



National Endowment for the Arts Freedom of Information Act Annual Report¹ for FY 2008

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I. BASIC INFORMATION REGARDING REPORT

1. Name, title, address, and telephone number of person to be contacted with questions about the Report

Monica Ashar, FOIA Officer
National Endowment for the Arts
1100 Pennsylvania Avenue, NW, Suite 608
Washington, DC 20506
Phone: (202) 682-5418

2. How to access to the Report on the agency Web site
<http://www.nea.gov/about/FOIA/FOIARreport08.pdf>

3. How to obtain a copy of the Report in paper form

Paper copies of the report can be obtained from Monica Ashar, whose contact information is provided above.

¹ Resubmitted July 29, 2010.

II. MAKING A FOIA REQUEST

1. Where to submit FOIA requests

Mail: FOIA Officer
National Endowment for the Arts
1100 Pennsylvania Avenue, NW, Suite 608
Washington, DC 20506-0001

Fax: (202) 682-5572

Email: foia@arts.gov

2. Why some requests were not granted

The majority of the denials involved withholding small, segregable portions of the requested records. Twenty-five denials (49% of the total requests processed) were made pursuant to exemption (b)(6), which protects against “a clearly unwarranted invasion of personal privacy.” The NEA made full denials in only four instances, all of which were based on reasons other than exemptions. Three of these were made because there were no responsive records. In the fourth instance, the requester failed to reasonably describe the records sought.

III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

1. Agency-specific acronyms or terms used in this Report

a. **NEA:** National Endowment for the Arts

2. Definitions of 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.
1. **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. **Perfect 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. Descriptions of the 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

| Statute | Type of Information Withheld | Case Citation | Total Number of Times Relied Upon by Agency |
|------------------------|---|---------------|---|
| 20 U.S.C. 959(c)(4)(B) | Verbatim comments made by panelists during the grant review process | N/A | 1 |

V. FOIA REQUESTS

A. Received, Processed and Pending FOIA Requests

| | 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 | 54 | 51 | 3 |

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

| | Number of Full Grants | Number of Partial Grants/ Partial Denials | Number of Full Denials Based on Exemptions | Number of Full Denials Based on Reasons Other Than Exemptions | | | | | | | | | TOTAL | |
|-----------------------|-----------------------|---|--|---|--|-------------------|--------------------|----------------------------------|--|-------------------|-------------------|------------------------------|-------|----|
| | | | | No Records | All Records Referred to Another Agency | Request Withdrawn | Fee-Related Reason | Records Not Reasonably Described | Improper FOIA Request for Other Reason | Not Agency Record | Duplicate Request | Other Explain in Chart Below | | |
| AGENCY OVERALL | 20 | 27 | 0 | 3 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 51 |

B. (2) Disposition of FOIA Requests – “Other” Reasons for Full Denials Based on Reasons Other than Exemptions from Section V.B(1) Chart – not applicable

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 | 1 | 0 | 1 | 25 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS

A. Received, Processed and Pending Administrative Appeals

| | Column 1 | Column 2 | Column 3 | Column 4 |
|-----------------------|--|---|--|--|
| | 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 |
| AGENCY OVERALL | 0 | 0 | 0 | 0 |

B. Disposition of Administrative Appeals – All Processed Appeals – **not applicable**

C. (1) Reasons for Denial on Appeal – Number of Times Exemptions Applied – **not applicable**

C. (2) Reasons for Denial on Appeal – Reasons Other than Exemptions – **not applicable**

C. (3) Reasons for Denial on Appeal – “Other” Reasons from Section VI.C (2) Chart – **not applicable**

C. (4) Response Time for Administrative Appeals – **not applicable**

C. (5) Ten Oldest Pending Administrative Appeals

| | 10th Oldest Appeal | 9th | 8th | 7th | 6th | 5th | 4th | 3rd | 2nd | Oldest Appeal |
|---|--------------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|----------------------|
| Date of Receipt of 10 Oldest Appeals | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Number of Days Pending | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

VII. FOIA REQUESTS: RESPONSE TIME FOR PROCESSED AND PENDING REQUESTS

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

| | SINGLE TRACK | | | | 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 |
| AGENCY OVERALL | 2 | 7.1 | < 1 | 118 | N/A | N/A | N/A | N/A |

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

| | SINGLE TRACK | | | | 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 |
| AGENCY OVERALL | 2 | 7.5 | < 1 | 118 | N/A | N/A | N/A | N/A |

C. Processed Requests – Response Time in Day Increments

Single Track

| | 0-20 Days | 21-40 Days | 41-60 Days | 61-80 Days | 81-100 Days | 101-120 Days | 121-140 Days | 141-160 Days | 161-180 Days | 181-200 Days | 201-300 Days | 301-400 Days | 401+ Days | TOTAL |
|-----------------------|-----------|------------|------------|------------|-------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|-----------|-------|
| AGENCY OVERALL | 48 | 1 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 51 |

Requests Granted Expedited Processing

| | 0-20 Days | 21-40 Days | 41-60 Days | 61-80 Days | 81-100 Days | 101-120 Days | 121-140 Days | 141-160 Days | 161-180 Days | 181-200 Days | 201-300 Days | 301-400 Days | 401+ Days | TOTAL |
|-----------------------|-----------|------------|------------|------------|-------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|-----------|-------|
| AGENCY OVERALL | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

D. Pending Requests – All Pending Perfected Requests

| | SINGLE TRACK | | | EXPEDITED PROCESSING | | |
|-----------------------|----------------|-----------------------|------------------------|----------------------|-----------------------|------------------------|
| | Number Pending | Median Number of Days | Average Number of Days | Number Pending | Median Number of Days | Average Number of Days |
| AGENCY OVERALL | 3 | 29 | 79 | 0 | N/A | N/A |

E. Pending Requests – 10 Oldest Pending Perfected Requests

| AGENCY OVERALL | 10th Oldest Request and Number of Days Pending | 9th | 8th | 7th | 6th | 5th | 4th | 3rd | 2nd | Oldest Request and Number of Days Pending |
|-----------------------|--|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|--|
| | Date | N/A | N/A | N/A | N/A | N/A | N/A | N/A | 9/29/08 | 8/19/08 |
| Number of Days | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 29 | 207 |

VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER

A. Requests for Expedited Processing²

| | Number Granted | Number Denied | Median Number of Days to Adjudicate | Average Number of Days to Adjudicate | Number Adjudicated Within 10 Calendar Days |
|---------------------------|---------------------------|--------------------------|--|---|---|
| AGENCY OVERALL | 0 | 6 | Unknown | Unknown | Unknown |

B. Requests for Fee Waiver³

| | Number Granted | Number Denied | Median Number of Days to Adjudicate | Average Number of Days to Adjudicate |
|---------------------------|---------------------------|--------------------------|--|---|
| AGENCY OVERALL | 1 | 10 | Unknown | Unknown |

² The NEA receives a relatively small number of FOIA requests per year, and it is able to begin processing virtually all of them immediately upon arrival. Because of this, the agency had not been documenting requests for expedited processing. At the time this report was initially submitted, the agency reported that it had no such requests. This was incorrect. There were six requests, none of which were formally granted. However, five of the six requests were fully processed in four days or fewer.

³ Many of the FOIA requests processed by the NEA do not incur fees. At the time this report was initially submitted, the agency had not been documenting requests for fee waivers. There were a total of 11 requests for fee waivers, none of which were formally granted. It is unclear whether any of the 10 reported in the “denied” column would have incurred any fees anyway. The one request reported in the “granted” column came from a commercial requester and would have incurred fees. However, no fees were charged on this request.

IX. FOIA PERSONNEL AND COSTS

| | PERSONNEL | | | COSTS | | |
|---------------------------|---|--|---|--|---------------------------------|----------------|
| | Number of “Full-Time FOIA Employees” | Number of “Equivalent FOIA Full- Time Employees” | Total Number of Full-Time FOIA Staff (The sum of columns 1 and 2) | Processing Costs (At initial request and appeal levels) | Litigation- Related Costs | Total Costs |
| AGENCY OVERALL | 0 | .5 | .5 | \$16,000 | 0 | \$16,000 |

X. FEES COLLECTED FOR PROCESSING REQUESTS

| | Total Amount of Fees Collected | Percentage of Total Costs |
|---------------------------|-----------------------------------|------------------------------|
| AGENCY OVERALL | 0 | 0% |

XI. FOIA REGULATIONS

The NEA’s regulations and fee schedule appear at 45 C.F.R. § 1100. These can be accessed electronically at <http://www.nea.gov/about/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 | 2 | 0 |

B. Consultations on FOIA Requests – Received, Processed, and Pending Consultations

| | Column 1 | Column 2 | Column 3 | Column 4 |
|-----------------------|---|---|--|---|
| | Number of Consultations Received from Other Agencies that Were <u>Pending</u> at Your Agency as of <u>Start</u> of the Fiscal Year | Number of Consultations <u>Received</u> from Other Agencies During the Fiscal Year | Number of Consultations Received from Other Agencies that Were <u>Processed</u> by Your Agency During the Fiscal Year | Number of Consultations Received from Other Agencies that Were <u>Pending</u> at Your Agency as of <u>End</u> of the Fiscal Year |
| AGENCY OVERALL | 0 | 0 | 0 | 0 |

C. Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency

| AGENCY OVERALL | 10th Oldest Consultation and Number of Days Pending | 9th | 8th | 7th | 6th | 5th | 4th | 3rd | 2nd | Oldest Consultation and Number of Days Pending |
|-----------------------|---|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|---|
| | Date | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Number of Days | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

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

| | Column 1 | Column 2 | Column 3 | Column 4 |
|-----------------------|--|--|---|---|
| | 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 | 54 | 57 | 51 |

Number of backlogged requests as of the end of the fiscal year from the previous Annual Report and the number of backlogged requests as of the end of the fiscal year from the current Annual Report.

| | 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 |
| AGENCY OVERALL | 0 | 2 |

E. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report – Appeals Received, Processed, and Backlogged

| | Column 1 | Column 2 | Column 3 | Column 4 |
|-----------------------|--|--|---|---|
| | NUMBER OF APPEALS RECEIVED | | NUMBER OF APPEALS PROCESSED | |
| | 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 | 0 | 0 | 0 | 0 |

Number of backlogged administrative appeals as of the end of the fiscal year from the previous Annual Report and the number of backlogged administrative appeals as of the end of the fiscal year from the current Annual Report.

| | Column 1 | Column 2 |
|-----------------------|--|---|
| | Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report | Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report |
| AGENCY OVERALL | 0 | 0 |