

National Endowment for the Arts

FOIA Annual Report

October 1, 2007 Through September 30, 2008

I. BASIC INFORMATION REGARDING REPORT

1. Point of Contact:

Kate Otterman
Office of the General Counsel, Room 518
National Endowment for the Arts
1100 Pennsylvania Ave. NW
Washington, D.C. 20506-0001
Tel: 202-682-5418

2. Electronic address for report: The FY 2008 Report for the National Endowment for the Arts will be available under the FOIA section of the Endowment's homepage at http://arts.gov/learn/FOIA/Foia_Guide.html

3. Paper copies of report: Paper copies can be requested from the person/address listed above.

II. MAKING A FOIA REQUEST

1. All FOIA requests should be mailed to:

National Endowment for the Arts FOIA Officer
Office of the General Counsel, Room 518
1100 Pennsylvania Ave. NW
Washington, D.C. 20506-0001

Email requests should be submitted to: arts_foia@arts.endow.gov

2. **Why some requests are not granted:** In 2008, the Agency made 28 determinations to deny information under the FOIA. The majority of the denials involved withholding small, segregable portions of the requested records. The reasons for such determinations are categorized by exemption as follows: One (1) denial pursuant to exemption (b)(2), which is related solely to the internal personnel rules and practices of an agency; One (1) denials pursuant to exemption (b)(5), which protects inter-agency or intra-agency memoranda or letters not available by law to a party other than an agency in litigation with the National Endowment for the Arts; and twenty eight (26) denials pursuant to exemption (b)(6), which protects personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

III. Terms used in this Report:

- a. **Administrative Appeal** – a request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.
- b. **Average Number** – the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.
- c. **Backlog** – the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.
- d. **Component** – for agencies that process requests on a decentralized basis, a “component” is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in their Annual FOIA Report data for both the agency overall and for each principal component of the agency.
- e. **Consultation** – the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.
- f. **Exemption 3 Statute** – a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.
- g. **FOIA Request** – a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a “third-party” request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., “first-party” requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act “systems of records” or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require the agency to utilize the FOIA in responding to the requester are included in this Report.

Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from

another agency. (Consultations are reported separately in Section XII of this Report.)

- h. **Full Grant** – an agency decision to disclose all records in full in response to a FOIA request.
- i. **Full Denial** – an agency decision not to release any records in response to a FOIA request because the records are exempt in their entirety under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.
- j. **Median Number** – the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.

- k. **Multi-Track Processing** – a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.

- i. **Expedited Processing** – an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.
 - ii. **Simple Request** – a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.
 - iii. **Complex Request** – a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.

- l. **Partial Grant/Partial Denial** – in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.

- m. **Pending Request or Pending Administrative Appeal** – a request or administrative appeal for which an agency has not taken final action in all respects.

- n. **Perfected Request** – a request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.

- o. **Processed Request or Processed Administrative Appeal** – a request or administrative appeal for which an agency has taken final action in all respects.
 - p. **Range in Number of Days** – the lowest and highest number of days to process requests or administrative appeals.
 - q. **Time Limits** – the time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).
3. Definitions of FOIA exemptions:
- a. **Exemption 1:** classified national defense and foreign relations information
 - b. **Exemption 2:** internal agency rules and practices
 - c. **Exemption 3:** information that is prohibited from disclosure by another federal law
 - d. **Exemption 4:** trade secrets and other confidential business information
 - e. **Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges
 - f. **Exemption 6:** information involving matters of personal privacy
 - g. **Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual
 - h. **Exemption 8:** information relating to the supervision of financial institutions
 - i. **Exemption 9:** geological information on wells

IV. EXEMPTION 3 STATUTES

- A. Exemption 3 Statutes Relied upon to Withhold Information: Exemption b(3) statutes were not used by the National Endowment for the Arts in FY 2008 FOIA responses.

Statute	Type of Information Withheld	Case Citation	Number of Times Relied upon per Component	Total Number of Times Relied upon by Agency
N/A	N/A	N/A	Component A # Component B #	N/A

V. FOIA REQUESTS

- A. Received, Processed and Pending FOIA Requests
1. Number of FOIA requests received during current fiscal year: 51

Number of FOIA requests processed during current fiscal year: 51

Number of FIOA requests pending as of end of preceding fiscal year: 0
 2. The number in Column 1 must match the number of “Requests Pending as of End of Fiscal Year” from last year’s Annual FOIA Report.
 3. The sum of Columns 1 and 2 minus the number in Column 3 must equal the number in Column 4.

	Column 1	Column 2	Column 3	Column 4
	Number of Requests Pending as of Start of Fiscal Year	Number of Requests Received in Fiscal Year	Number of Requests Processed in Fiscal Year	Number of Requests Pending as of End of Fiscal Year
AGENCY OVERALL	0	51	51	0

B.1. Disposition of FOIA Requests – All Processed Requests

	Number of Partial Grants/ Partial Denials	Number of Full Denials Based on Exemptions	Number of Full Denials Based on Reasons Other than Exemptions							
			No Records	All Records Referred to Another Component or Agency	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper FOIA Request for Other Reason	Not Agency Record	Duplicate Request
AGENCY OVERALL	27	0	1	0	0	0	5	0	0	0

B. (2) Disposition of FOIA Requests – “Other” Reasons for “Full Denials Based on Reasons Other than Exemptions” from Section V, B (1) Chart

1. If you utilized the “Other” column in Section V, B (1), provide below descriptions of the “other” reasons for full denials and the number of times each reason was relied upon. (The numbers in the “Total” column must match the numbers in the “Other” column from Section V, B (1).)

Component	Description of “Other” Reasons for Denials from Chart B (1) & Number of Times Those Reasons Were Relied upon	TOTAL
	Description “No records” used 1 time Description “Records not reasonably described” used five times	6

B. (3) Disposition of FOIA Requests – Number of Times Exemptions Applied

	Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
AGENCY OVERALL	0	1	0	0	1	26	0	0	0	0	0	0	0	0

VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS

A. Received, Processed and Pending Administrative Appeals- **The NEA did not receive or process any appeals from October 1, 2007 Through September 30, 3008**

Number of Appeals Pending as of Start of Fiscal Year	Number of Appeals Received in Fiscal Year	Number of Appeals Processed in Fiscal Year	Number of Appeals Pending as of End of Fiscal Year
0	0	0	0

B. Disposition of Administrative Appeals – N/A

Number Affirmed on Appeal	Number Partially Affirmed & Partially Reversed/Remanded on Appeal	Number Completely Reversed/Remanded on Appeal	Number of Appeals Closed for Other Reasons	TOTAL
0	0	0	0	0

Number of Days Pending	10 th Oldest Appeal	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Appeal
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VII. FOIA REQUESTS: RESPONSE TIME FOR PROCESSED AND PENDING REQUESTS

B. Processed Requests – Response Time for All Processed Perfected Requests

1. Provide the median, average and range in number of days to process all perfected requests.

	SIMPLE				COMPLEX				EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
AGENCY OVERALL	2.5	4.17	1	28	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

A. Processed Requests – Response Time for Perfected Requests in Which Information Was Granted

1. Provide the median, average and range in number of days to process all perfected requests in which information was granted. (“Granted” refers to full grants and partial grants.)

D. Pending Requests – All Pending Perfected Requests- **N/A- The NEA had no pending requests.**

E. Pending Requests – **N/A- The NEA had no pending requests.**

VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER

A. Requests for Expedited Processing- The NEA had no requests for expedited processing, and therefore did not grant or deny expedited processing.

B. Requests for Fee Waiver- The NEA had no requests large enough to produce fees, and therefore did not waive any fees.

IX. FOIA PERSONNEL AND COSTS

A. Personnel

	PERSONNEL			COSTS		
	Number of "Full-Time FOIA Employees"	Number of "Equivalent Full-Time FOIA Employees"	Total Number of "Full-Time FOIA Staff" (The sum of Columns 1 & 2)	Processing Costs (At initial request and appeal levels)	Litigation- Related Costs	Total Costs
AGENCY OVERALL	0	.5	.5	0	0	0

X. FEES COLLECTED FOR PROCESSING REQUESTS

- The NEA did not collect any fees for processing requests

	Total Amount of Fees Collected	Percentage of Total Costs
AGENCY OVERALL	0	0

XI. FOIA REGULATIONS

- The Arts Endowment’s regulation and fee schedule appear at 45 C.F.R. 1100.6. These can be accessed electronically at <http://www.arts.gov/learn/FOIA/FOIAReg.html>.

XII. BACKLOGS, CONSULTATIONS, AND COMPARISONS

A. Backlogs of FOIA Requests and Administrative Appeals

	Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
AGENCY OVERALL	0	0

B. Consultations on FOIA Requests – Received, Processed, and Pending Consultations
The NEA received no consultations pertaining to FOIA requests.

C. Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency
The NEA received no consultations pertaining to FOIA requests.

D. Comparison of Numbers of Requests from Previous and Current Annual Report – Requests Received, Processed, and Backlogged

	NUMBER OF REQUESTS <u>RECEIVED</u>		NUMBER OF REQUESTS <u>PROCESSED</u>	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
AGENCY OVERALL	57	51	57	51

Column 1

Column 2

	Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report
Component A	0	0
AGENCY	0	0
OVERALL		

