

CHIEF FOIA OFFICER'S REPORT

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

February 1, 2012

This report has been prepared by Gary M. Stern, NARA's General Counsel and Chief FOIA Officer, and his FOIA staff, 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.

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 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, all of the regional archives, and the Washington, DC Reference Staff who have initial interaction with the public.

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

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).

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?

Due to the age of most of the records in the National Archives, NARA routinely makes discretionary releases.

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

(b)(5)

5. Describe your agency's process to 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
- 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

Two examples of historical discretionary release criteria are: 1) the fact that (b)(5) information decreases in sensitivity over time; and 2) a maximum 30 year limit for some privacy material (old home addresses and phone numbers).

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

The Open Government Initiative has focused NARA's desire to reduce the FOIA backlog through many tactics, one of which is the Chief FOIA Officer's active involvement in the closing of the agency's twenty oldest FOIA's. NARA also describes recently declassified series on the National Declassification Center's blog.

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. In FY 2010 NARA granted in full 456 times, while during FY 2011 NARA was able to grant in full 395. The increases of complex FOIA requests for newly accessioned permanent

records of the Federal Bureau of Investigation (FBI) are directly attributed to the reduction in total grants.

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

Yes. In FY 2010 NARA released 143 partial grants, as compared to 175 partial grants in FY 2011.

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.

2. Is there regular interaction between agency FOIA professionals and the Chief FOIA Officer?

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:

- 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.
- Allocate additional resources in NDC 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.

- Target our 20 oldest FOIA requests, where a declassification determination is pending with the originating agency. We continue 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 many agencies who have agreed to work with NARA on this initiative.
- For extremely old cases, NARA continues to contact requesters to better understand what information they are seeking, and to determine if they are willing to narrow the request to a smaller subset of records.
- Where needed and appropriate, NARA will use training opportunities as a method of equipping staff with the knowledge necessary to independently process FOIA request.
- 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.
- 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.

3. Do your FOIA professionals work with your agency's Open Government Team?

Yes. Multiple FOIA professionals across NARA are on the Open Government Working Group. NARA's Open Government Working Group seeks information from each FOIA component in NARA in order to improve, enhance, and validate the material on NARA's Open Government webpage (<http://www.archives.gov/open/>).

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

NARA's core mission is to provide access to the records in the National Archives, and we have hundreds of archivists and related staff throughout all of our archival facilities, including 13 Presidential Libraries, who service researchers and respond to FOIA requests. Because the size of our collections is always increasing, with agencies transferring permanent records into the National Archives on an ongoing basis, and the size of our staff does not increase at a corresponding rate, it is not possible for NARA to assert that we have adequate staffing to respond to FOIA requests.

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

The Classified FOIA process has undergone a Six Sigma Green Belt initiative with the help of a Department of Defense contractor, and the lessons learned from this process are being implemented by the Classified FOIA unit in the National Declassification Center (NDC). In particular the NDC is applying a triage to cases as they come in to determine if the small ones can immediately be processed. The NDC is also contacting researchers of larger requests and trying to negotiate a narrowing of the request in hopes of faster processing.

In 2011, the George H. W. Bush Presidential Library succeeded in eliminating its FOIA backlog entirely. NARA's other Presidential Libraries also continued a trend started in FY2010 of completing more FOIA requests than they received, thus decreasing the overall backlog for two years in a row.

NARA's Presidential Materials Division and the Office of the General Counsel continue to work with all Libraries holding records subject to FOIA to analyze the possibility for improved efficiencies in the FOIA review process. Also, in FY 2011, we worked with archivists at the George W. Bush Presidential Library to ensure that they have the tools and knowledge necessary when their records become subject to FOIA in 2014.

NARA's Research Services/Special Access and FOIA Office continued to follow the triage procedure set up to analyze each incoming FOIA, identify if NARA holds any responsive documents, and send a substantive reply when possible. They trained all incoming Archival Development candidates in the basics of access and access review so they can apply to the principles to their work in other parts of the life cycle including accessioning, description, and reference. They also conducted further training for all archival staff in Research Services, Washington, DC area on access review, and worked to reduce the backlog, focusing on the oldest FOIAs still outstanding which allowed the closing of more FOIAs than were opened in FY 2011.

NARA has established tracking systems at all of its facilities to track the processing of FOIA requests. Most offices use OTS database software that captures 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 upgraded their 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 2011 Performance Plan. NARA's current goal for processing all FOIA requests (for operational, archival and presidential records) is 89% 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.

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. NARA is constantly adding new content to our website.

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

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. Because NARA uses Twitter, YouTube, RSS feeds, blogs, Facebook, and Flickr, there are too many examples to cite in this report. It is recommended that the reader access NARA’s published examples from here: <http://www.archives.gov/social-media/>. A couple of recent high profile examples include the [John Cutler Guatemala research records](#) in our Atlanta Regional Archive, the opening of [President Nixon’s Grand Jury testimony](#), and the tape recording of [Air Force One](#) after the assassination of President John F. Kennedy.

3. Describe the system your agency uses to routinely identify records that are appropriate for posting.

NARA continues to look for high-value data and records that will increase public knowledge of our holdings and foster an opportunity for individuals evaluate the effectiveness of our Federal government.

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.?

NARA has two criteria for records that are placed on our web site: first, those records that are believed to be of interest to the public, and second those records that are frequently requested under the FOIA in compliance with the statute. Because of the unique mission of NARA as the repository for all permanently valuable federal records it would not be possible to place everything online, but it is possible to place finding aids, record group descriptions, and the search engine ([Online Public Access](#)) in order to assist our customers.

NARA's web presence has changed dramatically with increased social media tools, such as blogs, twitter, and numerous YouTube channels. The agency web site has been redesigned with feedback from the staff and the public on its appearance and functionality, and with the ultimate goal to continually add content for the public. Describe any other steps taken to increase proactive disclosures at your agency.

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

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, with the creation of the Franklin D. Roosevelt Presidential Library, the Presidential Library system was launched, and it now 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 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. Furthermore, due to the age of most of the records in NARA's custody, discretionary release of archival records is our standard practice.

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?

Yes.

Online tracking of FOIA requests:

3. Can a FOIA requester track the status of his/her request electronically?

Yes, in part. Currently NARA allows a requester to examine, via our website, their place in the overall NARA queue. The requester will need to communicate with the individual FOIA staff to determine where the request resides in that offices specific queue.

4. If not, is your agency taking steps to establish this capability?

Yes. NARA is currently looking to upgrade individual offices FOIA tracking software, and is interested in the joint venture of the Department of Commerce, the Environmental Protection Agency, and the Office of Government Information Services (OGIS) regarding the FOIA Portal.

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?

Yes.

6. If so, describe the technological improvements being made.

The FOIA tracking software that is used by NARA is also capable of searches in document metadata, text of OCR documents, across case files and other uploaded data. The software provider, in conjunction with select NARA staff, is actively engaged in improving work flow management, efficiency, and elimination of redundant processes. All referrals are being processed paperless.

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?

Yes.

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?

Yes. 10.5 days on average.

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?

N/A

2. Section VII.A, 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?

The backlog stayed the same.

c. In Fiscal Year 2011, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2010?

No. NARA was able to close seven of the ten.

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?

No. NARA was able to close eight of the ten.

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:

e. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?

Yes. The increase is also due to the accessioning of sensitive FBI case files.

f. Was the lack of a reduction in the request backlog caused by a loss of staff?

No.

g. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?

Yes. The increase is also attributed to the accessioning of sensitive FBI case files.

h. What other causes, if any, contributed to the lack of a decrease in the request 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 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; the recent accessioning of sensitive Federal Bureau of Investigation case files; and, the notification period required prior to the release of Presidential records subject to the provisions of the Presidential Records Act and FOIA.

Administrative Appeal Backlog:

- i. **Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?**

No.

- j. **Was the lack of a reduction in the appeal backlog caused by a loss of staff?**

No.

- k. **Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received?**

Yes. One is still in consultation with another federal agency, and the other is in the early stages of possible litigation regarding access to records subject to the Presidential Records Act.

- l. **What other causes, if any, contributed to the lack of a decrease in the appeal backlog?**

See above.

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.

2. **Has your agency increased its FOIA staffing?**

No.

3. **Has your agency made IT improvements to increase timeliness?**

Yes.

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?**

Yes. The National Declassification Center has implemented the scanning of all referred documents onto a CD/DVD, instead of paper reproduction, with the hopes of a paperless process among Original Classification Authority (OCA) agencies.

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.

During the past fiscal year, the George H. W. Bush Presidential Library eliminated its FOIA backlog, a huge accomplishment. While they continue to receive numerous FOIA requests, many of which require processing large volumes of records, they are looking forward to processing FOIAs as they come in and not adding to the agency's FOIA backlog.

On January 26, 2012 the National Declassification Center released its [Fourth Bi-Annual Report](#). In The Strategic Plan of the National Archives and Records Administration, 2006 – 2016 (revised 2009), the Archivist singled out the National Declassification Center as reflecting "the ongoing challenge to balance the needs of national security and the right of citizens to have access to the records of their Government."

Each NDC Status Report will contain the following three sections: a narrative highlighting events and activities of the previous six months; a brief description of the interagency cooperation during the previous six months; and a quantitative update that charts cumulative progress on the back log and against the current year's NDC Civilian and Defense Annual Work Plans, since the January 1, 2010 stand up.