

FY2011 CHIEF FOIA OFFICER REPORT

U.S. COPYRIGHT OFFICE

I. STEPS TAKEN TO APPLY PRESUMPTION OF OPENNESS

1. STEPS TO ENSURE PRESUMPTION APPLIED TO ALL FOIA DECISIONS

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

All staff involved with processing FOIA requests have reviewed, considered and discussed President Obama's and Attorney General Holder's FOIA memoranda, particularly the presumption of openness. The memoranda have also been shared, throughout the Copyright Office, with managers who do not have direct responsibility for processing FOIA requests, for their consideration and understanding of FOIA's principles and goals.

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

Key staff, including the former Chief FOIA Officer and the FOIA Public Liaison, participated in government-wide training hosted by the Justice Department's Office of Information Policy (OIP) to discuss President Obama's directive. Because a primary function of the Copyright Office is to be an office of public record, most records may be obtained without a FOIA request. Consequently, most Copyright Office staff are involved with maintaining the public record and providing services to make those records publicly available. Only a small percentage of records require a FOIA request to obtain and each year less than about 50 requests are typically received of which a large portion are not processed for administrative reasons. For the few individuals involved with processing requests, the limited need for training has been satisfied through on-the-job training supplemented by ongoing Justice Dept. seminars.

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

The two memoranda directing that agencies establish a presumption of openness are now part of FOIA practices and the established guidelines at the Copyright Office. The presumption is part of Copyright Office analysis for reviewing and evaluating records for release, along with the requirements established by statute and regulation.

d. To what extent has the Copyright Office made discretionary releases of otherwise exempt information?

Although the Copyright Office did not make any discretionary disclosures in FY2010, there were few instances to consider withholding records.¹

¹In the past, the Copyright Office typically invoked only a few exemptions each fiscal year. It has invoked exemptions on only a couple occasions since President Obama issued his directive in January 2008 which means there is rarely an opportunity to make discretionary releases. In FY2010, there were only two refusals based on exemptions and both were redactions for exemption six privacy considerations. The rest of the refusals for any of the other 42 FOIA requests processed in FY2010 were based on administrative considerations, for example, some requests were not for agency records or requesters refused to pay required fees.

For the 32 FOIA requests that completed processing in FY2009, exemption five had been invoked once for a partial release in a previous fiscal year. For FY2008, exemption five was invoked once for one of the 46 requests processed that year. Consequently, as documented by the annual reports at www.copyright.gov, in a typical year there are few, if any, occasions to invoke FOIA exemptions and therefore, also few opportunities for discretionary releases.

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

Not applicable. See item d. above.

f. How does the Copyright Office review records to determine whether discretionary releases are possible?

The analysis applied by FOIA staff begins from the perspective that a responsive record will be released, unless consideration of its particular content indicates that there is a reasonable and foreseeable harm that requires it to be withheld to protect a legitimate interest identified by one of the exemptions. The Copyright Office routinely redacts documents in order to release any portion that is not protected by an exemption. Finally, records are not withheld in order to protect the personal interests of Government officials, to avoid embarrassment or to hide errors or failures.

g. Describe any other initiatives undertaken by the Copyright Office to ensure that the presumption of openness is being applied.

Not applicable.

2. CHANGES IN FULL OR PARTIAL GRANTS

For FY2008, there were 13 full grants, in FY2009 there were eight and in FY2010 there were ten. FYs2008 and 2009 each had one partial grant/denial that was based on exemption five. Those exemptions were invoked prior to the issuance of President Obama's directive. In FY2010 there were two partial grants/denials. Both were based on exemption six for privacy reasons.

II. STEPS TAKEN TO ENSURE THAT THE COPYRIGHT OFFICE HAS AN EFFECTIVE SYSTEM FOR RESPONDING TO REQUESTS

a. Do FOIA professionals within the Copyright Office have sufficient IT support?

Yes.

b. Describe how Copyright Office FOIA professionals interact with the Open Government Team.

Not applicable.

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

Due to the centralized nature of the FOIA process in the Copyright Office and the minimal number of FOIA requests received each year, the Chief FOIA Officer evaluates the need for staff to process FOIA requests on an ongoing, informal basis. In general, there is rarely ever any backlog and when there is one, it is very minimal. There are no indications based on backlogs, other processing problems or any public comment or complaint that formal procedures or a structured study is required to determine whether staffing is adequate.

d. Describe any other steps the Copyright Office has undertaken to ensure that its FOIA system operates efficiently and effectively.

As previously stated, the Copyright Office receives few FOIA requests each year and does not have a backlog problem. However, we continue to make improvements such as incorporating the use of spreadsheets to automate tracking even more, revising form letters to improve communications and reviewing procedures and practices on an ongoing basis to ensure they appropriately mesh with and take into account adjustments and changes the Copyright Office makes in its other areas of operations.

III. STEPS TAKEN TO INCREASE PROACTIVE DISCLOSURES

a. Has the Copyright Office added new material to its website since last year?

Yes, the Copyright Office adds material on an ongoing basis.

b. What types of records have been posted?

Updated circulars, forms and informational factsheets; federal register notices; public comments to rulemakings; data about registered works and documents recorded by the U.S. Copyright Office; online service provider “designation of agents”; reports and studies; and transcripts of Congressional testimony.

c. Give examples of the types of records the Copyright Office now posts that used to be available only by making a FOIA request for them.

Not applicable.

d. What system is in place to routinely identify records that are appropriate for posting?

As an office of public record, the Copyright Office has a traditional, ongoing practice of proactively making its records and documents routinely available to the general public.

e. How does the Copyright Office utilize social media in disseminating information?

The Copyright Office has posted statements on the Library of Congress's blog relating to Copyright Office developments and activities.

f. Describe any other steps taken to increase proactive disclosures at the Copyright Office .

Not applicable.

IV. STEPS TAKEN TO GREATER UTILIZE TECHNOLOGY

1. Electronic receipt of FOIA requests:

a. What proportion of the components within the Copyright Office which receive FOIA requests have the capability to receive such requests electronically.

100%. The Copyright Office has a single component.

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. The Copyright Office has a single component.

c. What methods does the Copyright Office use to receive requests electronically?

Email to individual staff or to a general mailbox through the Copyright Office website.

2. Electronic tracking of FOIA requests:

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

100%. The Copyright Office has a single component.

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. The Copyright Office has a single component.

c. What methods does the Copyright Office use to track requests electronically?

The Copyright Office maintains the FOIA docket as an electronic document.

3. Electronic processing of FOIA requests:

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

100%. The Copyright Office has a single component.

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. The Copyright Office has a single component.

c. What methods does the Copyright Office use to process requests electronically?

The Copyright Office uses email to communicate about FOIA requests and share documents among staff. It is also used to transmit responses and records to requesters. Word processing is used to draft FOIA responses.

4. Electronic preparation of your Annual FOIA Report:

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

The Copyright Office uses (1) word processing software to draft and prepare documents and for compiling and recording preliminary data; (2) spreadsheet software to calculate statistics and (3) email to communicate with each other and share drafts and related support documents and to transmit reports to DOJ.

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.

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

1. If the Copyright Office has a backlog, report here whether your backlog is decreasing. Second, report whether the Copyright Office 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 the Copyright Office did close.

The number of backlogged requests was reduced from ten at the end of FY2008 to two at the end of FY2009. For FY2010, it was reduced to one. There was no backlog for appeals in any of those years. There were ten pending requests for FY2008 and the oldest was received on March 19, 2007. For FY 2009, there were nine pending and the oldest was received on July 1, 2009. For FY2010, there was one which was received December 10, 2009. In FY2010, the Copyright Office closed all the requests that were pending at the end of FY2009.

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?

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

3. Describe the steps the Copyright Office 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.

There were ten cases backlogged from FY2008 that were closed in FY2009. That backlog was due to the fact that the procedures that were in place to track requests were not sufficient to document whether those particular cases had been processed. Therefore, in FY2009, steps were taken to ensure that processing was completed and the requesters were contacted. As a result, routine procedures are now in place to ensure proper documenting that accurately tracks processing for all FOIA requests. Two FOIA requests were backlogged from FY2009 because the Copyright Office was waiting for a response from a third party in order to provide a response. That was a rare situation that is not expected to recur. To prevent future backlogs, the Copyright Office has trained staff and established procedures to closely monitor the time periods for processing requests.

a. Does the Copyright Office routinely set goals and monitor the progress of its FOIA caseload?

Yes.

b. Has the Copyright Office increased its FOIA staffing?

No.

c. Has the Copyright Office made IT improvements to increase timeliness?

No.

d. Has the Copyright Office Chief FOIA Officer been involved in overseeing its capacity to process requests?

Yes.

Spotlight on Success

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

In FY2010, the Copyright Office began a digitization project to make approximately 70 million copyright registration records available to the public in a searchable, online database. The Office is currently focused on digitizing the *Catalog of Copyright Entries (CCE)*, a collection of 660 paper bound volumes that date from 1891 to 1978. From 1979 through 1982, the CCE is available in microfiche. As those formats were being phased out, the Copyright Office began maintaining an electronic database for registration records that date from 1978 to the present which is available online at the Copyright Office and on the Internet at the Copyright Office website at www.copyright.gov. As part of developing a new database for the older records, the Copyright Office is hosting periodic open forums to facilitate public discussion about the digitization project, particularly metadata capture and keyword indexing, to help ensure that the database meets the needs of users the best way possible. To date, 121 volumes of the CCE have been made available online through the Internet Archive at <http://www.archive.org/details/copyrightrecords>.