scope of CEQ records and available information on the activities of CEQ and related agencies.
 - a. Redesign website to reflect information in this FOIA Plan and add a FOIA Reading Room.
 - b. Coordinate with the Office of Administration and other jurisdictional offices regarding the implementation of website revisions.
- By June 19, 2006, CEQ's Chief FOIA Officer will advise all CEQ staff of their responsibilities under the FOIA and the CEQ FOIA Plan.
- Redesign website to reflect information in this FOIA Plan and add a FOIA Reading Room.
- Review other agency regulations and public input provided in response to this FOIA Plan.
- Coordinate with the Department of Justice Office of Information and Privacy and the Office of Management and Budget regarding the implementation of regulation revisions.
- Submit draft FOIA regulations to Federal Register in December 2006.
- Advise the Office of Management and Budget and the Office of Administration of CEQ FOIA backlog and its needs and proposals for more effective implementation of Executive Order 13392, the E-FOIA provisions of the 1996 FOIA Amendments, and other relevant authorities (this will continue on a monthly basis).

- a. Establish points of contact with OA and OMB.
 - b. Communications at the beginning of each month regarding status information on implementation of this FOIA plan and coordination on FOIA requests.
2. Areas to be completed by December 31, 2007.
 - Federal Register publication of draft and final revised FOIA regulations, incorporating the requirements Executive Order 13392 and the 1996 Amendments to FOIA.
 - a. Draft revised FOIA regulations published by January 5, 2007.
 - b. Final FOIA regulations by June, 2007.
 - Develop a CEQ Handbook on FOIA and Records Management for training CEQ staff.
 - a. Within three months of the revision of CEQ FOIA regulations.
3. Areas to be completed after December 31, 2007.
 - None