



FEMA

November 14, 2016

MEMORANDUM FOR: Nikki N. Gramian
Acting Director
Office of Government Information Services
National Archives and Records Administration

FROM: Tracey L. Showman *Tracey L. Showman*
Chief Administrative Officer
Federal Emergency Management Agency

SUBJECT: Compliance Review of the Federal Emergency Management Agency's Freedom of Information Act Program

This memorandum serves as the Federal Emergency Management Agency's (FEMA) response to the Office of the Government Information Services (OGIS) Report, regarding the results of OGIS' Compliance Assessment of FEMA's Freedom of Information Act Program.

FEMA takes its disclosure responsibilities under the Freedom of Information Act (FOIA) and Privacy Act seriously, and has taken immediate steps to improve overall Disclosure programmatic health. FEMA's Disclosure Program was not performing at an acceptable level, and as a result, sharp improvements in staffing and productivity have occurred over the last year. The Agency's leadership has placed significant priority on FEMA Disclosure Program leadership and analyst stability, training and development, finalizing 100 percent hiring for the Program, and reducing the overall backlog. FEMA remains committed to transparency, ensuring statutory and regulatory compliance, and preserving the rights of citizens to participate in and have access to their Government.

In January 2015, the Deputy Administrator and the Chief Administrative Officer recognized that the FEMA Disclosure Program needed a change in direction. In February 2015, the Chief Administrative Officer solicited an independent assessment of the Program from the Department of Homeland Security's (DHS) Deputy Chief Disclosure Officer and met with the Department of Justice's (DOJ) Director of the Office of Information Policy to garner disclosure best practices from across the Federal government. Both of these engagements resulted in positive changes to the FEMA Disclosure Program that are discussed in more detail below.

From March to July 2015, hiring and staff development became a critical focus. Historically, the FEMA Disclosure Program has seen high turnover in leadership and analyst positions. The Program has a total of seventeen (17) full-time positions. Thirteen (13) of those positions are currently filled. Candidates have been selected for the remaining four (4) positions and they are currently undergoing security suitability determinations. Also during this time, the entire FEMA Disclosure Program participated in disclosure refresher training through the DOJ, Office of Information Policy's training curriculum and associated disclosure processes.

Additionally, FEMA is using partnerships and other agreements, to reduce the overall backlog and improve the efficiency of the Program. The FEMA Disclosure Program utilizes a network of Disclosure Points of Contact throughout FEMA Headquarters and the Regions to assist with the processing of FOIA requests. FEMA mobilized Disaster Reservists to assist with high concentrations of disaster-related disclosure requests, and implemented an Interagency Agreement with the DHS Disclosure Office to provide backlog support services. To date, nearly 600 cases have been closed with the expectation that all 775 cases will be closed by February 28, 2017.

Below are the OGIS recommendations with FEMA's responses to date:

Finding 1: Management

Recommendation 1 suggested that FEMA address its current staffing shortage and fill its existing vacancies to reach its full authorized staffing level.

Response: This recommendation was implemented. As discussed above, the Program has a total of seventeen (17) full-time positions. Thirteen (13) of those positions are currently filled. For the remaining four (4) positions, candidates have been selected and are currently undergoing security suitability determinations.

Recommendation 2 suggested that FEMA track volume of records processed and use volume as a management and oversight control tool.

Response: This recommendation was implemented. FEMA now uses FOIAXpress to track the volume of records processed, and will use this information as a management and quality-control oversight tool. This data is reported to Agency leadership weekly to highlight the FOIA workload in a more comprehensive manner.

Recommendation 3 suggested that FEMA create a triage process that queues complex and simple requests based on the number of responsive pages or the topic of the request.

Response: This recommendation was implemented. FEMA is using FOIAXpress reports to assign cases by age, topic, multi-track type, and page count. Each FEMA Disclosure Program analyst is assigned a combination of simple and complex cases to ensure that all cases are processed in a timely manner.

Recommendation 4 suggested that FEMA FOIA officials work with Agency leadership to ensure the distribution of Cadre of On-Call Response/Recovery Employee (CORE) and non-CORE employees can maintain work on the FOIA process continues during disaster responses and create a plan for meeting those challenges.

Response: This recommendation is being implemented. FEMA is in the process of creating a contingency plan that augments the FEMA Disclosure Program's staff during major disasters by staggering deployments, using only the CORE employees during the initial deployment, and then initiating any additional Permanent Full-Time (PFT) deployments to ensure constant coverage within the FEMA Disclosure Program.

Recommendation 5 suggested that FEMA expand training opportunities to include more Department of Justice workshops, conferences, seminars, and training by other agencies.

Response: This recommendation was implemented. All FEMA Disclosure Program analysts completed disclosure refresh training through the DOJ, Office of Information Policy's training curriculum and associated disclosure processes. Additionally, the Chief Administrative Officer encouraged FEMA Disclosure Program analysts to utilize their training budget to seek training and development in other ways to professionalize their skills as analysts and that all of this be codified in the employee's Individual Developmental Plan.

Recommendation 6 suggested that FEMA continue to update its Standard Operating Procedures (SOPs) on the processing of FOIA requests.

Response: This recommendation is being implemented. FEMA is in the process of updating its FOIA SOPs to also include relevant changes to implement the recent FOIA Act of 2016.

Recommendation 7 asked FEMA to address FOIA appeals by reinstating a memorandum of understanding (MOU) with the U.S. Coast Guard Administrative Law Judge Program.

Response: Due to the cost associated with this option, FEMA non-concurs and instead opted to hire additional personnel to process appeals in conjunction with FEMA's Office of Chief Counsel, in an effort to create a "cradle-to-grave" process within the FEMA Disclosure Program. Additionally, FEMA is partnering with the DHS Disclosure Office to take part of this workload for processing. Also, FEMA has an embedded DHS Disclosure Office resource detailed to focus on structuring and prioritizing the work of the Program to further reduce the backlog, including appeals.

Recommendation 8 suggested that FEMA improve records management practices with regard to storage of Disclosure documents and ensure the Agency has a complete administrative record of each case.

Response: This recommendation was implemented. All Disclosure analysts completed records management training. In addition, FEMA is using only one FOIA tracking system (FOIAXpress) for Disclosure records. All communications, written or oral, with external stakeholders are managed in the tracking system. Spot checks are conducted by the FEMA Disclosure Program Chief and Section Chiefs to ensure the process is being followed.

Finding 2: Technology and Proactive Disclosure

Recommendation 1 suggested that FEMA use technology to track volume of records processed.

Response: This recommendation was implemented. FEMA is utilizing FOIAXpress to track volume of records processed and reports this information to Agency leadership weekly. FEMA is working with the DHS Privacy Office to learn how records can be processed and released in their native formats using existing case management software. The FEMA Disclosure Program is researching "best practices" with the DHS Privacy Office to preserve the file format.

Recommendation 2 suggested that FEMA overhaul the Agency's FOIA website to help reduce the office's administrative burden and increase requester knowledge about FOIA.

Response: This recommendation is being implemented. FEMA is in the process of overhauling the internal and external FEMA Disclosure Program website to explain various ways to submit disclosure requests for records. Additionally, the OpenFEMA Initiative and Data Visualization web pages already provide operational and mission data to the public and reduce mission-specific FOIA requests.

Recommendation 3 recommended proactive disclosure of certain records, such as contracts.

Response: This recommendation is being implemented. FEMA is developing a new Disclosure Program Directive and Manual that will integrate the process for proactive disclosures. FEMA is streamlining contractor notice procedures to make FOIA processing of contracts more efficient by adopting the DOJ guidance on contractor notices. The FEMA Disclosure Program is partnering with the Office of Chief Procurement Officer to determine standard exempt and releasable information contained in contracts.

Finding 3: Communication

Recommendation 1 suggested FEMA provide requesters with an estimated date of completion based on FEMA's annual statistics.

Response: This recommendation was implemented. FEMA's new acknowledgement letter template provides a website that allows requesters to track the status of their requests, to include an estimated response date.

Recommendation 2 suggested FEMA communicate regularly with requesters to update them on an estimated date of completion, status in the queue, and ask for change of address information, if applicable.

Response: This recommendation was implemented. FEMA included information in the FEMA Disclosure Program Directive and Manual to call requesters on a quarterly basis to discuss the status of their requests.

Recommendation 3 asked FEMA to rewrite its FOIA response letters in plain language and include a description of the request and tracking website link in the acknowledgement letters.

Response: This recommendation was implemented. FEMA's Disclosure Program has updated the acknowledgement letter template to include this information. FEMA revised the final response template to include appeal rights when the request is "granted in full."