



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

EXECUTIVE ORDER 13392: SUMMARY REPORT & PLAN OF THE FEDERAL ELECTION COMMISSION

INTRODUCTION

Pursuant to Executive Order 13392, issued on December 14, 2005, the Federal Election Commission undertook a comprehensive review and internal assessment of its compliance with the Freedom of Information Act (FOIA). Based upon this review and assessment, the FEC identified several areas in which efforts can be made to improve compliance with FOIA and created a plan for undertaking those improvements. This summary report and plan presents the agency's findings from the review and assessment, describes improvements currently being implemented, and establishes a timetable for improved future compliance.

FEC FOIA OPERATIONS

In early January 2006, the Office of General Counsel of the Federal Election Commission began a comprehensive review of the agency's FOIA compliance practices and procedures. Overall, the agency's review revealed that, with a few exceptions, the agency is meeting or exceeding the requirements of FOIA. As a "disclosure agency," the FEC strives on a daily basis to make campaign finance information available to the public in both paper and electronic format. Furthermore, pursuant in part to the guidelines established in the FEC's Interim Disclosure Policy,¹ the agency also regularly discloses to the public information related to closed enforcement matters, completed audits, policy information, and other non-exempt materials.

¹ On December 18, 2003, the FEC published for public comment in the Federal Register its Interim Disclosure Policy regarding placing closed files on the public record in enforcement, administrative fines, and alternative dispute resolution cases. With respect to each type of case, the policy lists the types of documents that the agency will affirmatively disclose as well as the timetable for placing such documents on the public record. The effective date of the Interim Disclosure Policy is January 1, 2004. *See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files*, 68 Fed. Reg. 70426 (December 18, 2003) (codified at 11 C.F.R. pts. 4 and 111).

As a small agency that routinely discloses information to the public, the FEC receives a relatively low number of FOIA requests annually, compared to other federal agencies.² A review of agency FOIA request processing data revealed that delays in responding that can lead to backlogs are not common, and usually only occur when the agency receives a request that is particularly complex or voluminous. However, based upon guidance from the Department of Justice and the Office of Management and Budget, the agency has identified six specific areas that it believes warranted further consideration. With an eye toward improving customer service, the agency assessed current policies and procedures for each area, identified specific improvements that can be made in the short term, and established long-term goals toward improved FOIA compliance.

AREAS OF REVIEW

Based upon the guidelines provided in the Executive Order, the FEC chose six distinct areas for further review and consideration.

- Area 1: FOIA Administration and Operations
- Area 2: FOIA Staffing
- Area 3: Staff Training
- Area 4: FOIA Website
- Area 5: Multi-track and Expedited Processing
- Area 6: FOIA and E-FOIA Reading Rooms

RESULTS OF REVIEW

Beginning in January 2006, the Office of General Counsel of the Federal Election Commission conducted a comprehensive review of the agency's FOIA compliance practices and procedures. The results of this review are highlighted below.

AREA 1: FOIA ADMINISTRATION AND OPERATIONS

Prior to implementation of EO 13392, the FEC's Press Office handled the agency's FOIA operations. Section 2 of the Executive Order mandated that each agency designate a Chief FOIA Officer and FOIA Public Liaison, as well as establish a FOIA Requester Service Center. In compliance with this mandate, the agency transferred responsibility for FOIA operations from the Press Office to the Office of General Counsel, General Law and Advice Division (GLA). GLA handles all of the FEC's administrative law, disclosure, Privacy Act, employment and labor law matters, and it administers the Commission's Ethics in Government Act program. In addition, GLA is responsible for providing legal advice on audit and repayment matters, as well as debt settlements, administrative terminations and administrative fines matters. The

² The FEC receives and processes, on average, between 45 and 50 FOIA requests per fiscal year.

Commission named Associate General Counsel Thomasenia Duncan as the FEC's Chief FOIA Officer, and Ms. Duncan appointed GLA attorney John Vergelli to be the FOIA Public Liaison.

Also in response to EO 13392, the agency created the FOIA Requester Service Center within GLA to handle the processing of all agency FOIA requests. The Service Center is staffed by GLA paralegal Candace Salley. These changes not only fulfilled the requirements of EO 13392, they also improved FOIA operations by placing responsibility for FOIA within the division that historically has been responsible for identifying responsive documents. As a result of these changes, the agency has been able to reduce some of the backlogs that occurred due to internal administrative coordination problems. The FEC also has internally publicized the creation of the FOIA Requester Service Center in order to ensure that all staff members are aware of its role in the agency.

Since shifting operations to GLA, the FOIA Requester Service Center, under the guidance of the Chief FOIA Officer, has streamlined the internal procedures for handling FOIA requests. Most importantly, the Service Center created a standardized intake process that utilizes a detailed intake form for each request. The form has fields for establishing a tracking number for each request, clarifying the subject matter, identifying which divisions are most likely to have responsive documents, assigning search responsibilities, indicating whether the request qualifies for expedited processing, and establishing the timeframes for responding to the request. By gathering this information at the outset, the agency is better equipped to process the request in the most efficient and informed manner. The completed form also serves as an invaluable reference throughout the processing of FOIA requests, particularly in ensuring that all responsive documents are identified, and that the response is completed within the established timetables.

AREA 2: FOIA STAFFING

The FOIA Requester Service Center is currently staffed by one paralegal who is responsible for receiving FOIA requests, filling out a standard intake form to determine the proper processing track and plan, coordinating the processing, and corresponding with the Requester. Due to time constraints resulting from other responsibilities within GLA, the paralegal can only dedicate a limited amount of time to the FOIA Requester Service Center.

The current staffing arrangement could prove to be inadequate in the long term, particularly if the agency receives complex or voluminous FOIA requests at the same time that GLA receives a large number of closed case files to process for placement on the public record in accordance with the agency's Interim Disclosure Policy. As noted above, GLA is responsible for placing closed files on the public record in enforcement and administrative fines cases. This includes reviewing entire case files to identify documents for public disclosure, and then reviewing each individual document to redact any information contained therein that falls under a relevant FOIA exemption. Since the same personnel within GLA handle both the affirmative disclosure and request

processing responsibilities of the FOIA, FOIA staff can be subject to competing time demands. The agency will continue to monitor FOIA staff resources to determine whether adequate resources have been allocated, with an eye to making appropriate staffing recommendations.

AREA 3: STAFF TRAINING

In the past, the FEC has focused its FOIA staff training efforts on those few individuals who were responsible for the actual processing of FOIA requests. However, a review of other agencies' staff training policies suggests that wider FOIA awareness training among agency staff could have a positive effect on the agency's overall FOIA compliance. As a result, the FEC is in the process of implementing staff training improvements, as well as establishing future goals related to training.

AREA 4: FOIA WEBSITE

In compliance with the 1996 E-FOIA requirements, the FEC has maintained a FOIA website (www.fec.gov/press/foia) that includes basic information about making a FOIA request as well as copies of the agency's FOIA Annual Reports. After establishing the FOIA Requester Service Center earlier this year pursuant to EO 13392, the agency updated its FOIA website to include contact information for the FOIA Requester Service Center and FOIA Public Liaison. The website also was updated to include more easily accessible instructions for making FOIA requests of the FEC, and a brief overview of the types of records that the agency routinely makes publicly available.

The FEC has conducted a review of other agencies' FOIA websites to identify ways that the FEC's FOIA website can be enhanced to improve customer service to the public. As a result of this review, the FEC intends to make several changes to its FOIA website.

AREA 5: MULTI-TRACK AND EXPEDITED PROCESSING

The Commission's Regulations lay out a general framework for multi-track processing at 11 C.F.R. § 4.7(f) and expedited processing at 11 C.F.R. § 4.7(g). In the past, the agency has applied these regulations in a somewhat informal, case-by-case manner. As a result of this experience, the agency plans to standardize the processes for assigning requests to processing tracks, as described below.

AREA 6: FOIA and E-FOIA READING ROOMS

The agency's FOIA Reading Room is located within the Public Records Office on the first floor of the FEC building at 999 E Street, NW in Washington, DC. The reading room maintains an archive of completed compliance actions, alternative dispute resolution and administrative fines cases; litigation and audit reports; advisory opinion requests, public comments and final opinions; Commission memoranda, bulletins and

directives; FEC newsletters and annual reports; press releases; federal register notices, public comments on proposed rulemakings, public hearing documents; Explanations and Justifications; and sunshine notices, agendas, agenda documents, minutes and audio tapes of past Commission meetings. The Public Records Office is open daily during normal business hours and on some weekends for public inspection and photocopying. Archived materials are searchable using the agency's KEA database and more recent materials can be located using web-based databases on terminals located in the reading room.

Pursuant to the 1996 E-FOIA amendments, the agency also has placed most of the information that is available in the reading room onto its website as an Electronic Reading Room for easy public accessibility. The online materials include indexes for many databases, with full text searchability.

To ensure that the FEC is fully complying with the E-FOIA requirements, the General Law and Advice Division has undertaken a review of the materials that are available in the Public Records Office / FOIA Reading Room and Electronic Reading Room. As a result of this review, the agency has identified several changes that can be made to improve customer service in accordance with EO 13392.

IMPROVEMENT AREAS FOR AGENCY PLAN

As a result of the agency's review of the six areas described above on pages 2 through 5, the FEC identified several improvement areas within each review area. The improvement areas discussed in greater detail below comprise the agency's plan under EO 13392.

- Area 1: FOIA Administration and Operations
 - Improvement 1.A.: Correspondence Library
 - Improvement 1.B.: Program Personnel Liaisons
 - Improvement 1.C.: FOIA Request Tracking and Processing
- Area 2: FOIA Staffing
 - Improvement 2.A.: FOIA Staff Resource Review Methodology
 - Improvement 2.B.: FOIA Staff Resource Review
- Area 3: Staff Training
 - Improvement 3.A.: FOIA Awareness Training
 - Improvement 3.B.: Program Personnel Liaison Training
 - Improvement 3.C.: Continuing Staff Training Evaluation
- Area 4: FOIA Website
 - Improvement 4.A.: Centralized Links
 - Improvement 4.B.: Detailed FOIA Instructions
 - Improvement 4.C.: Online FOIA Request Form
 - Improvement 4.D.: Customer Service Feedback Form
- Area 5: Multi-track and Expedited Processing
 - Improvement 5.A.: Clarify Tracks

Improvement 5.B.: Clarify Criteria for Expedited Processing
Area 6: FOIA and E-FOIA Reading Rooms
Improvement 6.A.: FOIA Reading Room Signage
Improvement 6.B.: Frequently Requested Records

AGENCY PLAN

AREA 1: FOIA ADMINISTRATION AND OPERATIONS

Improvement 1.A: Correspondence Library

Goals and Objectives:

The FOIA Requester Service Center has been working to create a standardized process for responding to FOIA requests based upon GLA's Standard Operating Procedures. As part of this effort, the Service Center is developing a library of correspondence form letters that assist in expediting response times and communicating more effectively with the public. A review of other agency FOIA practices indicates that many agencies are using standardized form letters for corresponding with Requesters, and the agency believes that this is another step in the streamlining process that began with the development of the standard intake form. Included in the correspondence library will be a standard acknowledgment letter that will be sent to every requester notifying them of the agency's receipt of their request and informing them of their track(s), tracking number, and anticipated timetable for completion of the request. The acknowledgment letter will also provide information about the ability to "opt in" to a faster track by limiting the request (see Improvement 5.A. below).

Timetable:

The agency anticipates completing the correspondence library by the end of the third quarter of CY2006.

Improvement 1.B: Program Personnel Liaisons

Goals and Objectives:

The agency will establish a central point of contact within each FEC division. This contact person will be responsible for corresponding with the FOIA Requester Service Center during the processing of requests. The individual contacts from each division will be identified with the assistance of the offices of the Commission's Staff Director and General Counsel. By identifying a single point of contact within each division, the agency will be better able to alleviate delays that

occur when a division does not fully or timely respond to a request from the FOIA Requester Service Center.

Timetable:

The FEC will establish program personnel contacts within each division by the end of the second quarter of CY2006.

Improvement 1.C: FOIA Request Tracking and Processing

Goals and Objectives:

The FEC has identified a longer-term goal of increasing the use of technology in processing FOIA requests. In collaboration with the agency's Information Technology division, the FEC plans to look into existing software options for solutions to tracking FOIA response deadlines and maintaining electronic FOIA response files.

Timetable:

The agency plans to begin working with the Information Technology Division beginning in the second quarter of CY2006 and complete any upgrades by the end of CY2007.

AREA 2: FOIA STAFFING

Improvement 2.A: FOIA Staff Resource Review Methodology

Goals and Objectives:

To assess the agency's FOIA staffing needs, OGC will work with the agency's Information Technology Division to establish a baseline methodology for reviewing the total staff resources that are expended on FOIA compliance. The agency will most likely utilize an existing software application, *Law Manager 98™*, to track the time that GLA personnel spend working on FOIA-related projects. The software application allows for several methods of statistical analysis of the input data.

Timetable:

The agency anticipates having a methodology in place by the end of the second quarter of CY2006.

Improvement 2.B: FOIA Staff Resource Review

Goals and Objectives:

During the fourth quarter of CY2006, the agency will complete a study of FOIA staff resources using the methodology discussed above. By making a detailed and informed assessment of the staffing issues

involved with administering the FOIA, the agency hopes to discover staffing solutions that will improve customer service and decrease or even eliminate the occasional backlogs.

Timetable:

The agency will complete the study by the end of CY2006. Based upon the outcome of the study, OGC will request additional budgetary allocations for future fiscal years, where necessary, to support improved staffing requirements.

AREA 3: STAFF TRAINING

Improvement 3.A: FOIA Awareness Training

Goals and Objectives:

The agency is planning FOIA awareness training for FEC personnel who maintain agency records likely to be responsive to FOIA requests. These training sessions will focus on providing employees with a basic understanding of the agency's FOIA compliance policies and requirements. Specific topics include procedures for conducting searches for responsive FOIA documents within an employee's own files, as well as general FOIA practices of making records publicly available in accordance with the agency's Interim Disclosure Policy. The objective of this awareness training will be to encourage FEC employees to maintain their office files in such a way as to facilitate a timely and thorough search of their files should they be responsive to a FOIA request, and that employees recognize which documents from their files should be placed on the public record at the appropriate time.

Timetable:

This training is preliminarily planned to take place during the third or fourth quarter of CY2006.

Improvement 3.B: Program Personnel Liaison Training

Goals and Objectives:

The FEC is developing specialized training for the division liaisons discussed in Area 1.B above. This training will focus on skills for managing searches for responsive documents within the various divisions of the agency. The agency will also hold periodic training as necessary to keep the liaisons apprised of any procedural changes or to address any problems or complications that arise.

Timetable:

This training is preliminarily planned for the fourth quarter of CY2006.

Improvement 3.C: Continuing Staff Training Evaluation

Goals and Objectives:

The FEC intends to continually examine whether the training discussed above sufficiently reduces the agency's occasional delays. If the agency determines that additional training is necessary to help reduce delays, OGC has considered two additional training possibilities. The first would be to train a group of OGC attorneys who would be available to assist with FOIA processing on a case-by-case basis. An alternative would be to provide the division liaisons with additional training in FOIA processing to assist on a case-by-case basis. Both of these possible courses of action remain available to the agency in the future, and will be explored further if necessary.

Timetable:

Ongoing.

AREA 4: FOIA WEBSITE

Improvement 4.A: Centralized Links

Goals and Objectives:

The FEC will provide direct, centralized links from the agency's FOIA website to the publicly available materials located elsewhere on the FEC website. This will be a "one stop shopping" list of all of the available disclosure materials on the website including but not limited to closed compliance matters, advisory opinion files, FEC newsletters and annual reports.

Timetable:

The FEC will complete the website link project by the end of CY2006.

Improvement 4.B: Detailed FOIA Instructions

Goals and Objectives:

The FEC's FOIA webpage will have more detailed instructions for making FOIA requests and appeals, as well as information for following up on requests with the FOIA Requester Service Center and FOIA Public Liaison. The website also will include a more detailed description of the types of materials the agency maintains in its archives or closed files – the types of records which can only be

accessed based upon a FOIA request. The FEC's FOIA website will link to relevant FOIA websites maintained by the Department of Justice that can provide Requesters with additional assistance. The agency is also considering publishing its schedule of fees and fee waiver application information. The information provided on the FEC's website will satisfy the FOIA Reference Guide requirements outlined in 5 U.S.C. § 552(g).

Timetable:

These changes will go online in stages beginning immediately and continuing throughout the third and fourth quarters of CY2006. Additionally, the FEC will continue to monitor feedback from the public regarding the user-friendliness of the agency's FOIA webpage and make upgrades as necessary.

Improvement 4.C: Online FOIA Request Form

Goals and Objectives:

The FEC plans to work with its Information Technology department to develop an online FOIA request form. The agency envisions that such a form would serve a two-fold purpose. First, an online form would make it easier for the public to make FOIA requests for FEC materials by removing an added step in the process and clarifying what information is necessary. Second, an online form would improve the agency's processing of requests by standardizing the Requesters' information into a format that is easily exportable to the standard intake discussed above. Additional features, such as an online "track your request" function may also be considered.

Timetable:

The agency plans to undertake this task in CY2007.

Improvement 4.D: Customer Service Feedback Form

Goals and Objectives:

The FEC will create an online customer service feedback form where requesters can comment on the FEC's handling of FOIA matters, make suggestions for improvements, or compliment agency personnel on their efforts in processing FOIA requests. The FOIA Public Liaison and Chief FOIA Officer will review the information submitted on the form in order to make changes or improvements as necessary.

Timetable:

The agency plans to undertake this task in CY2007.

AREA 5: MULTI-TRACK AND EXPEDITED PROCESSING

Improvement 5.A: Clarify Tracks

Goals and Objectives:

In order to more effectively and uniformly apply the Commission's Regulations for multi-track and expedited processing, the agency has more clearly defined the three available processing tracks as follows: expedited 10-day; intermediate 20-day; and extended 20+day. On its standard intake form the agency will create a track selection area to clearly show the track(s) to which a given request is assigned.

Timetable: This task will be completed by the end of the second quarter of CY2006.

Improvement 5.B: Clarify Criteria for Expedited Processing

Goals and Objectives: The FEC has also reviewed the language of 11 C.F.R. § 4.7(g) with a goal of clarifying the criteria for expedited processing. This information will be included on the FEC's standard intake form as a checkbox area for the expedited processing criteria.

Timetable: This task will be completed by the end of the second quarter of CY2006.

AREA 6: FOIA and E-FOIA READING ROOM

Improvement 6.A.: FOIA Reading Room Signage

Goals and Objectives:

OGC is working with the Public Records Office to establish clearer signage for the FOIA Reading Room. This will eliminate any confusion the public may have about the location and accessibility of the FOIA materials.

Timetable:

The FEC intends to complete this task by the end of the third quarter of CY2006.

Improvement 6.B.: Frequently Requested Records

Goals and Objectives:

Pursuant to E-FOIA amendment 5 U.S.C. § 552 (a)(2)(D), the agency has developed a protocol for determining which frequently requested records should be made publicly available. Under the Act, the agency

is directed to make available to the public copies of all records which have been requested and which, due to their nature or subject matter, are likely to be the subject of subsequent requests for substantially the same records. OMB has recommended that a maximum of three (3) requests for the same documents should trigger this provision of the FOIA. The FEC plans to evaluate its records of FOIA requests to determine whether to adopt the OMB's recommendation or adopt a lower threshold for disclosure of documents produced in response to a FOIA request. To facilitate the disclosure, the FOIA Requester Service Center is working on developing a system for tracking and calling up processed FOIA requests. The FEC will also begin reviewing its past FOIA request responses to determine which document productions, if any, warrant disclosure based upon the criteria that the agency will establish. GLA will work with the agency's Information Technology Division to create a separate area on the agency's website to compile electronic versions of the document productions for public review, and will create a direct link from the agency's FOIA website to this new webpage. The FEC may include hardcopies of the documents in the FOIA Reading Room, or in the alternative, direct visitors in the FOIA Reading Room to the online location of the documents.

Timetable:

The agency plans to establish its "frequently requested records" disclosure policy by the end of the fourth quarter of CY2006 and begin implementing it by the end of the first quarter of CY2007.

CONSOLIDATED TIMETABLE

Areas anticipated to be completed by December 31, 2006

- Improvement 1.A.: Correspondence Library
- Improvement 1.B.: Program Personnel Liaisons
- Improvement 2.A.: FOIA Staff Resource Review Methodology
- Improvement 2.B.: FOIA Staff Resource Review
- Improvement 3.A.: FOIA Awareness Training
- Improvement 3.B.: Program Personnel Liaison Training
- Improvement 4.A.: Centralized Links
- Improvement 4.B.: Detailed FOIA Instructions
- Improvement 5.A.: Clarify Tracks
- Improvement 5.B.: Clarify Criteria for Expedited Processing
- Improvement 6.A.: FOIA Reading Room Signage
- Improvement 6.B.: Frequently Requested Records

Areas anticipated to be completed by December 31, 2007

Improvement 1.C.: FOIA Request Tracking and Processing
Improvement 4.C.: Online FOIA Request Form
Improvement 4.D.: Customer Service Feedback Form

Areas anticipated to be completed after December 31, 2007

Improvement 3.C.: Continuing Staff Training Evaluation

CONCLUSION

The Federal Election Commission has already made and continues to make excellent progress in its implementation of EO 13392. The agency has identified several areas of improvement as outlined above, and has created concrete and realistic timetables for implementing those goals. Reports on the FEC's progress will be included in the agency's FY06 and FY07 FOIA Annual Reports.