

U.S. Environmental Protection Agency's 2018 Chief FOIA Officer

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Section 1: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying DOJ's FOIA Guidelines is the presumption of openness.

A. FOIA Training

1. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any substantive 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 offered by EPA and/or the Department of Justice (DOJ).

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 to provide guidance and updates on FOIA related matters. Members of the Office of General Counsel's (OGC'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.

On January 26, 2017, EPA FOIA professionals and staff with FOIA responsibilities attended training offered by the Department of Justice including Implementing the FOIA Improvement Act of 2016, Recent Significant Case Decisions, Advanced Procedural Requirements and Exemptions 6 and 7.

The EPA National FOIA Program, in conjunction with OGC, held the 2017 National FOIA Training Conference from September 12 through 14, 2017, at EPA Headquarters with over 180 attendees from across the Agency. Training conference presentations were delivered by speakers from the National FOIA Program, the Office of General Counsel, the FOIA Expert Assistance Team (FEAT) and EPA regional offices, along with the Assistant Branch

Director, DOJ Civil Division/Federal Programs Branch, and the Director, DOJ Office of Information Policy (OIP). Training topics included:

- Importance of FOIA to EPA’s Mission
- FOIA Improvement Act of 2016
- What to do When You Receive a FOIA Request
- Conducting a Defensible Search
- Collection and Processing
- Power User Strategies to Make Relativity Work for You
- Review Strategies for Success
- FOIA Exemption 4
- FOIA Exemptions 5
- FOIA Exemption 6
- Production: Crossing the Final Line in Style
- Administrative Appeal and Litigation Perspectives
- Perspectives from DOJ
- FOIA Expert Assistance Team
- FOIA Idea Lab
- FOIA Toolkit

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 trainings at least once throughout the year.” If your response to the previous question is less than 80% of your FOIA professionals attend training, please explain your agency’s plan to ensure that all FOIA professionals receive or attend substantive 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. The Agency Public Liaison and FOIA Officer regularly had discussions with FOIA requesters and EPA’s FOIA administration personnel.

C. Other Initiatives

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

All EPA employees were required to complete mandatory FOIA Awareness Training in FY 2017. Mandatory FY 2018 FOIA Awareness training is currently available for all employees to complete before the end of FY 2018. Furthermore, EPA provided employees with online access to materials from the 2017 EPA National FOIA Training Conference, which was held in September 2017. See Question 2 above for details on the training.

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

The Agency FOIA Officer held monthly meetings with the Agency's FOIA Coordinators and Regional FOIA Officers where the presumption of openness was often discussed, and OGC personnel provided assistance at these meetings, as needed.

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

DOJ's FOIA Guidelines emphasize that "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just presumption of disclosure, but also an effective system for responding to FOIA requests." It is essential that agencies effectively manage their FOIA program.

Please answer the following questions to describe the steps your agency has taken to ensure that the management of your FOIA program is effective and efficient. You should include any additional information that describes your agency's efforts in this area.

1. For Fiscal Year 2017, 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 2017 Annual FOIA Report.

The average number of days for adjudicating requests for expedited processing was 7.16 based on the FOIA Annual Report for FY 2017.

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.

EPA's Region 10 conducted a self-assessment of the Region's FOIA Program two years after its reorganization as a result of a LEAN event. The staff held a two-day offsite retreat to reflect on successes and opportunities for improvement. The primary areas for improvement were responding to a higher percentage of simple requests within 20 days and ensuring proper training so that all FOIA staff could respond to any request regardless of the subject area.

4. 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 the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2017 (please provide a total number or an estimate of the number).

For this reporting year, EPA's FOIA Public Liaison directly or through the FOIA Officer provided services in response to approximately 100 requests for assistance.

5. Optional Survey Question: If possible, please provide an estimate of the average number of pages that your agency processes for each request. You may provide estimates for each track.

EPA does not track pages that are being released to the public through FOIAonline. However, EPA released 244,269 records in FY 2017.

6. 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.

In terms of system-wide improvements, the current FOIAonline solution shares software and infrastructure with the eRulemaking Program. The systems' production environment is an on-site/on-premises solution that has capacity limitations which can result in some performance delays, particularly in generating reports at times. In order to address these limitations and create expanded integration opportunities, the entire system is being rebuilt using open source software in a secure cloud-based environment to improve its scalability and performance, as well as enhanced functionality.

In terms of EPA processing, all FOIA requests received by 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 who have FOIAonline accounts are able to view all status information regarding the processing and managing of their individual requests (e.g., when the request was received, where the request has been assigned, etc.).

Section III: Steps Taken to Increase Proactive Disclosures

The Department of Justice has long focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

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

EPA highlights important proactive disclosures by placing links on the Agency's home page. These include but are not limited to the following:

- Hurricane Maria Impact on Costa Rica and EPA's Region 2 Assistance Provided, September 30, 2017, <https://www.epa.gov/newsreleases/epa-hurricane-maria-update-saturday-september-30>
- EPA continues its round-the-clock response to Hurricanes Maria and Irma in close coordination with federal, commonwealth, territory, and local partners. EPA remains focused on environmental impacts and potential threats to human health as well as the safety of those in the affected areas, <https://www.epa.gov/newsreleases/epa-hurricane-maria-update-tuesday-october-31>
- EPA is focused on environmental impacts [of Hurricane Maria] and potential threats to human health, as well as the safety of those in the affected areas, <https://www.epa.gov/newsreleases/epa-hurricane-maria-update-sunday-october-15th>
- EPA continues to coordinate closely with local, state, tribal, and federal partners in response to Hurricane Irma, <https://www.epa.gov/newsreleases/epa-hurricane-irma-recovery-update-friday-september-29> and <https://www.epa.gov/newsreleases/epa-irma-update-friday-september-15-2017>
- EPA is focused on environmental impacts and potential threats to human health caused by Hurricane Maria, as well as the safety of those in the affected areas, <https://www.epa.gov/newsreleases/epa-hurricane-maria-update-friday-september-29>
- West Texas Added to National Priorities List to Reduce Environmental and Public Health Risk, July 2017, <https://www.epa.gov/newsreleases/epa-adds-west-texas-site->

[national-priorities-list-reduce-environmental-and-public](https://www.epa.gov/newsreleases/epa-adds-west-texas-site-national-priorities-list-reduce-environmental-and-public)
<https://www.epa.gov/newsreleases/epa-adds-west-texas-site-national-priorities-list-reduce-environmental-and-public>

- Northern California Fires Response Update, November 2, 2017. EPA has collected more than 8,300 containers of household hazardous waste in Napa and Sonoma counties as part of the multi-agency response to the Northern California fires. The items, which range in size from small paint canisters to large chemical drums, have been transported to EPA staging areas in Windsor and Yountville before disposal at hazardous waste facilities. <https://www.epa.gov/newsreleases/epa-news-advisory-northern-california-fires-response-update-november-2-2017>
- EPA posted a link to a snapshot of the January 19, 2017, EPA website to allow the public to look back at the contents of the website prior to the change of Administration, <https://19january2017snapshot.epa.gov/>

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

Yes. EPA highlights important proactive disclosures by placing banners with website links on the Agency's home page. The EPA website (www.epa.gov) is used to actively post planned and active efforts regarding a wide variety of events, such as Agency involvement in natural disasters, EPA assistance agreements, changes in regulation, etc.

3. 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 uses tools like Google analytics to identify areas and topics of interest to the public.

4. 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 sorting feature allows the user to limit results to sub-categories of "environmental professional" or "regulatory community."

5. 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?

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 issues of interest

to the public such as EPA's involvement with the hurricanes in Houston, Texas, and wildfires in Sonoma, California.

Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information more accessible. In addition to using the Internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that describes your agency's efforts in this area.

1. Has your agency identified any best practices to leverage 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 best practices, the types of technology used and the impact on your agency's processing.

Yes. EPA uses FOIAonline to gather data regarding FOIA processing on a regular basis.

2. Did your agency successfully post all four quarterly reports for Fiscal Year 2017?

Yes. EPA posted all four quarterly reports in FY 2017.

3. 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 2018.

N/A

4. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2016 Annual FOIA Report and, if available, for your agency's Fiscal Year 2017 Annual FOIA Report.

FY 16 Annual FOIA Report – <https://www.epa.gov/foia/epa-foia-annual-report-2016>

FY 17 Annual FOIA Report – <https://www.epa.gov/foia/epa-foia-annual-report-2017>

5. If there are any other steps your agency has taken to improve use of technology in FOIA, please describe them here.

A number of technical enhancements were made to the FOIAonline application in FY 2017 which improved EPA's ability to manage FOIA requests and appeals. These include creating the ability for EPA's OGC staff to indicate the basis of appeals received (fee waiver or expedited processing). This functionality allows staff to readily identify both types of appeals and manage them more effectively by promoting efficiency and greater consistency in response determinations.

Another technical enhancement that was implemented in FOIAonline in FY 2017 was the ability to create and manage non-FOIA requests within the system. In some cases, the public submits a first party request that after communication with the requester ultimately needs to be managed as a FOIA request. The opposite can occur as well. The recent enhancement now allows agencies to create non-FOIA request types and easily convert an original request to the most appropriate type of request so that it can be managed appropriately without needing to replicate the case file details.

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

The Department of Justice has emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report 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, appeals, and consultations.

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2017 Annual FOIA Report and, when applicable, your agency's 2016 Annual FOIA Report.

A. Simple Track

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.

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

Yes. EPA uses a simple track.

2. If so, for your agency overall in Fiscal Year 2017, was the average number of days to process simple requests twenty working days or fewer?

Yes. The average number of days to process a simple request in FY 2017 was 18.15 days.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2017 that were placed in your simple track.

The percentage of requests that were processed in the simple track in FY 2017 was 70%.

4. If your agency does not track simple requests separately, was the average number of days to process all non-expedited requests in twenty working days or fewer?

N/A

B. Backlogs

Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2016 and Fiscal Year 2017 when completing this section of your Chief FOIA Officer Report.

BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2017, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2016?

No.

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.

During FY 2017, EPA saw a substantial increase in the number and complexity of FOIA requests seeking records from the Office of the Administrator.

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 2017.

The number of backlogged requests was 518 or 16% of all requests received in FY 2017.

BACKLOGGED APPEALS

8. If your agency had a backlog of appeals at the close of Fiscal Year 2017, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2016?

No. The backlog of appeals in FY 2016 was 113 and at the end of FY 2017 it was 125.

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.

The Agency saw an increase in the number of backlogged appeals from 113 in FY 2016 to a backlog of 125 at the end of FY 2017. EPA attributes this increase in backlogged appeal inventory to several factors. First, the number of appeals received by EPA increased by approximately 16% from last fiscal year to this fiscal year. Second, EPA received 36 new FOIA lawsuits in FY 2017, compared to only 12 lawsuits in the previous fiscal year. During this reporting period, the same staff members dedicated to processing administrative appeals were responsible for handling this litigation.

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 2017. If your agency did not receive any appeals in Fiscal Year 2017 and/or has no appeal backlog, please answer with "N/A."

EPA's backlog of appeals at the end of FY 2017 was 125. EPA received 224 appeals during FY 2017. Therefore, the percentage of appeals that make up the backlog out of the total number of appeals received by EPA in Fiscal Year 2017 is 56%.

C. Backlog Reduction Plans

11. In the 2017 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1,000 requests in Fiscal Year 2016 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your 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 2017?

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 was available online. Agency FOIA professionals also received 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 shared quarterly status reports with senior leaders to help manage the FOIA process. Senior management has used these reports to encourage a decrease in the backlog of FOIA requests.

However, the number of FOIA requests received from outside the Agency increased to a total to 11,498 in 2017 for unforeseen reasons.

12. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2017, what is your agency's plan to reduce this backlog during Fiscal Year 2018?

In order to reduce the number of 1,880 backlogged requests, EPA has made some technical updates in the FOIAonline system and has hired limited contractor staff to assist with the processing of requests and respond to other needs. EPA is working on a Backlog Reduction Effort to close all FOIA requests received before January 1, 2017. Furthermore, in early CY 2018, EPA plans to conduct a LEAN event to streamline the Agency's FOIA processes.

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

Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VIC. (5), entitled "Ten Oldest Pending Administrative Appeals," and Section XERIC., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2016 and Fiscal Year 2017 when completing this section of your Chief FOIA Officer Report.

TEN OLDEST REQUESTS

13. In Fiscal Year 2017, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2016 Annual FOIA Report?

No.

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 2016 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

Of the 10 oldest pending requests for the FY 2016 Annual FOIA Report, EPA closed three of the ten oldest FOIA requests.

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?

For the three requests (out of the 10 oldest requests) that were closed, none were closed due to the request being withdrawn by the requester, and EPA provided interim responses for all three of these requests.

TEN OLDEST APPEALS

16. In Fiscal Year 2017, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2016 Annual FOIA Report?

No.

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 2016 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

EPA closed nine of the ten oldest appeals.

TEN OLDEST CONSULTATIONS

18. In Fiscal Year 2017, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2016 Annual FOIA Report?

Yes. All of the consultations that were reported in the FY 2016 Annual FOIA Report were closed in FY 2017.

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 2016 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

N/A.

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 2017.

EPA closed nine of the ten oldest appeals and closed all of its pending consultations. The primary challenge in closing the last of the ten oldest requests from FY 2017 was due to the need to consult with multiple offices. Limited staff resources, competing with litigation priorities, made it difficult to complete the reviews. EPA anticipates closing the remaining requests in FY 2018.

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.

N/A

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. In October through December 2017, EPA dedicated staff to focus on closing FOIA requests received prior to January 1, 2017.

F. Success Stories

Out of all the activities undertaken by your agency since March 2017 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency’s efforts. The success story can come from any one of the five key areas. As noted above, OIP will highlight these agency success stories during Sunshine Week. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

Backlog Reduction Effort

EPA initiated an effort to eliminate or substantially reduce the number of FOIA requests pending before January 1, 2017, as announced in an EPA press release in November, 2017.

- Focus on requests received before January 1, 2017 (~650)
- Report shows progress by separate organizations, in addition to Agency-wide progress
- Progress can be tracked on the EPA FOIA website (<https://www.epa.gov/foia/foia-backlog-reduction>)
- EPA closed 56 backlogged FOIAs in October 2017.
- EPA closed 120 backlogged FOIAs in November 2017.
- EPA closed 129 backlogged FOIAs in December 2017.

National FOIA Training Conference

EPA conducted a National FOIA Training Conference on September 12-14, 2017. (Please see Section 1.A.2. for further information.)

- First national training conference in five years
- Participants included attorneys, FOIA professionals and their managers
- The robust agenda addressed processing FOIA requests and FOIA exemptions
- Ask the FOIA Expert desk available during breaks