



National Endowment for the Arts Freedom of Information Act 2011 Chief FOIA Officer Report

INTRODUCTION

The National Endowment for the Arts (NEA) is a small agency with approximately 170 staff members and no agency components. The agency's day-to-day FOIA operations are proportionately small. One FOIA Officer handles all of the NEA's FOIA requests. She is supervised by Karen Elias, the agency's General Counsel and Chief FOIA Officer.

During FY 2010, the NEA processed 153 FOIA requests. Although this represents nearly a 90% increase over the number processed last year, the total is relatively small compared with the number of requests that other agencies process. Given this sudden increase and the modest number of requests, it is 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 fiscal year 2010.

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.

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.

In January 2010, the Office of General Counsel conducted an agency-wide, in-person training on the Freedom of Information Act. The training provided an introduction to FOIA and educated staff on how records are released under the act. The FOIA Officer specifically addressed the President's FOIA Memorandum, emphasizing that "the Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears."

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

As noted above, the agency has only one FOIA Officer. Because she was hired in June 2009 and had not previously worked with the Freedom of Information Act, all of the training she received

from the Office of Information Policy (OIP) incorporated the principles of the President's FOIA Memorandum and the Attorney General's FOIA Guidelines.

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

Given the small number of agency staff with direct FOIA responsibilities, there has been no internal agency guidance issued. Rather, staff members rely on guidance that has been produced by OIP. When FOIA staff members need to resolve an issue of openness, they consult with OIP and with each other.

d. To what extent has your agency made 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.

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

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

f. How does your agency 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.

g. 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.

2. Report the extent to which the numbers of requests where records have been released in full and the numbers of requests where records have been released in part has changed from those numbers as reported in your previous year's Annual FOIA Report.

In FY 2010, the NEA processed 153 requests. Of those, 35 (23%) were full grants and 91 (59%) were partial grants. Records were therefore released in response 82% of the requests that the agency processed. This represents an increase over FY 2009, in which the agency released records in response to 70% of requests that it processed. That year, the NEA processed 83 FOIA requests; of those, 25 (30%) were full grants and 33 (40%) were partial grants.

Because the NEA receives relatively few FOIA requests per year, it is difficult to conclude that variations from one year to the next correlate to a greater (or lesser) presumption of openness at the agency. The number of records released in full increased during the last fiscal year; however, the total number of requests processed increased by an even greater degree. Therefore, the percentage of records released in full decreased. These percentages can be explained in part by an increase in the number of FOIA requests for grants and grant applications, for which there are almost always records available for release. However, each grant-related request almost always has a (b)(6) redaction because the responsive records contain the salary information of private individuals.

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."

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

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

The NEA Office of Information & Technology Management (IT) was an integral part of the agency's FOIA operations in FY 2010, assisting the agency's FOIA Officer in the implementation of two major projects. The first major project was the creation of the database that is used to process and track agency FOIA requests. The second major project was the overhaul of the FOIA web pages on the agency website.

The IT staff also provides timely assistance when asked to search for responsive records. Although most searches can be conducted without IT support, one particular set of FOIA requests this year required extensive IT involvement. The IT staff provided assistance that was both prompt and thorough.

b. Describe how your agency's FOIA professionals interact with your 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. However, FOIA is an integral component of the agency's Open Government plan, and it is featured prominently on the Open Government section of the agency's website. Through its Open Government plan, the NEA "seek[s] to expand the availability of information, further promote public participation in its activities and improve participation and collaboration through the use of new technology."

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

Because the NEA receives so few 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.

The agency has some flexibility to accommodate sudden short-term increases in FOIA activities. For example, at the beginning of FY 2010, the agency received multiple FOIA requests for which thousands of responsive documents were located. Two agency staff members assisted the FOIA Officer in redacting the documents. The agency's two attorneys assisted by reviewing the records.

d. 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 to increase the amount of material that is available on your agency 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?

The National Endowment for the Arts regularly updates its website with new material. Moreover, the NEA made extensive revisions to the FOIA section of its website to better organize the content for potential requesters.

b. What types of records have been posted?

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.

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.

One example is the webcasts of the meetings of the National Council on the Arts. The Council currently meets three times per year to review and make recommendations on applications for grants, funding guidelines, and leadership initiatives. During each meeting, the Council holds a session that is open to members of the public. Prior to the creation and posting of the webcasts, members of the public who were not able to attend the meeting could make a FOIA request for a copy of the transcript. Now, the open session can be viewed online.

d. What system do you have in place 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.

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

The NEA utilizes a variety of 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 2010, 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.

In April 2010, the NEA launched its Facebook fan page and Twitter account. 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 Public Affairs staff regularly "tweets" and updates the NEA's Facebook page, posting new content as often as three times a day. In addition, the agency increased the distribution of audio and video content by launching an NEA YouTube channel this summer.

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, now three years old, chronicles program activities and discusses literary and literacy issues. The NEA post new material at least three days a week to each of its two blogs.

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

No additional steps have been taken.

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 agencies reported widespread use of technology in handling FOIA requests. For this section of your Chief FOIA Officer Report for 2011, please answer the following more targeted questions:

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 NEA has the capability to receive FOIA requests electronically. There are no agency components.

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

The NEA had the capability to receive FOIA requests electronically at the time of the previous Chief FOIA Officer Report. There has been no increase.

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

The NEA uses email to receive requests electronically. Requests can be submitted either to the FOIA Officer's personalized NEA email account or to the FOIA email account (foia@arts.gov). In addition, if another agency staff member receives an email that is later determined to be a FOIA request, the email is forwarded to the FOIA Officer.

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 NEA has the capability to track FOIA requests electronically. There are no agency components.

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

The NEA had the capability to track FOIA requests electronically at the time of the previous Chief FOIA Officer Report. There has been no increase.

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

The agency uses a database that was created by the FOIA Officer in consultation with the agency's Office of Information Technology. At the time of the previous Chief FOIA Officer Report, the NEA tracked requests using a spreadsheet.

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 NEA has the capability to process FOIA requests electronically. There are no agency components.

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

The NEA had the capability to track FOIA requests electronically at the time of the previous Chief FOIA Officer Report. There has been no increase.

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

Much of the searching is done using one of the NEA's databases. This is especially true for requests concerning grants awarded by the agency. Once the redactions are made, the records are generally scanned and emailed to the requester. However, FOIA staff still redacts the records by hand on a paper copy.

4. Electronic preparation of your 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 used an off-the-shelf software product to design a database to facilitate the preparation of the annual FOIA report.

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.

The NEA is satisfied with its existing system.

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

Improvements to timeliness in responding to pending FOIA requests and reductions in backlogs are both ongoing agency efforts. The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests.

1. If your agency has a backlog, report here whether that backlog is decreasing. That reduction should be measured in two ways. First, 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.

At the end of FY 2009, there were ten backlogged requests and zero backlogged administrative appeals.¹ At the end of FY 2010 there were also ten backlogged requests and zero backlogged administrative appeals. Although this number neither increased nor decreased since FY 2009, it now represents a smaller percentage of the requests handled by the agency.

Six of the ten oldest backlogged requests from FY 2009 were closed in FY 2010. The remaining four were not discovered until FY 2011, and are reported among the ten oldest in FY 2010. They have since been closed.

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 lack of backlog reduction² a result of an increase in the number of incoming requests or appeals?

The lack of backlog reduction did not directly result from an increase in the number of incoming requests processed at the NEA. However, it should be noted that despite a 90% increase in incoming requests from FY 2009 to FY 2010, the agency's backlog did not increase.

b. Is the lack of backlog reduction caused by a loss of staff?

No.

¹ In the FY 2009 annual report, there were six backlogged requests reported. This number should instead be ten. During FY 2011, the agency discovered four FOIA requests in our files that had not been logged, filed, or, to the best of our knowledge, responded to. These FOIA requests are first counted in the FY 2010 annual report.

² Questions V.2.a through V.2.d have been reworded to reflect the fact that although there has not been a decrease, there has not been an increase, either. The original wording refers to a "backlog increase."

c. Is the lack of backlog reduction caused by an increase in the complexity of the requests received?

No.

d. What other causes, if any, contributed to the lack of backlog reduction?

Although the agency's backlog has remained constant at ten, the reasons for the backlog have changed. In FY 2009, none of the backlogged requests required consultation from other agencies. At the close of FY 2010, four backlogged requests contained records were being reviewed by other agencies as part of the consultation process.

3. Describe the steps your agency is taking to reduce any backlogs and to improve timeliness 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?

The agency's FOIA Officer continually monitors the progress of the FOIA caseload and responds to requests in a timely manner. In FY 2010, 131 of the 153 requests processed (86%) received a final response within 20 working days. More than half (83 of the requests processed, or 54%) received a final response within five working days.

Given the reason for the current backlog and the response rate to initial requests, the NEA is nevertheless taking further steps to improve timeliness. Consultations are now only conducted when necessary, and the agency is now more proactive on following up on outstanding consultations. To prevent the misplacement of incoming FOIA requests (*see footnote, page 8*), the current FOIA Officer ensures that all FOIA requests are logged upon arrival.

b. Has your agency increased its FOIA staffing?

No.

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

During the last year, the NEA began using a database for FOIA, as was mentioned above. Although the use of the database does not directly increase response time, it does increase the efficiency of the agency's FOIA operations with respect to tracking requests.

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

The agency's Chief FOIA Officer is directly involved in overseeing the agency's capacity to process requests. She is the immediate supervisor of the agency's FOIA Officer, and she is kept apprised of any increase in the volume or complexity of the FOIA requests received.

VI. SPOTLIGHT ON SUCCESS

Out of all the activities undertaken by your agency in this last year to increase transparency, describe here one success story that you would like to highlight as emblematic of your efforts.

One of the major success stories is the agency's increased use of technology to engage the public and disseminate information to. Although the agency has made extensive use of its website for years, it has only more recently employed social media. The NEA now 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 has begun webcasting 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 two 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.