



NATIONAL SCIENCE FOUNDATION

CHIEF FOIA OFFICER REPORT

March 2011 to March 2012

Section 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 Legal Analyst for FOIA and Privacy conducts bi-weekly FOIA/PA training to all new employees, and to subgroups of employees as needed.

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

Yes, the Legal Analyst and the staff assistant for FOIA attended the ASAP National Training Conference in March of 2011.

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? Yes.

4. What exemptions would have covered the information that was released as a matter of discretion? Exemption 5.

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

This is an integral part of the FOIA Officer's review of responsive records, and of the General Counsel's determination on appeals. Various factors go into the decision-making on this issue. These include the age of the document, the sensitivity of the issues being discussed in the documents, and the potential for harm to the deliberative process.

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

While information is received from staff familiar with the responsive documents, the final decision on withholding or releasing records is made by the NSF FOIA Officer. The NSF General Counsel makes the determination on all administrative appeals. This assures that the review for discretionary release is consistently applied to responsive documents.

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, they remained essentially the same – 62 in FY 2010 and 59 in FY 2011. The majority of records requested at NSF involve requests for funded grant proposals. These documents always contain information exempt from release under Exemption 6 and in some instances they also contain proprietary business information protected under Exemption 4. In addition, responses to requests for Office of Inspector General investigative records routinely involve protection of personal privacy. Exemptions 4 and 6 cannot be waived. This greatly limits the number of NSF responses that can be granted in full.

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

Section 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 NSF FOIA professional has on-going interactions with IT support personnel and requests for assistance and revisions to the FOIA management database are promptly provided.

2. Is there regular interaction between agency FOIA professionals and the Chief FOIA Officer? Yes.
3. Do your FOIA professionals work with your agency's Open Government Team? Yes.
4. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to FOIA administration.
NSF added additional FOIA support personnel during the FY 2010 reporting period. With impending budget decreases we expect that the current level of support will remain steady.
5. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.
The NSF Sharepoint FOIA database is continually reviewed for efficiency and updated with any additional requirements received from Congressional mandates and/or the Office of Information and Privacy at DOJ.

Section 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?

Yes.

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

The 2009 and the 2010 FOIA Logs were posted.

The GSA SmartPay Program site is routinely updated.

Project Outcome Reports have been added to the following NSF web site:

http://www.research.gov/research-portal/appmanager/base/desktop;jsessionid=JqL9PpQYlpQGQdot9losQY5Rk2BtF2CWvFbHpMXSHNn7qjN13CC3!-1621870533!170942325?nfpb=true&pageLabel=research_node_display&nodePath=/researchGov/Service/Desktop/PublicOutcomesReport.html.

The Project Outcomes Report for the General Public serves as a brief summary prepared by the Principal Investigator (PI) or co-PI specifically for the public, describing the nature and outcomes of the project.

3. Describe the system your agency uses to routinely identify records that are appropriate for posting. The NSF FOIA Officer keeps this in mind while processing requests. Outside the FOIA process, the NSF Open Government initiative seeks to identify and post additional records on the NSF web site that may be of interest to the public. See <http://www.nsf.gov/open/>.

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.?

Yes. NSF uses a variety of social media tools to share news about research NSF has funded, funding opportunities offered by the Foundation, job openings at NSF and more. NSF can also be followed on the social media sites listed: <http://www.nsf.gov/social>.

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

NSF's Open Government Plan continually seeks out additional records that may be added to the NSF public web site. See <http://www.nsf.gov/open/>.

Section 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.

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

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? This capability is under review due to security concerns.

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?

NSF's business processes allow for electronic access to most all awarded proposal records which provides the FOIA Officer with direct access to requested records. Most redacting is done electronically.

6. If so, describe the technological improvements being made. N/A

Section 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?
No. However, due to the increased complexity of requests, we plan to move to multi-track processing during the current Fiscal Year.
 - 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? N/A
 - 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?
No. NSF's average for all requests in 2011 was 23 working days due to an additional increase in both the number and complexity of requests. 2010 was an average of 19 working days.
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? No.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2011, did that backlog decrease as compared to Fiscal Year 2010? N/A
 - c. In Fiscal Year 2011, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2010?
Of the ten pending requests four were completed and six remained pending.
 - 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? N/A
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:

Request Backlog:

- a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests? Yes, NSF received yet another increase in the number of requests in FY 2011.
- b. Was the lack of a reduction in the request backlog caused by a loss of staff? No.
- c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received? Yes. The majority of requests received are for funded grant proposals. In addition to an increase in such requests, there has been an increase in the number of proposals requested in individual requests. Because proposals may contain confidential, proprietary information exempt from disclosure under exemption 4, the FOIA Officer must contact the submitter of each proposal pursuant to E.O. 12,600 and the NSF FOIA regulations, provide the submitter an opportunity to comment, and review any comments prior to determining what to disclose. Thus, a single request for ten proposals can require ten times the time and effort to process as a single request for one proposal. Other requests involve large numbers of records containing confidential information, requiring line by line review and redaction.
- d. What other causes, if any, contributed to the lack of a decrease in the request backlog? None.

Administrative Appeal Backlog: N/A

- e. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?
- f. Was the lack of a reduction in the appeal backlog caused by a loss of staff?
- g. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received?
- h. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?

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?
Yes. NSF's Legal Analyst for FOIA and Privacy and the Chief FOIA Officer work closely and on a daily basis to assure prompt processing of incoming requests and continuous communication with the requester community. We sought to reduce backlog by increasing the number of requests reviewed during FY 2011. NSF processed 519 requests in 2011, an increase of 44, or nearly 10%, over 2010 with no increase in FOIA staff.
2. Has your agency increased its FOIA staffing?
No. NSF added additional FOIA support personnel during the FY 2010 reporting period. With impending budget constraints we expect the current level will remain steady.
3. Has your agency made IT improvements to increase timeliness? Not in FY 2011.
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?
NSF routinely shares and reviews documents for referrals and consultations via electronic media to speed the exchange of records.

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? N/A

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.

In 2010, NSF received 500 requests, an increase of 105 or nearly 27% over 2009. NSF processed 465 requests in 2010, an increase of 83 or nearly 22% over 2009.

NSF received another increase in the number of requests received in FY2011, rising to 526. Most significantly, NSF processed 519 requests in 2011, another increase of 44 over 2010 with no increase in FOIA staff. This additional increase was due to the diligence of the NSF staff, and resulted in lower backlog than would otherwise be the case from the increase in both the number and complexity of new requests.

Moreover, NSF has no Appeals backlog despite an increase from 6 in FY2010 to 20 in FY2011.