



2011 Chief FOIA Officer Report

I: Steps Taken to Apply the Presumption of Openness

1. *Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.*

a. Describe how the President's FOIA Memorandum and the Attorney General's FOIA Guidelines have been publicized throughout your agency.

The NMB's Office of Legal Affairs (OLA) processes all FOIA requests filed with the agency. All staff involved in processing FOIA requests have reviewed President Obama's January 21, 2009 FOIA memorandum and Attorney General Holder's March 19, 2009 FOIA guidelines.

b. What training has been attended and/or conducted on the new FOIA Guidelines?

The agency's FOIA professionals did not attend any conferences or conduct any training related to the President's FOIA Memorandum and the Attorney General's FOIA Guidelines in 2010. However, the agency's FOIA professionals attended multiple conferences and training seminars regarding the new FOIA Guidelines in 2009 and will receive additional related training this year.

c. How has your agency created or modified your internal guidance to reflect the presumption of openness?

The agency's internal guidance regarding the processing of FOIA requests was not formally modified during the past year; however, in 2009, the FOIA professionals and the agency's Chief FOIA Officer met to discuss the presumption of openness and ensure that it was being considered prior to withholding any documents under applicable FOIA exemptions. The agency's FOIA professionals will continue to consider the presumption of openness in making any recommendations regarding releases of records in the future.

d. To what extent has your agency made discretionary releases of otherwise exempt information?

The agency releases almost all of the records requested under FOIA, with limited redactions, and does not formally track whether a release of information is discretionary; however, the agency made discretionary releases of otherwise exempt information in at least two cases during FY 2010.

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

Exemptions 2 and 6 would have covered the released information.

f. *How does your agency review records to determine whether discretionary releases are possible?*

The FOIA professional assigned to the case collects the records covered by the request, reviews the records to determine whether exemptions apply, and then discusses possible withholdings and releases with the Chief FOIA Officer.

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

The agency has not taken any other formal initiatives to ensure that the presumption of openness is being applied to decisions involving releases under FOIA. However, the agency has been successful in its efforts to implement the President's memo and the Attorney General's Guidelines regarding openness: in FY 2010, the agency only redacted or withheld information from four requestors.¹

2. *Report whether your agency shows an increase in the number of requests where records have been released in full or where records have been released in part when compared with those numbers in the previous year's Annual FOIA Report.*

NMB received 22 FOIA requests in FY 2009: 9 full grants, 5 partial grants/partial denials, and 8 full denials in cases where the agency did not have any records relating to the request. In FY 2010, the NMB received 28 FOIA requests; 27 of the requests have been processed, resulting in 7 full grants, 5 partial grants/partial denials², and 15 full denials in cases where the agency did not have any records relating to the request. Thus, the number of full grants and partial grants/partial denials during FY 2010 was almost identical to the number of full grants and partial grants/partial denials during the prior fiscal year.

II: Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests

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

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

¹ To date, one FY 2010 request has not been fully processed. It is anticipated that some documents will be withheld and/or redacted in response to this request, thus the total number of agency responses involving redactions or withholdings for FY 2010 will be five.

² One of these cases did not involve a withholding or redaction but was still considered a partial denial because the agency did not possess any documents relating to a portion of the request.

Yes. FOIA professionals have the IT support necessary to make electronic disclosures quickly. The NMB currently uses a central electronic case-tracking system to monitor deadlines for responding to FOIA requests. All NMB FOIA professionals have access to this system while working at agency headquarters or remotely. The FOIA professionals also have access to software applications to ensure that they are able to search for agency records thoroughly and efficiently.

b. Describe how your agency's FOIA professionals interact with your Open Government Team.

Currently, the agency's FOIA professionals do not work closely with the agency's Open Government Team as these two groups of individuals have separate responsibilities.

c. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to responding to FOIA requests.

Not applicable.

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

The FOIA professionals and other NMB staff have access to the NMB Corporate Memory system—an electronic records and documents management system containing official agency records—and the NMB Knowledge Store. Whenever possible, FOIA professionals search the electronic databases for records in order to process FOIA requests as soon as possible.

III: Steps Taken to Increase Proactive Disclosures

Describe here the steps your agency has taken to increase the amount of material that is available on your agency's website, including providing examples of proactive disclosures that have been made since issuance of the new FOIA guidelines.

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

Yes. During the past year, the NMB added hundreds of documents to its website and the Knowledge Store.

b. What types of records have been posted?

The agency posted numerous types of records on its website and the Knowledge Store, including party submissions in representation dispute cases, arbitration awards, collective bargaining agreements, and Presidential Emergency Board reports.

- c. *Give examples of the types of records your agency now posts that used to be available only by making a FOIA request for them.*

The agency posts many of the categories of documents that were the subject of past FOIA requests, such as collective bargaining agreements, arbitration awards, and Presidential Emergency Board reports, and older representation determinations.

- d. *What system do you have in place to routinely identify records that are appropriate for posting?*

Every week, the NMB proactively discloses on its website basic information regarding representation, arbitration, mediation, and alternative dispute resolution cases. The NMB Office of Alternative Dispute Resolution Services staff collaborates with other NMB employees to ensure that new information—such as Board notices, Board determinations, reports, and memoranda from directors—are posted on the website in a timely manner. For example, all Board determinations and notices are typically posted within two business days.

- e. *How do you utilize social media in disseminating information?*

The agency does not currently use social media—such as Facebook, MySpace, Twitter, YouTube, or web logs—to disseminate information.

- f. *Describe any other steps taken to increase proactive disclosures at your agency.*

This year, the agency published its Annual Performance and Accountability Report to Congress as an interactive HTML E-report for the first time in its history.³ The HTML format provides readers with the ability to navigate the report via detailed links so they can access information more quickly. Additionally, the agency continued to proactively disclose information—such as Board notices and published determinations—via the “What’s New” page on its website and via group e-mail to interested individuals and organizations.

IV: Steps Taken to Greater Utilize Technology

1. Electronic Receipt of FOIA requests.

- A. *What proportion of the components within your agency which receive FOIA requests have the capability to receive such requests electronically?*

The NMB is a small agency with a limited staff-size of 52 employees. Thus, for purposes of processing FOIA requests, there is only one component within the agency. All FOIA requests filed with the agency are processed by the Office of Legal Affairs (OLA); OLA receives requests in hard copy format and electronically, whichever the requestor prefers.

³ See <http://www.nmb.gov/documents/2010annual-report/index.html>

b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

Not applicable.

c. What methods does your agency use to receive requests electronically?

The agency accepts FOIA requests electronically via fax or e-mail.

2. Electronic tracking of FOIA requests

a. What proportion of components within your agency which receive FOIA requests have the capability to track such requests electronically?

The agency has the capability to track FOIA requests electronically.

b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

Not applicable.

c. What methods does your agency use to track requests electronically?

The agency currently uses commercial off the shelf programs to track requests.

3. Electronic processing of FOIA requests

a. What proportion of components within your agency which receive FOIA requests have the capability to process such requests electronically?

The agency has the capability to process many FOIA requests electronically. However, most of the agency's older records are currently maintained by the National Archives and Records Administration (NORA) in hard copy format. Thus, if the NMB has to order records from NORA in order to process a request, the search for responsive records will not be conducted electronically.

b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

Not applicable.

c. What methods does your agency use to process requests electronically?

The NMB currently uses several forms of technology to process requests, including electronic databases, the NMB's internal electronic records management system, the NMB's on-line Knowledge Store, and commercial off the shelf programs.

4. Electronic Preparation of Annual FOIA Report

- a. *What type of technology does your agency use to prepare your agency Annual FOIA Report, i.e., specify whether the technology is FOIA-specific or a generic data-processing system.*

The agency uses a commercial off the shelf spreadsheet program.

- b. *If you are not satisfied with your existing system to prepare your Annual FOIA report, describe the steps you have taken to increase your use of technology for next year.*

Not applicable.

Part V: Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

1. *If your agency has a backlog, report here whether that backlog is decreasing. Report whether the number of backlogged requests and backlogged administrative appeals that remain pending at the end of the fiscal year decreased or increased, and by how many, when compared with last fiscal year. Second, report whether your agency closed in Fiscal Year 2010 the ten oldest of those pending requests and appeals from Fiscal Year 2009, and if not, report how many of them your agency did close.*

The NMB has a backlog of one FOIA request from FY 2010. The agency did not have a backlog in FY 2009; thus, our backlog increased by one. The agency does not have a backlog of administrative appeals.

2. *If there has not been a reduction in the backlog as measured by either of these metrics, describe why that has occurred. In doing so, answer the following questions and then include any other additional explanation.*

- a. *Is the backlog increase a result of an increase in the number of incoming requests or appeals?*

Yes, in addition to a loss of staff and an increase in the complexity of the requests received.

- b. *Is the backlog increase caused by a loss of staff?*

Yes, in addition to increases in the number of incoming requests and the complexity of the requests received.

- c. *Is the backlog increase caused by an increase in the complexity of the requests received?*

Yes, in addition to an increase in the number of incoming requests and a loss of staff.

d. What other causes, if any, contributed to the increase in backlog?

Not applicable.

3. Describe the steps your agency is taking to reduce any backlogs and to improve timelines in responding to requests and administrative appeals. In doing so answer the following questions and then also include any other steps being taken to improve timeliness.

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

No.

b. Has your agency increased its FOIA staffing?

No.

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

Yes.

d. Has your agency Chief FOIA Officer been involved in overseeing your agency's capacity to process requests?

Yes.

The agency has taken other steps to improve timeliness. During the past fiscal year, the agency converted hundreds of older documents into electronic records and published them on the NMB Knowledge Store. Additionally, all new records are saved in electronic format on a daily basis. It is anticipated that these efforts will increase the agency's ability to rapidly process future FOIA requests.

Spotlight On Success

In August of 2010, a requester submitted a FOIA request electronically, referencing a Microsoft Excel spreadsheet attachment that listed several NMB certifications that the requestor needed for his files. Agency FOIA professionals used a recently-created electronic database in order to locate the information. The requested documents were located, scanned, and sent to the requestor electronically within five business days.