

CHIEF FOIA OFFICER'S REPORT

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

January 31, 2011

This report has been prepared by Gary M. Stern, NARA's General Counsel and Chief FOIA 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. Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

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 Presidential Library system was established which 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 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 – totaling roughly ten billion pages, plus maps, film, photographs, audio records, and electronic records – are executive branch agency 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.

a. Describe how the President's FOIA Memorandum and the Attorney General's FOIA Guidelines *have* been publicized throughout your agency.

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 instruction 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., deck logs and 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.

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

Staff has taken advantage of training opportunities given by the Department of Justice's Office of Information Policy (DOJ/OIP), the USDA's Graduate School, and the American Society of Access Professionals (ASAP). The National Archives' Special Access and FOIA Staff, the Presidential Materials Staff, and the Office of the General Counsel have initiated FOIA/Privacy training with staff at various Presidential Libraries, a number of regional archives, and the Washington, DC Reference Staff who have initial interaction with the public.

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

NARA has prominently placed the goal of the President's memorandum and the Attorney General's guidance online at <http://www.archives.gov/foia/foia-guide.html>. All training related to FOIA, or access restrictions in general, is introduced as an extension of the NARA mission and its close connection with the Attorney General's guidelines.

d. To what extent has your agency made discretionary releases of otherwise exempt information?

Due to the age of most of the records in NARA's custody, discretionary release is the norm, and the National Archives has historically always leaned towards openness.

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

Exemptions (b)(2), (b)(5), (b)(6) & (b)(7)(C).

f. How does your agency review records to determine whether discretionary releases are possible?

Because of their age or subject matter, most records in the National Archives' holdings are unrestricted and are available for research without filing a FOIA request. These include, for example:

- genealogical and family history materials
- high level policy documents of cabinet agencies
- records that do not contain any national security classified material or other information that may be withheld under a FOIA exemption
- formerly classified records properly declassified under an Executive Order
- records comprising the John F. Kennedy Assassination Records Collection

NARA generally does not apply the (b)(5) exemption to permanent records.

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

The Open Government Initiative has enabled the agency to proactively aim at the closure of the agency's twenty oldest FOIA's.

2. Report the extent to which the numbers of requests where records have been released in full and the numbers of requests where records have been released in part has changed from those numbers as reported in your previous year's Annual FOIA Report.

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 or in part under a FOIA exemption. In FY 2009, NARA withheld information in full 7 times compared to FY 2010, where there were only four instances when information was denied in full. There is also an increase in the number of full grants from 430 instances in FY 2009 to 456 instances in FY 2010.

Part II: Steps Taken to Ensure that NARA has an Effective System 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."

Do FOIA professionals within your agency have sufficient IT support?

Yes.

Describe how your agency's FOIA professionals interact with your Open Government Team.

The Chief FOIA Officer for NARA has a representative on the Open Government Working Group that is responsible for preparing and implementing the Open Government Plan. He also oversees the policy and document selection for release on NARA's web page for operational FOIAs. Each of the archival FOIA units within NARA also select documents, and or datasets, determined to be significant in revealing the ongoing mission of the federal government. Many of these items can be seen at NARA's FOIA Reading Room:

<http://www.archives.gov/foia/electronic-reading-room.html>, or located at NARA's Open Government web page: <http://www.archives.gov/open/>.

Describe the steps your agency has taken to assess whether adequate staffing is being devoted to responding to FOIA requests.

The Classified FOIA process has undergone a Six Sigma Green Belt initiative with the help of a Department of Defense contractor. Lessons learned from this process are being distributed and evaluated by other agency FOIA processing units for future implementation.

Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.

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 that deals with archival records in the Washington, DC area has a customized database that serves as a FOIA tracking system, a document repository, and 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 2011 Performance Plan. NARA's current goal for processing FOIA requests is 88% of requests processed within 20 work days. 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

a. Has your agency added new material to your agency website since last year?

NARA's web presence has changed dramatically with increased social media tools, such as blogs, twitter, and a couple of YouTube channels. The agency web site has been redesigned with feedback from the staff on its appearance and functionality.

b. What types of records have been posted?

See below.

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

The types of records that are posted include contracts, agency record schedules, and our ten oldest FOIA requests.

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

Records that are frequently requested (three times minimum) are placed on NARA's web site.

e. How do you utilize social media in disseminating information?

NARA has chosen to use multiple social media tools in order to implement the agency wide goal of being a "customer focused organization" and an "Open NARA" that seeks the input of our customers. NARA uses Twitter, YouTube, RSS feeds, blogs, Facebook, and Flickr.

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

In addition to making records available to our customers in NARA's research rooms across the county, 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 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 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 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 administrations Open Government Directive, NARA has added the following data to our public facing website and/or www.archives.gov/open/.

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.

FOIA Tracking data – Allows FOIA requesters to track the processing of their requests using the tracking number provided in NARA's acknowledgement letter.

The National Declassification Center (NDC) Biannual Report – Allows the public to know what records have been prioritized for declassification review and tracks the success rate of diminishing the 400 million page backlog.

Online Public Access – a centralized search engine that accesses multiple NARA datasets.

Going forward, NARA plans to expand the records and data available to the public, including the addition of more Records Disposition Schedules (SF 115) and “Records Transmittal and Receipt” forms (SF 135) for records maintained at NARA administered Federal Records Centers. NARA will continue to look for other high-value data that will increase public knowledge of our holdings and foster an opportunity for individuals evaluate the effectiveness of our Federal government.

Part 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 agencies reported widespread use of technology in handling FOIA requests. For this section of your Chief FOIA Officer Report for 2011, please answer the following more targeted questions:

1. Electronic receipt of FOIA requests:

- a. What proportion of the components within your agency which receive FOIA requests have the capability to receive such requests electronically?**

100%

- b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?**

N/A

- c. What methods does your agency use to receive requests electronically?**

Email, and online generated requests.

2. Electronic tracking of FOIA requests:

- a. What proportion of components within your agency which receive FOIA requests have the capability to track such requests electronically?**

100%

- b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?**

The introduction of databases to track FOIA cases in all of the Presidential Libraries that are subject to the FOIA; the continual enhancement of the custom database used by the FOIA processing staff that deals with archival records in the Washington, DC area; and the same system being used in the Center for Legislative Archives and the Office of the General Counsel for redaction purposes.

c. What methods does your agency use to track requests electronically?

OTS database software for the Office of the General Counsel, the Presidential Libraries subject to FOIA, Regional Archives, and a custom database for the offices that handle FOIAs for classified and unclassified accessioned records.

3. Electronic processing of FOIA requests:

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

Three of the FOIA components are able to process FOIA requests electronically.

b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

The Office of the General Counsel has added tracking and redacting software that mirror the custom system mentioned above. We anticipate that Presidential Libraries will begin to have this capability later in FY11.

c. What methods does your agency use to process requests electronically?

NARA is currently running a pilot with the office that handles FOIA's related to National Security Information. The goal of the pilot is to scan the documents into the custom database, burn the images onto CDs for distribution to the necessary agencies. One of the final outcomes would be to see interagency referrals accomplished wholly electronically.

4. Electronic preparation of your Annual FOIA Report:

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

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.

- 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.**

See above.

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

Improvements to timeliness in responding to pending FOIA requests and reductions in backlogs are both ongoing agency efforts. The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. Section XII of your Annual FOIA Report includes figures that show your agency's backlog of pending requests and administrative appeals for the past two fiscal years. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In this section you should address the following elements.

- 1. If your agency has a backlog, report here whether that backlog is decreasing. That reduction should be measured in two ways. First, report whether the number of backlogged requests and backlogged administrative appeals that remain pending at the end of the fiscal year decreased or increased, and by how many, when compared with last fiscal year. Second, report whether your agency 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 your agency did close.**

First, at the end of FY2010, NARA had a backlog of 7,064 initial FOIA requests, an increase of 210 cases; and eight appeals resulting in an increase of two cases.

Second, while the overall backlog did increase, NARA successfully closed last year's ten oldest FOIA cases.

- 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?**

Yes. Because there has been an increase in the number of records that are transferred to the National Archives earlier in their “lifecycle,” i.e., when they are only 10-15 years old, instead of 30 years old, many of these records are still sensitive and cannot be released in full for researcher use. Thus, the research community’s only means to access these newer collections is through the FOIA.

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

Yes. NARA was without a FOIA Officer in the Office of the General Counsel for half of the year, allowing for an increase in the operational FOIA backlog.

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

See above.

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

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 contribute 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 provisions of the Presidential Records Act and FOIA.

3. Describe the steps your agency 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.

a. Does your agency routinely set goals and monitor the progress of your FOIA caseload?

Yes.

b. Has your agency increased its FOIA staffing?

Yes. The Office of the General Counsel has filled the position of the FOIA Officer, and the Presidential Library’s have hired a number of staff with the purpose of reducing FOIA backlogs.

c. Has your agency made IT improvements to increase timeliness?

NARA has expanded the use of online redaction and tracking software.

d. Has your agency Chief FOIA Officer been involved in overseeing your agency's capacity to process requests?

Yes. The Chief FOIA Officer continues to work with FOIA staff across the agency to evaluate issues that hinder our ability to meet processing time limits and reduce the pending backlog of FOIA requests. After seeking input from the individuals who process FOIA requests, NARA is working to fully implement the following initiatives as part of our Open Government Plan for improving FOIA processing.

1. Expand 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. Allocate additional resources in NW 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. At this time there are no plans to expand the staffing levels; however, staff is looking toward shifting priorities in an effort to accomplish this task within existing resources.
3. Target our 20 oldest FOIA requests, where a declassification 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. The Chief FOIA Officer has committed to working directly with representatives of agencies with a security interest in classified records to facilitate the prompt review of these requests. Initial contact has already been made with one agency who has agreed to work with NARA on this initiative.
4. For extremely old cases, NARA is in the process of contacting requesters to determine whether or not requesters are still interested in gaining access to the requested records, to better understand what information they are seeking, and 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. To assist with backlogs at the Presidential libraries, NARA has hired 15 new archivists to the three Presidential libraries currently subject to the FOIA (i.e., Ronald Reagan, George H.W. Bush, and William J. Clinton). The George W. Bush Library is staffed with archivists who have begun the process of organizing and preparing the records of that administration for public access beginning in 2014.

7. In matters where delays in processing are related to NARA's inability to reach an agreement with a FOIA requester on the scope of his or her request, segmenting extremely large requests, or over our response times, we will report these matters to the Office of Government Information Services (OGIS) for possible mediation or appropriate resolution.
8. To increase access to records of the type often requested through FOIA, NARA will look to incoming FOIA requests to identify frequently requested documents for publication in our Electronic FOIA reading room. We will also consult with NARA offices on a regular and recurring basis to identify additional materials appropriate for online disclosure.

Spotlight on Success

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

NARA has increased transparency by implementing the Records Control Schedule (RCS) repository. This web portal provides access to scanned versions of records schedules, or Standard Forms 115, Request for Records Disposition Authority, which have been developed by Federal agencies and approved by the Archivist of the United States. The RCS can be accessed at: <http://www.archives.gov/records-mgmt/rcs/>.