National Endowment for the Arts
Freedom of Information Act
2012 Chief FOIA Officer Report

INTRODUCTION

The National Endowment for the Arts (NEA) is a small agency with approximately 160 staff members and no agency components. The agency's day-to-day FOIA operations are proportionately small. One FOIA Officer, Monica Ashar, processes all of the NEA's FOIA requests. She is supervised by Karen Elias, the NEA's General Counsel and Chief FOIA Officer.

During FY 2011, the NEA processed 140 FOIA requests. Although this represents a decrease from the previous fiscal year, the complexity of the requests has increased. Because of the relatively small number of requests, the Agency cautions that it may be difficult to draw meaningful conclusions based on metrics alone.

The NEA is committed to making its work more transparent and recognizes that FOIA is a fundamental element of Open Government. By applying a presumption of openness and maintaining effective FOIA operations, the agency seeks to expand the availability of its information to the public. The following report describes the steps taken by the NEA to implement the Freedom of Information Act during the past year.

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.

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.

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

The NEA did not conduct any training sessions for Agency staff specifically on the FOIA. However, the Agency does incorporate information about the FOIA in its new-employee orientation.

2. Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?

The Agency's FOIA Officer attended the following training sessions offered by the Department of Justice: Advanced FOIA Seminar and New Guidance on Referrals and Consultations. In addition, she attended the training session on Dispute Resolution Skills offered by the Office of Government Information Services (OGIS).

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

3. Did your agency make any discretionary releases of otherwise exempt information?

The NEA made very few discretionary releases during the past fiscal year. This is due to the nature of the records requested, as well as the small number of FOIA requests that are received by the Agency.

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

Generally, when a discretionary release can be made at the NEA, exemption (b)(5) applies.

5. Describe your agency's process to review records to determine whether discretionary releases are possible.

The FOIA Officer reviews all records that are responsive to a particular FOIA request. When there is a possibility of making a discretionary release, she consults with the Agency's General Counsel/Chief FOIA Officer.

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

There are no additional initiatives being undertaken.

In Section V.B.(1) of your agency's Annual FOIA Report, entitled "Disposition of FOIA Requests – All Processed Requests" the first two columns list the "Number of Full Grants" and the "Number of Partial Grants/Partial Denials." Compare your agency's 2011 Annual FOIA Report with last year's Annual FOIA Report, and answer the following questions:

7. Did your agency have an increase in the number of responses where records were released in full?

No. There was a slight decrease in the number of responses where records were released in full. In FY 2010, there were 35 full grants, whereas in FY 2011, there were 30 full grants. However, it should also be noted that there was an overall decrease in the total number of requests processed, from 153 in FY 2010 to 140 in FY 2011.

8. Did your agency have an increase in the number of responses where records were released in part?

Yes. There was a slight increase in the number of responses where records were released in part. In FY 2011, there were 95 partial grants, whereas in FY 2010, there were 91 partial grants.

II.   STEPS TAKEN TO ENSURE THAT YOUR AGENCY HAS AN EFFECTIVE SYSTEM IN PLACE 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."

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.

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

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

Yes. The IT staff provides prompt assistance upon request.

2. Is there regular interaction between agency FOIA professionals and the Chief FOIA Officer?

Yes. The NEA's FOIA Officer is directly supervised by the Chief FOIA Officer.

3. Do your FOIA professionals work with your agency's Open Government Team?

After the agency's Open Government plan was issued in early 2010, there has been minimal interaction between the agency's FOIA professionals and the Open Government Team.

4. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to FOIA administration.

Because the NEA receives a modest number of FOIA requests per year, it currently has one FOIA Officer. If the number or complexity of the FOIA requests significantly increased, the need for additional staffing would become readily apparent. At this time, the staffing level meets the Agency's needs. In addition, there is some flexibility to accommodate short-term increases in FOIA activities.

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

No additional steps have been taken.

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 both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2011 to March 2012). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

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

The National Endowment for the Arts regularly updates its website with new material.

2. Provide examples of the records, datasets, videos, etc., that have been posted this past year.

The National Endowment for the Arts regularly posts new records to its website as they become available. These categories of records include:

- annual updates to the guidelines of its main grant opportunities, as well as periodic updates when additional grant opportunities occur
- research reports and other publications
- press releases
- grants awarded by the agency
- webcasts of select agency meetings, forums, and events, such as meetings of the National Council on the Arts
- recipients of the NEA's lifetime achievement awards, such as the NEA Jazz Masters, NEA Heritage Fellows, and NEA Opera Honors, as well as the recipients of the National Medal of Arts

Additionally, the NEA regularly posts content developed specifically for an online audience. The website's "Features" section provides an in-depth look at NEA-funded projects. The electronic version of NEA's quarterly magazine includes material not available in the print edition, such as audio interviews and video segments. Furthermore, each week the agency releases a free audio podcast featuring interviews with artists and arts administrators.

3. Describe the system your agency uses to routinely identify records that are appropriate for posting.

Many of the records posted on the website were created specifically to be made available to the public, such as press releases, reports, podcasts, and other NEA-produced material. Others, such as the webcasts, were public events that were recorded and posted online to bring them to a larger audience. Finally, many of the records online have traditionally been widely disseminated by the agency. These include program guidelines and grants awarded by the agency.

4. Beyond posting new material, is your agency taking steps to make the information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities, providing explanatory material, etc.?

The NEA is currently working to make its information more useful to the public. First the Agency is working to ensure that all text on its website conforms to the Plain Writing Act, a law that promotes clear, comprehensible communication. Second, the NEA undertook a website assessment in 2011 to better understand how it can make its information more useful to the public. Based on that assessment, the Agency will be redesigning its website this year to improve design, usability, and search capabilities. The NEA will be soliciting feedback on the process and design and will make adjustments accordingly.

5. Describe any other steps taken to increase proactive disclosures at your agency.

The NEA utilizes a variety of social media tools to expand awareness of the agency and its mission, as well as to extend its message in a consistent, coordinated, and complementary manner. In FY 2011, the agency actively maintained a presence on Facebook, Twitter, and YouTube. Shortly after the start of FY 2011, the agency launched its iTunes U channel. These allow the NEA to reach additional audiences with its message and drive traffic to the NEA website. The Agency also uses these tools to promote its events, grants, publications, and online content.

The NEA currently maintains two blogs. Its Art Works blog provides a forum for discussing how art transforms communities. Here, the agency presents a narrative on Chairman Rocco Landesman's Art Works tour and other arts-related issues. The second blog focuses on the NEA's Big Read program. This blog chronicles program activities and discusses literary and literacy issues. This summer, the NEA maintained a third blog that focused on its Blue Star Museums initiative. This blog highlighted participating museums and their exhibitions, as well as the military families who received free admission through the program.

Additionally, the Open Government section of the NEA's website provides a central location for key information on the Agency. Examples of records found here are the strategic plan, the Agency's organizational chart, and budget and planning information.

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 and 2011, agencies reported widespread use of technology in handling FOIA requests. For 2012, the questions have been further refined and now also address different, more innovative aspects of technology use.

Electronic receipt of FOIA requests:

1.   Can FOIA requests be made electronically to your agency?

Yes. FOIA requests can be submitted to the NEA using the following e-mail address: FOIA@arts.gov. The NEA does not utilize a web form to receive FOIA requests.

2.   If your agency processes requests on a decentralized basis, do all components of your agency receive requests electronically?

Not applicable.

Online tracking of FOIA requests:

3.   Can a FOIA requester track the status of his/her request electronically?

No.

4.   If not, is your agency taking steps to establish this capability?

The NEA is not currently taking steps to establish this capability. Because the Agency receives relatively few FOIA requests, and all of the requests are ultimately processed by the FOIA Officer, FOIA requesters can communicate directly with her to receive updates on their requests.

Use of technology to facilitate processing of requests:

5.   Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing

document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

The NEA is not currently taking steps to establish this capability. Similar to the answer in the previous question, relatively few FOIA requests are received, and the Agency's FOIA processes are centralized.

6. If so, describe the technological improvements being made.

Not applicable.

V.   STEPS TAKEN TO IMPROVE TIMELINESS IN RESPONDING TO REQUESTS AND REDUCE BACKLOGS

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section addresses 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 and appeals. For the figures required in this Section, please use those contained in the specified sections of your agency's 2011 Annual FOIA Report.

1.   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. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.

a.   Does your agency utilize a separate track for simple requests?

Yes. The NEA uses a track for simple requests. In addition, it created a "very simple" track during FY 2011. The Agency uses this track for requests that require almost no time to process.

b.   If so, for your agency overall, for Fiscal Year 2011, was the average number of days to process simple requests twenty working days or fewer?

Yes. The average number of days to process simple requests was 14.5 days, with the median being 6.5 days.

c.   If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?

Not applicable.

2.   Sections XII.D.(2) and XII.E.(2) of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report – Backlogged Requests/ Appeals," show the numbers of any backlog of pending requests or pending appeals from Fiscal Year 2011 as compared to Fiscal Year 2010. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition, Section VII.E, entitled "Pending Requests – Ten Oldest

Pending Requests," and Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," from both Fiscal Year 2010 and Fiscal Year 2011 should be used for this section.

> *a.   If your agency had a backlog of requests at the close of Fiscal Year 2011, did that backlog decrease as compared with Fiscal Year 2010?*

Yes. The number of backlogged requests decreased from ten at the end of FY 2010 to four at the end of FY 2011.

> *b.   If your agency had a backlog of administrative appeals in Fiscal Year 2011, did that backlog decrease as compared to Fiscal Year 2010?*

Not applicable. The NEA did not have a backlog of administrative appeals in FY 2011.

> *c.   In Fiscal Year 2011, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2010?*

Yes. The NEA closed its ten oldest requests that were pending as of the end of FY 2010.

> *d.   In Fiscal Year 2011, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2010?*

Not applicable. There were no administrative appeals pending as of the end of FY 2010.

3.   If you answered "no" to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation.

Not applicable.

All agencies should strive to both reduce any existing backlogs or requests and appeals and to improve their timeliness in responding to requests and appeals. Describe the steps your agency is taking to make improvements in those areas. In doing so, answer the following questions and then also include any other steps being taken to reduce backlogs and to improve timeliness.

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

The Agency's FOIA Officer continually monitors the progress of the FOIA caseload and sets goals.

2.   Has your agency increased its FOIA staffing?

No.

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

Not during the reporting period.

4.   If your agency receives consultations from other agencies, has your agency taken steps to improve the efficiency of the handling of such consultations, such as utilizing IT to share the documents, or establishing guidelines or agreements with other agencies on the handling of particular information to speed up or eliminate the need for consultations?

Not applicable. The NEA did not receive any consultations in FY 2011.

USE OF FOIA'S LAW ENFORCEMENT "EXCLUSIONS"

In order to increase transparency regarding the use of the FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to "treat the records as not subject to the requirements of [the FOIA]," 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. *Did your agency invoke a statutory exclusion during Fiscal Year 2011?*

No.

2. *If so, what is the total number of times exclusions were invoked?*

Not applicable.

SPOTLIGHT ON SUCCESS

Out of all the activities undertaken by your agency since March 2011 to increase transparency and improve FOIA administration, describe here one success story that you would like to highlight as emblematic of your agency's efforts.

One of the major success stories is the agency's continued use of technology to engage the public and disseminate information. The NEA maintains a presence on Facebook, Twitter, YouTube, and iTunes. These tools are used to promote the agency's events, grants, publications, and online content.

Additionally, the agency continues to webcast NEA events. These include meetings of the National Council on the Arts meetings, as well as panel discussions that would be of interest to the public. By broadcasting these events online, the NEA makes attendance possible for those outside of the immediate area.

Finally, the agency uses its blogs to further engage members of the public. The Art Works blog provides a forum for discussing how art transforms communities. The Big Read blog chronicles Big Read activities while discussing literary and literacy issues. The Blue Star Museums blog highlights free opportunities for military families at museums across the United States.