

# National Endowment for the Humanities

## 2012 Chief FOIA Officer Reports

### Content of 2012 Chief FOIA Officer Reports

#### Time frame for Report

Unless otherwise noted, your 2012 Chief FOIA Officer Report should address agency activities that have occurred since the filing of last year's Report, which was March 8, 2011, up until the filing of the 2012 Report, which will be March 12, 2012. Thus, the general reporting period for the Chief FOIA Officer Reports is March 2011 to March 2012.

*Name and Title of Agency Chief FOIA Officer: Carole M. Watson, Deputy Chairman*

### **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?

*Answer:* Yes. Last fall, the National Endowment for the Humanities' (NEH) Office of the General Counsel (OGC), which is responsible for processing the agency's FOIA requests and appeals, provided training for NEH staff who assist the OGC with searching for and identifying records responsive to FOIA requests. The OGC conducted this training to ensure that NEH achieves maximum disclosure and transparency in all of its FOIA decisions.

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

*Answer:* Yes. OGC staff who have FOIA responsibilities (FOIA staff) attended the U.S. Department of Justice's Exemption 2 after the Supreme Court's Ruling on *Milner v. Department of the Navy* training, and the Refresher Training on FY 2011 Annual FOIA Reports and 2012 Chief FOIA Officer Reports.

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?

*Answer:* Yes.

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

*Answer:* NEH made discretionary releases of otherwise exempt information under Exemption 5. For example, NEH released internal agency staff e-mails discussing deliberative matters, as well as an internal draft report.

5. Describe your agency's process to review records to determine whether discretionary releases are possible.

*Answer:* The FOIA staff applies the Attorney General's guidelines on discretionary releases whenever it reviews records responsive to a FOIA request. Specifically, the FOIA staff is mindful that it should only withhold records when it can reasonably foresee that disclosure would harm an interest protected by one of the FOIA exemptions or when the disclosure is prohibited by law.

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

*Answer:* NEH is currently revising its FOIA regulations to ensure that they are consistent with the FOIA and the President's FOIA Memorandum and the Attorney General's FOIA Guidelines. The agency plans to publish its proposed regulations for comment in the coming months.

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?

*Answer:* Yes. In FY 2011, NEH processed 49 requests and made 12 full grants, compared with FY 2010 where NEH processed 53 requests and only made 3 full grants.

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

*Answer:* The number of responses in which NEH released records in part stayed about the same. There were 31 partial grants in FY 2010 and 27 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?

*Answer:* Yes. The IT office consistently provides the FOIA staff with valuable support on a timely basis, and both the IT office and the FOIA staff maintain a close and cordial working relationship.

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

*Answer:* Yes. The Chief FOIA Officer reviews all reports prepared by the FOIA staff for submission to the U.S. Department of Justice. In addition, because the Chief FOIA Officer is also the agency's Deputy Chairperson and therefore the decision-making authority on FOIA requests, the Chief FOIA Officer reviews all FOIA responses prepared by the FOIA staff. Furthermore, the FOIA staff regularly updates the Chief FOIA Officer, as necessary, on the progress of outstanding FOIA requests and appeals.

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

*Answer:* Yes. The FOIA staff works with the agency's Open Government Team on an "as needed" basis.

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

*Answer:* NEH currently has two FOIA staff members who devote at least 50% of their time on FOIA administration, and one other FOIA staff member who spends at least 25% of her time on FOIA administration. Since NEH generally receives relatively few FOIA requests each year, the agency has determined that the current staffing level meets the agency's needs at this time.

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

*Answer:* As explained in I.1. above, last year, the FOIA staff conducted FOIA training for agency staff who assist the FOIA staff with searching for and identifying responsive records. NEH also established a FOIA Directive to reflect the principles of openness and transparency emphasized by the President's FOIA Memorandum and the Attorney General's FOIA guidelines. Furthermore, in recent months, NEH has upgraded some of its software so that it can make electronic redactions in records responsive to a FOIA request.

### **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?

*Answer:* Yes.

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

*Answer:* NEH regularly posts new information about the agency's activities on its website. The types of information NEH posts include lists of recent grant awards, press releases, examples of funded projects, recent speeches by the NEH Chairman, names and contact information of new staff members, information on

grant administration, application guidelines, and the full text of Humanities, NEH's bimonthly magazine.

Over the past year, the agency has also posted its FY 2012 Appropriations Request and other administrative reports, including its FY 2011 Performance and Accountability Report and FY 2012 First Quarter HSPD-12 Implementation Status Report. In addition, the agency has added new data sets to its open government web page.

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

*Answer:* The FOIA staff regularly reviews the agency's FOIA logs for frequently requested records and works with agency staff to identify records appropriate for posting in NEH's FOIA electronic reading room.

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.?

*Answer:* Not at this time. However, NEH is in the process of overhauling its current website, and is considering ways that it can make information about the agency more useful to the public on the new website.

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

*Answer:* In addition to posting new information on the current agency website, NEH has been using social media platforms such as Facebook, Twitter, and YouTube to further disseminate information about its programs and activities, to connect with people who are interested in the humanities, and to provide a place for the public to communicate and exchange ideas with those who are interested in the agency's work. For example, NEH has been using Twitter to announce new grant programs, grant deadlines, staff travel to conferences, and National Council on the Humanities appointments. On its Facebook page, NEH has been posting press releases, recently awarded grants, and examples of funded projects. NEH also has a YouTube channel on which the agency has posted programming on digital humanities initiatives and a video of last year's Jefferson Lecture.

## **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?

*Answer:* Yes. Requesters can make electronic FOIA requests through NEH's online FOIA request form available at <http://www.neh.gov/howeare/foia/request.asp>.

2. If your agency processes requests on a decentralized basis, do all components of your agency receive requests electronically?

*Answer:* Not applicable. NEH is a small government agency and it does not have separate components that receive FOIA requests. All FOIA requests directed to NEH are handled by the General Counsel's office.

*Online tracking of FOIA requests:*

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

*Answer:* No.

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

*Answer:* NEH is a small government agency that receives relatively few FOIA requests each year. Accordingly, NEH has determined that it is unnecessary and would not be cost-effective for the agency to offer an electronic tracking system for its requesters at this time.

*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?

*Answer:* No. As explained in IV.4. above, NEH receives a limited number of FOIA requests each year, and therefore, the agency is not taking steps at this time to utilize more advanced technologies. However, should the number or complexity of FOIA requests rise, NEH will reassess whether it should implement advanced technologies to facilitate the agency's overall FOIA efficiency.

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

*Answer:* Not applicable.

## **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?

*Answer:* 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?

*Answer:* Yes. In FY 2011, NEH spent an average of 17 days to process simple requests.

- 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?

*Answer:* Not applicable.

2. 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

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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?

*Answer:* Yes. NEH had four backlogged requests In FY 2010 and three backlogged requests in FY 2011.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2011, did that backlog decrease as compared to Fiscal Year 2010?

*Answer:* The number of backlogged appeals stayed about the same. NEH had zero backlogged appeals in FY 2010 and one backlogged appeal in FY 2011. NEH responded to this backlogged appeal in early FY 2012 (approximately one month after receiving it).

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

*Answer:* Yes.

- 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?

*Answer:* Yes.

3. 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:

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

*Answer:* Not applicable.

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

*Answer:* Not applicable.



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

*Answer:* Not applicable.

- d. What other causes, if any, contributed to the lack of a decrease in the request backlog?

*Answer:* Not applicable.

Administrative Appeal Backlog:

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

*Answer:* Not applicable.

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

*Answer:* Not applicable.

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

*Answer:* Not applicable.

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

*Answer:* Not applicable.

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?

*Answer:* NEH is committed to ensuring the timeliness of FOIA requests and appeals and is continually assessing ways to improve its FOIA response times. The FOIA staff regularly reviews NEH's FOIA log to monitor the progress of requests and appeals, and they communicate frequently by e-mail and in-person to discuss outstanding FOIA requests and appeals.

2. Has your agency increased its FOIA staffing?

*Answer:* No. As explained in II.4. above, NEH has determined that the current FOIA staffing level meets the agency's needs at this time.

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

*Answer:* Yes. As explained in II.5. above, NEH recently upgraded some of its software so that it can electronically redact records responsive to a FOIA request.

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?

*Answer:* No. NEH responds to the few FOIA consultations it receives each year in a timely manner. Accordingly, NEH has not taken steps at this time to increase the agency's efficiency in handling consultations. However, should the number or complexity of FOIA consultations rise, NEH will reassess whether it should utilize IT, or establish guidelines or agreements with other 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?

*Answer:* No.

2. If so, what is the total number of times exclusions were invoked?

*Answer:* Not applicable.

## **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.

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*Success Story (Stories):* At the beginning of FY 2012, the FOIA staff conducted targeted FOIA training sessions for all NEH staff, including office and division heads, responsible for assisting the FOIA staff with FOIA requests. These sessions were provided to remind agency staff of the FOIA standards emphasized in the President's 2009 FOIA memorandum and Attorney General's FOIA Guidelines, and to ensure the continued efficiency of NEH's FOIA system. For example, agency staff were trained on how to effectively search for responsive records, and how to prepare these records for review by the FOIA staff. In addition, for each training session, there were hypothetical FOIA requests tailored to cover the kinds of records maintained by a particular office or division, so that agency staff could see the kinds of requests they may be asked to assist with.

Since the completion of the FOIA training sessions, the FOIA staff has noticed improvements in the efficiency of NEH's FOIA system. For instance, offices and divisions responding to the same FOIA request have been working cooperatively to ensure that the FOIA staff are not unnecessarily receiving multiple copies of the same record. In addition, agency staff have been diligent about providing frequent updates to the FOIA staff on the progress of retrieving archived records located off-site.