

CHIEF FOIA OFFICER'S REPORT

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

March 15, 2010

This report has been prepared by Gary M. Stern, NARA's General Counsel and Chief FOIA Officer, and Ramona Oliver, NARA's FOIA and Privacy Act Officer, in compliance with the "Guidelines for Chief FOIA Officer Reports to the Department of Justice Pursuant to Attorney General Holder's FOIA Guidelines," published by the Office of Information Policy on September 30, 2009. Questions concerning this report can be addressed to my attention by phone at 301-837-1750 or by e-mail at garym.stern@nara.gov.

Part I: Steps NARA has Taken to Apply the Presumption of Openness

1. The National Archives and Records Administration (NARA) was established in 1934, and the largest percentage of our holdings is housed in the National Archives buildings in Washington, DC and College Park, Md. In 1939, the first Presidential Library was established by President Roosevelt; a system of Presidential Libraries has since developed that holds the donated Presidential papers and Presidential records from President Hoover forward in thirteen Presidential Libraries managed by NARA throughout the country. Since 1969, NARA has also managed a system of regional archives that hold the permanent Federal records of regional origin and significance. Most, but not all, of these massive holdings are executive branch agency federal records and Presidential records that are now subject to the Freedom of Information Act (FOIA). However, NARA has been responding to public access requests for government information since long before the FOIA was enacted. Through its core statutory mission, NARA has been making the vast majority of its records available to the public without the use of or need for the FOIA.

NARA continues to look for additional opportunities to provide greater access to our archival holdings, as well as our own operational records. As a first step, NARA distributed President Obama's FOIA Memorandum to all staff. In the cover memo staff was reminded that the policies in the President's memo are consistent with NARA's core mission to make records available to the public as quickly and completely as possible. The memo also provided instructions to FOIA processing staffs that they should immediately begin to apply the presumption of disclosure to all decisions involving FOIA disclosures, as mandated by the President.

Where access is a concern, NARA endeavors to make as much information available to the public as possible. Staff has always been encouraged to make segregable portions of otherwise exempt documents available in response to FOIA requests. We also engage in screening projects, aimed at quickly pulling records containing exempt information from boxes and/or folders in an effort to provide immediate access to open material. We participate in and encourage frank conversations with originating agencies to work out access issues prior to the transfer of records to limit the number of restrictions invoked in both paper and electronic records. Some historical records are made available without screening such as: records that are 75 years old or older; records that contain references to individuals but are not name retrievable (e.g., Navy deck logs and military unit diaries); records that, based on series title and staff experience, are not known or reasonably expected to contain exempt material; or, series of records where after a statistical sample has been completed the records are believed to contain no restrictions to access.

2. A comparative analysis shows that the distribution of the President's guidance has offered staff an opportunity to make additional disclosures of information, that would otherwise been withheld in full under a FOIA exemption. In FY 2008, NARA withheld information in full 25 times compared to FY 2009, where there were only seven instances when information was denied in full. In FY2009, FOIA requests were granted in full 430 times compared to 508 times in FY 2008. NARA released records 135 times in part in FY2009 and 190 times in FY2008.

Part II: Steps Taken to Ensure that NARA has an Effective System for Responding to Requests

NARA has established tracking systems at all of its facilities to track the processing of FOIA requests. Most offices use MS Access databases that capture all of the statistical information required by DOJ concerning incoming FOIA requests. NARA's FOIA processing staff the deals with archival records in the Washington, DC area has a customized database that serves as a FOIA tracking system, document repository as well as an electronic redaction system. Regardless of the tracking methodology, each system provides a monthly feed to NARA's Performance Measurement and Reporting System (PMRS). The PMRS monitors the timely processing of FOIA request against the goals outlined in NARA's FY 2010 Performance Plan. NARA's current goal for processing FOIA requests is 87% of requests processed within 20 work days. For the 1st quarter of FY 2010 NARA is performing at 88.69% against the target goal. The Chief FOIA Officer and NARA Office heads use this data to monitor FOIA processing, assess the backlog, set priorities and determine areas for improvement in the process. Our current tracking methods work well and serve the purpose of our FOIA processing staffs.

Part III: Steps Taken to Increase Proactive Disclosures

In addition to making records available to our customers in NARA's research rooms across the country, NARA also uses our public facing website to facilitate access to several different types of records. Below is a select list of NARA databases that are available online:

Archival Research Catalogue (ARC) is an online catalog of NARA's nationwide holdings, with basic descriptions currently of over 63% of NARA's holdings. ARC allows users to perform searches using keywords, by location, organization, person, or topics, and for digitized images.

Access to Archival Databases (AAD) is a search engine into some of NARA's holdings of electronic records. Currently there are databases and indexes from approximately 30 archival series; this number will continue to grow. AAD can be search by person, geographic areas, organizations, or dates.

Federal Records Guide allows customers to search NARA's holdings of federal records at a very high level, to identify which record groups may have material relevant to your research topics. This guide includes records that originated in the executive, judicial, and legislative branches.

Microfilm Catalogue is a searchable database of NARA's more than 3,000 numbered microfilm publications. The described microfilm includes those created by or purchased by NARA for researcher use. This catalogue helps researchers determine which rolls of microfilm may be the most relevant for their research at NARA.

The list above is not comprehensive, but serves as an example of how NARA continues to make the records we hold more accessible to the public. Other examples of proactive disclosure of records can be found across NARA's website, including in our established electronic FOIA reading room as well as the documents published on the websites of our Presidential libraries and regional archives facilities.

Since the issuance of the Administration's Open Government Directive, NARA has added the following data to our public facing website www.archives.gov and/or data.gov:

2007-2009 Code of Federal Regulations (CFR) available in an open format, includes the codification of general and permanent regulations of the Federal government published in the Federal Register.

2000-2010 Federal Register – the official legal news paper of the United States government, documenting regulatory actions and policies of Federal agencies.

The Organization Authority Files data set - a highly detailed presentation of the evolution of names and administrative histories of Federal and non-Federal organizations. It is used by NARA as a source of access points for indexing archival descriptions and/or other authority records with consistent headings.

Agency Records Control Schedules (SF 115) –Records Control Schedule (RCS) repository provides access to scanned versions of records schedules, or Standard Forms 115, Request for Records Disposition Authority, that have been developed by Federal agencies and approved by the Archivist of the United States.

Going forward, NARA plans to expand the records and data available to the public, including the addition of more SF 115's, as well as SF 135's, the "Records Transmittal and Receipt" forms for records that are stored at NARA administered Federal Records Centers. We are also in the process of adding FOIA Tracking Data which will allow FOIA requesters to track the processing of their FOIA requests using the tracking numbers provided in NARA's acknowledgment letters. NARA will continue to look for other high-value data that will increase public knowledge of our holdings and foster an opportunity for individuals to evaluate the effectiveness of the Federal government.

Part IV: Steps Taken to Greater Utilize Technology

A. Electronic receipt of requests:

1. Does your agency currently receive request electronically? YES
2. If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically? N/A

B. Electronic tracking of requests:

1. Does your agency track requests electronically? YES
2. If not, what are the current impediments to your agency utilizing a system to track electronically? N/A

C. Electronic processing of requests:

1. Does your agency use technology to process requests? YES
2. If not, what are the current impediments to your agency utilizing technology to process requests?

NARA’s FOIA processing staff that deals with archival records in the Washington, DC area has a customized database that serves as a FOIA tracking system, document repository as well as an electronic redaction system. This system serves that office well because of the volume of incoming requests.

At this time, it is not feasible for other offices within NARA to use electronic technology to process requests. We will continue to evaluate this matter to determine if volume and complexity of requests require the use of automated technology for FOIA processing.

D. Electronic Preparation of Annual FOIA Report:

1. Does your agency utilize technology to prepare you agency Annual FOIA Report?
YES
2. If not, what are the current impediments to your agency utilizing technology to prepare you agency Annual FOIA Report?

NARA uses the statistical data available in PMRS to capture data needed for the Annual FOIA Report. At this time, PMRS does not capture all the data needed for the Annual Report. NARA is, however, looking at alternatives to capture additional data required by DOJ and Congress on FOIA activities.

Part V: Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

1. **Numbers of backlogged requests and administrative appeals that remain pending at the end of FY2009**

	Backlog	
	Initial Requests	Administrative Appeals
FY 2009	6,854	29
FY2008	5,781	6

2. Age of those requests and appeals

	Oldest Pending Requests	
	Initial Requests	Administrative Appeals
FY 2009	9/21/1992 (Pending 6,209 days)	June 6, 2008 (Pending 332 days)
FY2008	09/21/1992 (Pending 5,853 days)	January 25, 2005 (pending 925 days)

3. If there has not been a reduction in the backlog, describe why that has occurred and what steps NARA is taking to bring about a reduction.

In FY09 NARA’s FOIA backlog grew by 1,073 requests. This can be attributed to the fact that NARA received 18,581 requests in FY09, a significant increase over the 14,075 requests received in FY08 (4,506 additional initial requests). Even with the increase in incoming requests NARA managed to process 4,036 more requests in FY09 than in FY08.

While NARA has made strides to enhance performance on the processing of FOIA requests, we are still faced with significant challenges. Like many government agencies, NARA faces budgetary and staffing limitations that impede our ability to meet FOIA goals. There are also factors unique to NARA that contributes to NARA’s inability to fully comply with the FOIA’s statutory time limits: reconstruction of Official Military Personnel Files, requested under FOIA, that were burned in the fire of 1973; NARA’s inability to downgrade or declassify classified records that are the subject of pending FOIA requests; and, the notification period required prior to the release of Presidential records subject to the Presidential Records Act and FOIA.

4. Describe the steps your agency has taken to improve timeliness in responding to requests and to administrative appeals.

NARA continues to look for ways to improve our timeliness in responding to initial FOIA request and administrative appeals. The Chief FOIA Officer has asked each office that processes FOIA requests to look at ways to streamline the process. While there is nothing that we can do with regard to the large volume of records that are

pending declassification review by other agencies, we can improve our internal processing. A few initiatives are outlined here:

1. Expanding the use of multiple tracking queues in order to make sure that simple requests, which can be easily processed, are not caught behind more complex requests.
2. Allocating additional resources to our coordination backlog to ensure that all agency responses on classified records are reconciled, and where appropriate, previously classified records or releasable portions thereof are made available and pending FOIA requests for the same records can be closed.
3. Targeting our 10 oldest FOIA requests, where the access determination is pending with the originating agency. We plan to remind those agencies that the requests are pending and work with them on a remedy to get extremely old cases off our queue.
4. For extremely old cases, NARA is contacting requesters to determine whether or not requesters are still interested in gaining access to the requested record or if they are willing to narrow the request to a smaller subset of records.
5. Where needed and appropriate, NARA will use training opportunities as a method of equipping staff with the knowledge necessary to independently process FOIA request.
6. NARA is systematically working through the six backlogged FOIA appeals. At this time each request is in the process of being closed.