

Time frame for 2015 Chief FOIA Officer Reports

Unless otherwise noted, agency 2015 Chief FOIA Officer Report should address agency activities that have occurred since the filing of last year's Report, which was March 17, 2014, up until the filing of the 2015 Report (March 15, 2015). Thus, the general reporting period for the Chief FOIA Officer Reports is March 2014 to March 2015.

Content of 2015 Chief FOIA Officer Reports

Name of agency: **National Endowment for the Humanities**

Name and Title of agency Chief FOIA Officer: **Margaret F. Plympton, Deputy Chairman**

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.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

FOIA Training:

1. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any FOIA training or conference during the reporting period such as that provided by the Department of Justice?

Answer: Yes. During the reporting period, our primary FOIA professional attended the Advanced FOIA Seminar held by OIP, as well as the roundtable on proactive disclosures, and the Chief FOIA Officer Report refresher training.

Furthermore, NEH's Office of General Counsel (OGC) provided substantive FOIA training to all other agency personnel with FOIA responsibilities (i.e., staff members who work in NEH's various offices and divisions who gather responsive records when a FOIA request comes in for records from their offices).

2. Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

Answer: Approximately 70%. During the reporting period, NEH had three FOIA professionals assigned to process FOIA requests and work on FOIA matters (all OGC staff). The FOIA professional with primary FOIA responsibility attended trainings held by OIP, as described above. Because of staff turnover, the two additional FOIA professionals who helped with FOIA on an ad-hoc basis did not attend substantive FOIA training (which accounts for the less than 100% response). Also, as described above, all staff outside the OGC with FOIA responsibilities also attended substantive FOIA training.

3. In the 2014 Chief FOIA Officer Report Guidelines, OIP asked agencies to provide a plan for ensuring that core, substantive FOIA training is offered to all agency FOIA professionals at least once each year. Please provide the status of your agency's implementation of this plan.

Answer: NEH has implemented its plan to ensure that core, substantive FOIA training is offered to all agency FOIA professionals each year. During the reporting period, NEH's primary FOIA professional attended OIP training, as described above. Also, all three of NEH's FOIA professionals routinely review the OIP website and other sources to keep apprised of training opportunities and attend training when possible. NEH continues to make training available and encourage its FOIA professionals to take training.

Outreach:

Not required of agencies which received less than 1,000 FOIA requests in Fiscal Year 2014.

Discretionary Disclosures:

4. Does your agency have a distinct process or system in place to review records for discretionary release? If so, please briefly describe this process. If your agency is decentralized, please specify whether all components at your agency have a process or system in place.

Answer: Yes. As part of NEH's standard practice in processing each FOIA request we receive, NEH FOIA professionals review the responsive records and carefully assess whether NEH may make discretionary disclosures of information, even if NEH could properly withhold the information under one or more FOIA exemptions.

5. During the reporting period did your agency make any discretionary releases of information?

Answer: No. Please see our answer to Section I, Question 8, below, for explanation.

6. What exemption(s) would have covered the material released as a matter of discretion?

Answer: Not Applicable.

7. Provide a narrative description, as well as some specific examples, of the types of information that your agency released as a matter of discretion during the reporting year.

Answer: Not Applicable.

8. If your agency was not able to make any discretionary releases of information, please explain why.

Answer: During the reporting period, NEH had little opportunity to make discretionary releases. NEH primarily withheld agency records under Exemptions 4 (such as the script of an unreleased documentary) and 6 (such as personally identifiable information), under which discretionary release is often not appropriate due to the nature of the records protected by these two exemptions. NEH withheld fewer agency records under Exemption 5 (which does allow leeway for discretionary releases); however, NEH did not make any discretionary releases of records, or parts of records, protected by Exemption 5 because NEH determined that the records at issue contained sensitive deliberative and pre-decisional discussion which, if released, could chill open and frank discussion on policy matters.

Other Initiatives:

9. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here. If any of these initiatives are online, please provide links in your description.

Answer: We regularly proactively release sample agency publications, program activities and grant narratives as well as financial reports concerning NEH's grant-making and budget; we also maintain on our public website a list of NEH credit card holders and our complete staff directory.

<http://www.neh.gov/about/legal/reports> (financial reports)

<http://www.neh.gov/news/press-release/2014-12-08> (grants awarded)

<http://www.neh.gov/about/foia/electronic-reading-room> (credit card holders)

<http://www.neh.gov/about/staff> (searchable staff directory)

Furthermore, during the reporting period NEH updated its FOIA regulations (which were last revised in 1987) to ensure that they are consistent with current FOIA law, the President's FOIA Memorandum, and the Attorney General's FOIA Guidelines. NEH's new FOIA regulations went into effect March 21, 2014. We also updated our internal directive for processing FOIA requests, which mirrors the new regulations.

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." It is essential that agencies effectively manage their FOIA program.

Please answer the following questions to describe the steps your agency has taken to ensure that your management of your FOIA program is effective and efficient. You should also include any additional information that describes your agency's efforts in this area.

Personnel:

Not required of agencies which received less than 1,000 FOIA requests in Fiscal Year 2014.

Processing Procedures:

1. For Fiscal Year 2014, what was the average number of days your agency reported for adjudicating requests for expedited processing?

Answer: One (1) day.

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that request for expedited processing are adjudicated within ten calendar days or less.

Answer: Not Applicable.

Requester Services:

3. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at the National Archives and Records Administration (NARA)?

Answer: Yes. In our initial response to an administrative appeal, we notify requesters of the mediation services offered by OGIS.

4. When assessing fees, does your agency provide a breakdown of how FOIA fees were calculated and assessed to the FOIA requester?

Answer: NEH did not assess any fees during the reporting period.

5. If estimated fees are particularly high, does your agency provide an explanation for the estimate to the requester?

Answer: NEH did not issue any fee estimates during the reporting period.

Other Initiatives

6. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc., please describe them here.

Answer: During the reporting period, NEH conducted trainings for all agency staff with FOIA responsibilities. This training covered efficient searching and initial document review. Our FOIA professionals are in regular contact with the various NEH divisions and offices responsible for searching for records responsive to a FOIA request, to offer assistance or advice.

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.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

Posting Material:

1. Does your agency have a distinct process or system in place to identify records for proactive disclosures? If so, describe your agency's process or system.

Answer: Yes. NEH routinely proactively releases samples of NEH-funded grant narratives. Program officers in the various NEH divisions select samples of grant application narratives from projects NEH has funded, and forward them to the OGC FOIA professionals for review before NEH posts them online with agency grant guidelines, and in NEH's electronic FOIA Library.

2. Does your process or system involve any collaboration with agency staff outside the FOIA office? If so, describe this interaction.

Answer: Yes. Please see our answer to Section III, Question 1, above.

3. Describe your agency's process or system for identifying "frequently requested" records that should be posted online.

Answer: Our FOIA professionals regularly review the NEH FOIA log and automatically evaluate any record that has been requested twice as a potential "frequently requested" record.

4. Provide examples of material that your agency has proactively disclosed the past reporting year, including links to the posted material.

Answer: NEH regularly posts new information about agency activities on its website. For example, it posts press releases about funded projects, lists of recent grant awards, sample grant application narratives, speeches by the NEH Chairman, information on grant administration, application guidelines, annual agency reports (e.g., Performance and Accountability reports, Service Contract Inventory reports, etc.) and the full text of *Humanities*, NEH's bimonthly magazine.

NEH also maintains on its website its organizational chart and staff directory; biographies and photographs of some of its senior staff; webpages for its Office of Communications and Public Affairs, and its Office of Congressional Affairs; a social media index, which contains NEH as well as office and division specific RSS feeds and Twitter page links; a section called *Explore*, which contains an interactive database of websites, applications, and NEH-supported digital projects; and guidelines on using NEH's logo (e.g., how to use it in print and electronic communications).

<http://www.neh.gov/about/legal/reports> (financial reports)

<http://www.neh.gov/news/press-release/2014-12-08> (grants awarded)

<http://www.neh.gov/about/foia/freedom-information-act-sample-grant-application-narratives> (sample grant narratives)

<http://www.neh.gov/grants/research/awards-faculty-hispanic-serving-institutions> (sample of grant guidelines)

<http://www.neh.gov/about/staff> (searchable staff directory)

<http://www.neh.gov/humanities> (*Humanities* magazine)

<http://www.neh.gov/about/chairman/deputy-chairman> (biography of Deputy Chairman, links on this site include those to the Chairman's speeches, Office of Communications and White House Affairs)

<http://www.neh.gov/news/press-releases> (press releases)

<http://www.neh.gov/brand-materials> (guidelines for use of NEH logo)

Other Initiatives:

5. If there are any other steps your agency has taken to increase proactive disclosures, please describe them here.

Answer: We have encouraged program officers and divisional staff to review their records for documents they feel would be of interest to the public.

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.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that describes your agency's efforts in this area.

Online tracking of FOIA requests and appeals:

Not required of agencies which received less than 1,000 FOIA requests in Fiscal Year 2014.

Making material posted online more useful:

1. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website?

Answer: Yes. NEH continues to fine-tune the search feature of its website. Furthermore, NEH ensures that every page of the website, including materials posted, is accessible on mobile devices.

2. If yes, please provide examples of such improvements. If your agency is already posting material in its most useful format, please describe these efforts.

Answer: The search feature for the NEH website provides results with search term suggestions and search results that include "stemmer" algorithms, thus providing users with more results (e.g., a search for "walk" will result in "walks", "walker", "walked", etc.). Also, NEH has implemented a search results interface which allows users to sort results by various fields (date, author, relevancy, etc.); users can also filter results by document type, divisions and offices, subject matter, etc.

3. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?

Answer: No.

4. If so, briefly explain what those challenges are.

Answer: Not Applicable.

Use of technology to facilitate processing of requests:

Not required of agencies which received less than 1,000 FOIA requests in Fiscal Year 2014.

Other initiatives:

5. Did your agency successfully post all four quarterly reports for Fiscal Year 2014?

Answer: NEH successfully posted its quarterly reports on the NEH website, but technical issues, which are being addressed with OIP, prevent the information from appearing on FOIA.gov.

6. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal year 2015.

Answer: Not Applicable.

7. Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? If yes, what are the different types of electronic means that are utilized by your agency to communicate with requesters?

Answer: Yes. NEH FOIA professionals use e-mail to communicate with requesters in every case unless the requester does not provide an email address or prefers not to communicate via email.

8. If your agency does not communicate electronically with requesters as a default, are there any limitations or restrictions for the use of such means? If yes, does your agency inform requesters about such limitations?

Answer: Not Applicable.

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section your Chief FOIA Officer Report 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, appeals, and consultations. For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2014 Annual FOIA Report and, when applicable, your agency's 2013 Annual FOIA Report.

Simple Track: 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.

1. Does your agency utilize a separate track for simple requests?

Answer: Yes.

2. If so, for your agency overall, for Fiscal Year 2014, was the average number of days to process simple requests twenty working days or fewer?

Answer: In Fiscal Year 2014, the NEH spent an average of 13.4 days to process simple requests.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2014 that were placed in your simple track.

Answer: 82%.

4. If your agency does not track simple requests separately, was the average number of days to process all non-expedited requests twenty working days or fewer?

Answer: Not Applicable.

Backlogs: Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2013 and Fiscal Year 2014 when completing this section of your Chief FOIA Officer Report.

Backlogged Requests:

5. If your agency had a backlog of requests at the close of Fiscal Year 2014, did that backlog decrease as compared with Fiscal Year 2013? If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog.

Answer: NEH had one backlogged request at the end of Fiscal Year 2013 and no backlogged requests at the end of Fiscal Year 2014.

6. If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2014. If your agency did not receive any requests in Fiscal Year 2014 and/or has no request backlog, please answer with "N/A."

Answer: Not Applicable.

Backlogged Appeals:

7. If your agency had a backlog of appeals at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013? If not, explain why and describe the causes that contributed to your agency not being able to reduce backlog. When doing so, please also indicate if any of the following were contributing factors: An increase in the number of incoming appeal, a loss of staff, and/or an increase in the complexity of the appeals received.

Answer: NEH had no backlog of appeals at the end of Fiscal Year 2014.

8. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2014. If your agency did not receive any appeals in Fiscal Year 2014 and/or has no appeal backlog, please answer with "N/A."

Answer: Not Applicable.

Backlog Reduction Plans:

Not required of agencies which received less than 1,000 FOIA requests in Fiscal Year 2014.

Status of Ten Oldest Requests, Appeals, and Consultations: Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2013 and Fiscal Year 2014 when completing this section of your Chief FOIA Officer Report.

Ten oldest requests:

9. In Fiscal Year 2014, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

Answer: Yes. In Fiscal Year 2014, NEH closed the one backlogged request from Fiscal Year 2013.

10. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2013 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

Answer: Not Applicable. See Section V, Question 9, above.

11. Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?

Answer: Not Applicable. The one backlogged request NEH had at the close of FY 13 was not withdrawn.

Ten Oldest Appeals:

12. Fiscal Year 2014, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

Answer: NEH did not have pending appeals in our Fiscal Year 2013 report.

13. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2013 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

Answer: Not Applicable.

Ten Oldest Consultations:

14. In Fiscal Year 2014, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

Answer: NEH did not have pending consultations in our Fiscal Year 2013 report.

15. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2013 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Answer: Not Applicable.

Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans:

16. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2013.

Answer: NEH did not face obstacles in this regard; NEH closed its only pending request from Fiscal Year 2013 in Fiscal Year 2014.

If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

Answer: Not Applicable.

17. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2015.

Answer: Not Applicable.

Use of FOIA’s Law Enforcement “Exclusions”

Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2014?

Answer: No.

If so, please provide the total number of times exclusions were invoked.

Answer: Not Applicable.

Success Story

Out of all the activities undertaken by your agency since March 2013 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency’s efforts. The success story can come from any one of the five key areas. As noted above, these agency success stories will be highlighted during Sunshine Week by OIP. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

Answer:

During the reporting period, NEH maintained a robust electronic FOIA library and agency website which made it easier for FOIA professionals and agency staff to refer potential FOIA requesters to our website for the information they sought, and for members of the public to find that information.

In addition, NEH closed its single backlogged request from Fiscal Year 2013 in April 2014 and had no backlogged requests at the end of Fiscal Year 2014.

Finally, NEH also completed the process of updating its FOIA regulations during the reporting period, to ensure that they are consistent with current FOIA law, the President's FOIA Memorandum and the Attorney General's FOIA Guidelines. NEH's FOIA regulations had last been revised in 1987. NEH published the new FOIA regulations in the Federal Register in February 2014 and the regulations went into effect March 21, 2014.