

U.S. Environmental Protection Agency's Chief FOIA Officer

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U.S. Environmental Protection Agency
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Section 1: Steps Taken to Apply the Presumption of Openness

A. 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?

Yes, all FOIA professionals and staff who have FOIA responsibilities attended training and conferences during the reporting period. FOIA professionals include National FOIA Office staff, Headquarters FOIA Coordinators, Regional FOIA Officers and full-time FOIA staff.

2. If yes, please provide a brief description of the type of training attended or conducted and the topics covered.

The Agency FOIA Officer held monthly meetings with the Agency's FOIA Coordinators and Regional FOIA Officers who provide guidance and updates on FOIA related matters. Members of the Office of General Counsel's Information Law Practice Group and the FOIA Expert Assistance Team (FEAT) provided assistance and briefed regional attorneys. These monthly meetings provided key FOIA personnel with ongoing training relevant to the performance of their duties, including but not limited to information on Agency FOIA processes and procedures; explanations of how to apply FOIA exemptions, estimate fees and make discretionary disclosures; as well as guidance on other administrative processing matters and FOIA related topics.

EPA FOIA professionals and staff with FOIA responsibilities attended training offered by the Department of Justice Office of Information Policy including Training for Attorneys and Access Professional; Best Practice Workshops; and training on the FOIA Improvement Act of 2016. EPA FOIA professionals and staff with FOIA responsibilities participated in the American Society of Access Professionals Annual National Training Conference and Food for Thought Training Seminars on the anniversary of the FOIA and the National Action Plan.

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

The percentage of FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training was 100%.

4. OIP has directed agencies to “take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year.” If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency’s plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

N/A

B. Outreach

5. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA?

Yes, EPA worked with Open Government groups to implement the President’s National Action Plan 2.0. Furthermore, EPA staff regularly discuss FOIA requests with individuals when clarification is needed and to update requesters on status.

6. If you did not conduct any outreach during the reporting period, please describe why.

N/A

C. Other Initiatives

7. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA.

All EPA employees were required to take a mandatory FOIA Awareness Training. The training consisted of three modules:

Module 1: The Government’s Obligation to the Public Under the FOIA

- What is FOIA?
- Guidance for Implementing the FOIA
- FOIA Libraries and FOIAonline

Module 2: FOIA Requests

- Who Can Make a FOIA Request?
- What Records are Subject to the FOIA?

Module 3: EPA's FOIA Process

- Workflow for Responding to FOIA requests
- Headquarters FOIA Coordinators, Regional FOIA Officers and FOIA Resources

EPA has a network of FOIA Coordinators and Regional FOIA Officers who help ensure that non-FOIA professionals are aware of their FOIA obligations and are updated on a regular basis on best FOIA practices.

Furthermore, EPA offered FOIAonline training to EPA employees. The training consisted of a complete overview of the functionality of FOIAonline.

8. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

The Agency FOIA Officer held monthly meetings with the Agency's FOIA Coordinators and Regional FOIA Officers where the presumption of openness was discussed. Members of the Office of General Counsel's Information Law Practice Group and the FEAT provided assistance at the meetings.

Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests

A. Processing Procedures

1. For Fiscal Year 2016, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2016 Annual FOIA Report.

The average number of days for adjudicating requests for expedited processing was 4.74.

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 requests for expedited processing are adjudicated within ten calendar days or less.

N/A

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report data, using active workflows and track management, reviewing and updating processing procedures, etc.

Yes, EPA conducted a self-assessment of the FOIA Program. Multiple data sources were used including: 1) document review of reports, policies and procedures, FOIA Lean outputs, and previous evaluations; 2) internal and external interviews; and 3) an online survey. A copy of the assessment can be located at: <https://www.epa.gov/foia/evaluation-epas-foia-program>.

4. Please provide an estimate of how many requests your agency processed in Fiscal Year 2016 that were from commercial use requesters. If your agency is decentralized, please identify any components within your agency that received a majority of their requests from commercial use requesters.

The EPA processed approximately 8,000 requests from commercial use requesters in Fiscal Year 2016.

B. Requester Services

5. Does your agency provide a mechanism for requesters to provide feedback about their experience with the FOIA process at your agency? If so, please describe the methods used, such as making the FOIA Public Liaison available to receive feedback, using surveys posted on the agency's website, etc.

Yes, EPA provides the contact information for its Public Liaison and Office of Government Information Services (OGIS) in all decision letters. The website for the Public Liaison, which includes information about OGIS, is located at: <https://www.epa.gov/foia/public-liaison>.

6. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of how often requesters sought assistance from your agency's FOIA Public Liaison.

Approximately two requesters per month have contacted EPA's Public Liaison seeking assistance in Fiscal Year 2016.

7. The FOIA Improvement Act of 2016 requires agencies to make their reference material or guide for requesting records or information from the agency electronically available to the public. Please provide a link to your agency's FOIA reference guide.

The link to EPA's reference guide can be found at: <https://www.epa.gov/foia/foia-request-process>.

C. Other Initiatives

8. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as improving search processes, eliminating redundancy, etc., please describe them here.

All FOIA requests received at the EPA are managed throughout their lifecycle in FOIAonline. FOIAonline gives requesters the capability to create individual accounts which then allows them to view the specific processing details of their individual requests. Requesters holding accounts are able to view all status information (e.g., when the request was received, where the request has been assigned) regarding the processing and managing of their individual requests.

Section III: Steps Taken to Increase Proactive Disclosures

A. Posting Material

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

Since October 1, 2012, EPA has posted records released through FOIA on FOIAonline. Accordingly, responses to most FOIA requests, including those containing frequently requested information, are available to the public through FOIAonline. One major exception is first party requests. A first party request is made by an individual for his or her own records.

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

EPA programs and regions strive to identify records of public interest. For example, FOIA personnel are reminded to identify records for proactive disclosure at monthly FOIA Coordinator meetings attended by Headquarters staff and monthly FOIA Officer meetings for staff in Regional offices. In addition, EPA develops websites to disclose information concerning topics of interest. Once the websites are established, EPA staff update the sites with new information as it becomes available.

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

EPA has not encountered any significant challenges.

4. If so, briefly explain those challenges and how your agency is working to overcome them.

N/A

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

Here are links to the types of material that EPA proactively disclosed during this year's reporting cycle:

<https://www.epa.gov/flint>

<https://www.epa.gov/vw>

<https://www.epa.gov/goldkingmine>

6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe these efforts.

EPA highlights important proactive disclosures by placing banners on the Agency's home page.

B. Other Initiatives

7. If there are any other steps your agency has taken to improve proactive disclosures, please describe them here. For example, has your agency engaged requesters in determining how and what to post? Has your agency used web analytics to inform your proactive disclosures?

As explained above, EPA is proactively posting records online, but also has a robust web analytics program to identify topics/records of interest to help ensure that EPA's website reflects those of interest to the public.

Section IV: Steps Taken to Greater Utilize Technology

A. 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?

Yes, EPA staff look for opportunities to make the information posted more useful to the public.

2. If yes, please provide examples of such improvements.

An example of an improvement to make posted information more useful is the implementation of a sorting feature which appears when search results are displayed. For many topics, EPA's website contains information written for different audiences ranging from school children to

policy analysts to environmental professionals. This new sorting feature allows the user to limit results to sub-categories of “environmental professional” or “regulatory community.”

FOIAonline offers full text search of records released through a FOIA request for public users.

3. Have your agency’s FOIA professionals interacted with other agency staff (such as technology specialists or public affairs or communications professionals) in order to identify if there are any new ways to post agency information online?

Yes, the Agency continuously updates its website to ensure that information is posted in an efficient and user friendly manner.

B. Use of Technology to Facilitate Processing of Requests

4. Did your agency conduct training for FOIA staff on any new processing tools during the reporting period, such as for a new case management system, or for search, redaction, or other processing tools?

Yes, EPA conducted training for FOIA staff on the use of Adobe DC and posted instructions on the FOIA Intranet site.

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? If yes please describe:

- The technological improvements being made.

EPA staff are using Microsoft Console; Ipro; Relativity and Encase (in limited capacity).

- The impact of using these technologies on your agency’s request processing.

The use of these technologies has allowed EPA to provide staff processing FOIA requests an estimate, before record collection takes place, of the number of search results expected from the Agency’s email system. This early estimate provides staff the ability to modify search parameters to better target the relevant information before the collection takes place. This in turn speeds processing times and review times as more focused search results are produced. EPA also uses technologies to de-duplicate search results and provides a review platform for collaborative record review by multiple EPA staff members.

6. Are there additional tools that could be utilized by your agency to create further efficiencies?

EPA staff continuously look for tools that can improve efficiency, such as those with the capability to produce data sets beyond the use of keywords and data ranges.

C. Other Initiatives

7. Did your agency successfully post all four quarterly reports for Fiscal Year 2016?

Yes, EPA posted all four quarterly reports.

8. 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 2017.

N/A

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

A. Simple Track

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

Yes, EPA utilizes a simple track.

2. If so, for your agency overall in Fiscal Year 2016, was the average number of days to process simple requests twenty working days or fewer?

The average number of days to process simple requests was 18.24.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2016 that were placed in your simple track.

The percentage of requests processed in the simple track was 78.1%.

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?

N/A

B. Backlogs

BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015? If not, explain why and describe the causes that contributed to your agency not being able reduce its backlog.

Yes, EPA's backlog decreased as compared to the backlog reported in the last Annual FOIA Report.

6. If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming requests.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

N/A

7. 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 2016.

The percentage of requests that make up the backlog out of the total number of requests received by EPA was 12.3%.

BACKLOGGED APPEALS

8. If your agency had a backlog of appeals at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015? If not, explain why and describe the causes that contributed to your agency not being able reduce backlog.

Yes, the backlog of appeals decreased as compared with the backlog reported in Fiscal Year 2015 Annual FOIA Report.

9. If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming appeals.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.\

N/A

10. 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 2016. If your agency did not receive any appeals in Fiscal Year 2016 and/or has no appeal backlog, please answer with "N/A."

The percentage of appeals that make up the backlog out of the total number of appeals received was 58%.

C. Backlog Reduction Plans

11. In the 2016 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1,000 requests in Fiscal Year 2015 was asked to provide a plan for achieving backlog reduction in the year ahead. Did you agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2016?

EPA implemented a requirement for all Agency personnel to take annual FOIA training to better understand each individual's roles and responsibilities under FOIA. This training is available online. Agency FOIA professionals also receive monthly guidance from the Agency FOIA Officer to assist in the identification and elimination of any barriers prohibiting the timely closure of FOIA requests.

EPA shares with senior leaders quarterly status reports to help manage the FOIA process. Senior management used these reports to help EPA reduce the backlog of FOIA requests during this fiscal year.

12. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2016, what is your agency's plan to reduce this backlog during Fiscal Year 2017?

During Fiscal Year 2017:

The Agency will provide EPA program and regional offices with access to electronic tools and services to help identify and review documents that are responsive to FOIA requests.

The Agency will provide mandatory employee training on FOIA.

The FEAT will continue to work with program and regional offices in managing the processing of complex and high-profile FOIA requests, in an effort to improve the Agency's processing of these requests.

D. Status of Ten Oldest Requests, Appeals, and Consultations

TEN OLDEST REQUESTS

13. In Fiscal Year 2016, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

EPA closed nine of the ten oldest FOIA requests that were reported pending in the last Annual FOIA Report.

14. 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 2015 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

EPA closed nine of the ten oldest FOIA requests included in the last Annual FOIA Report. EPA anticipates closing the remaining request in Fiscal Year 2017.

15. 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?

None were withdrawn by the requester.

TEN OLDEST APPEALS

16. In Fiscal Year 2016, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

Yes, the ten oldest appeals that were reported pending in the last Annual FOIA Report were closed.

17. 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 2015 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A

TEN OLDEST CONSULTATIONS

18. In Fiscal Year 2016, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

No; the ten oldest consultations pending in the Fiscal Year 2015 Annual FOIA Report were pending at the end of Fiscal Year 2016. However, all three were closed by the end of Calendar Year 2016.

19. 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 2015 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

None of the three consultations reported in the Fiscal Year 2015 Annual FOIA Report were closed in Fiscal Year 2016. However, all three were closed by the end of Calendar Year 2016.

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

20. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2015.

EPA closed the ten oldest appeals and closed all of its pending consultations. However, one of the ten oldest requests is still pending. The primary challenge in closing the last of the ten oldest requests from Fiscal Year 2015 was due to the need to consult with multiple offices. Limited staff resources, competing with litigation priorities, made it difficult to complete the review. EPA anticipates closing the remaining request in Fiscal Year 2017.

21. 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.

EPA has not been delayed in processing FOIA requests due to consultations with other agencies.

22. 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 2017.

The program offices that have the ten oldest requests have assigned each request to a FOIA professional for processing. Furthermore, the Office of General Counsel has assigned the ten oldest appeals to staff for processing. The program offices and the Office of General Counsel monitors the processing on a monthly basis to help ensure the ten oldest requests and appeals, respectively, are completed this fiscal year, if possible.

F. Interim Responses

23. Does your agency have a system in place to provide interim responses to requesters when appropriate? See OIP Guidance, “The Importance of Good Communication with FOIA Requesters.” (Mar. 1, 2010)

Yes, EPA has a system in place to provide interim responses through FOIAonline.

24. If your agency had a backlog in Fiscal Year 2016, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

The number of cases in the backlog where a substantive interim response was provided during the fiscal year was approximately 900.

G. Success Stories

The following are examples of EPA’s success stories.

Region 8’s Application of the Lean Process to Improve Processing of FOIAs

EPA staff are encouraged to apply Lean principles to processes that need improvement. EPA’s Region 8 staff, located in Denver, identified the Region’s FOIA process as in need of change. Since there was a lack of clear lines of responsibility about who was accountable for processing requests all the way down to establishing a set of standardized letters, the Region 8 FOIA Officer needed support from all levels. A Regional reorganization led to a new Content Management Unit prior to starting the Lean process, which made implementing some of the findings easier. In the past, 13 FOIA Coordinators processed FOIA requests as a collateral duty. Now there are three Government Information Specialists (GS-0306 series), in addition to the Region 8 FOIA Officer, in the new Unit handling everything. The key measure of their success was the reduction in processing time for simple request from 15 to eight days.

Improving management confidence in the Region's FOIA process was another key outcome to the Lean review. Despite moving to FOIAonline for FOIA processing in Fiscal Year 2013, senior managers continued to review responses in paper outside the system. By taking advantage of the "concurrency pending" feature in FOIAonline, senior managers may now look at the responses prepared for their signature electronically while staff finalize the documentation in FOIAonline, cutting at least three days from the processing time. Management also supported the last advancement which was the recent hiring of an e-tools expert. This staff member is certified to use Relativity, a document review software, and can assist Regional employees with processing FOIA requests.

FEAT

In Fiscal Year 2016, EPA's FEAT, which was established in 2014 to provide project management and oversight of EPA's most voluminous/complex FOIAs, was involved in 280 FOIA requests across 14 topic areas. As an example of the FEAT's work, in Fiscal Year 2016, the FEAT managed the completion of a request from an entity suing EPA over a Clean Water Act rulemaking. EPA and 6 other agencies received FOIAs from the requester; through the FEAT's close coordination and on-going communication with the requester, the request was substantially narrowed and EPA made six interim productions and one final production of documents. No litigation was filed by the requester against EPA (three other agencies were sued), and the administrative appeal filed by the requester was limited to a challenge of the withholding of specific documents, which was upheld.