

NATIONAL SCIENCE FOUNDATION

CHIEF FOIA OFFICER REPORT

March 2015 to March 2016

Chief FOIA Officer: Erin Dawson, Assistant General Counsel, Office of the General Counsel

Section I: Steps Taken to Apply the Presumption of Openness.

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's 2009 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. You may also include any additional information you would like to describe how your agency is working to apply the presumption of openness.

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?

The Chief FOIA Officer, the FOIA Officer, and the FOIA staff assistant attended the Advanced Freedom of Information Act seminar at the Department of Justice in April, 2015.

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

One hundred percent.

3. 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.

Not applicable.

Discretionary Releases:

4. Does your agency have a distinct process or system in place to review records for discretionary release?

Because NSF is a small agency the FOIA Officer reviews all incoming FOIA requests. This review includes consideration of potential discretionary disclosures.

5. During the reporting period, did your agency make any discretionary releases of otherwise exempt information?

Yes.

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

Exemption 5.

7. Provide a narrative description, as well as some specific examples, of the types of information that your agency released as a matter of discretion.

Typically, discretionary disclosures at NSF consist of deliberative material the disclosure of which is unlikely to discourage future candor in agency recommendations. An example of a discretionary release that occurred during the time frame of this report was internal e-mails between NSF staff regarding administration of a specific grant. Even though these e-mails were deliberative because they reflected the pre-decisional opinions of NSF staff about grant administration, NSF determined that there was no foreseeable harm from the disclosure of the information and accordingly, released the e-mails to the requestor.

8. If your agency was not able to make any discretionary releases of information, please explain why.

Not applicable.

Other Initiatives:

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

In June, 2015, NSF published an update of its Open Government Plan. Since the release of the NSF Open Government Plan 1.0 in April 2010, the agency has connected the plan to its most recent strategic plan. Consequently, "Investing in Science, Engineering and Education for the Nation's Future – NSF Strategic Plan for 2014-2018," is reflected in the June, 2015 version of the NSF Open Government Plan.

With respect to making its data and information available, NSF's key principle in executing all of the elements of the NSF Open Government Plan is: Unless shown otherwise, the default position will be to make NSF data and information available in an open machine-readable format.

The updated Open Government Plan is available on the NSF website using the following link: <http://www.nsf.gov/open/>.

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.” 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 your management of your FOIA program is effective and efficient. You should also include any additional information that describes your agency’s efforts in this area.

Processing Procedures:

1. For Fiscal Year 2015, what was the average number of days your agency reported for adjudicating requests for expedited processing?

NSF did not adjudicate any requests for expedited processing.

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.

Not applicable.

3. On July 2, 2015, OIP issued new guidance to agencies on the proper procedures to be used in the event an agency has a reason to inquire whether a requester is still interested in the processing of his or her request. Please confirm here that to the extent your agency may have had occasion to send a “still interested” inquiry, it has done so in accordance with the new guidelines for doing so, including affording requestors thirty working days to respond.

NSF has contacted FOIA requestors regarding whether they are still interested in the processing of their requests and in doing so has followed all of the steps and criteria outlined in the July 2, 2015 OIP guidance.

Requester Services:

4. Agency FOIA Requester Service Centers and FOIA Public Liaisons serve as the face and voice of an agency. In this capacity they provide a very important service for requesters, informing them about how the FOIA process works and providing specific details on the handling of their individual requests. The FOIA also calls on agency FOIA Requester

Service Centers and FOIA Public Liaisons to assist requesters in resolving disputes. Please explain here any steps your agency has taken to strengthen these services to better inform requesters about their requests and to prevent or resolve FOIA disputes.

NSF has a FOIA Public Liaison and provides contact information for this person on the NSF public website. Due to low demand for these services, NSF has not taken any recent steps to strengthen these services.

Other Initiatives:

5. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc., please describe them here.

The NSF FOIA database is maintained electronically and continually reviewed for efficiency and updated with any additional requirements. Many of the FOIA requests that NSF receives are for research proposals. This information is maintained in an electronic database allowing for direct access by the FOIA Officer and more efficient electronic redaction. NSF also asks individuals who submit proposals to the agency to identify potential confidential commercial information at the time that the proposal is submitted. While this preliminary identification does not mean the information will necessarily be withheld under an exemption, the identification does make the submitter notice process more efficient if a proposal is requested pursuant to FOIA.

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.

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.

Posting Material:

1. Describe your agency's process or system for identifying "frequently requested" records required to be posted online under Subsection (a)(2) of the FOIA. Does your agency have a distinct process or system in place to identify records for proactive disclosure? If so, please describe your agency's process or system.

The NSF FOIA Officer processes all FOIA requests and reviews records for proactive disclosure on a case-by-case basis. The NSF FOIA Officer is also familiar with the topic areas at the agency that tend to generate "frequently requested records," such as the NSF Antarctic Program, and ensures that these records are posted online. The majority

of the requests NSF receives are for research proposals and NSF rarely receives a request for the same research proposal more than once. NSF is working to better anticipate what information the public has an interest in and then get it posted to the NSF website proactively.

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.

NSF outlined ways in which to increase transparency in its updated Open Government Plan. For example, NSF encourages public use of released datasets to promote public knowledge of the agency's activities and outcomes, and to foster innovation related to science and engineering. NSF periodically inventories data assets not yet publicly available, by following the processes and goals outlined in the Open Data Policy inventory schedule (<http://www.nsf.gov/data/>). Currently, 113 NSF datasets have been proactively disclosed online (<http://catalog.data.gov/organization/nsf-gov>).

3. When making proactive disclosures of records, are your agency's FOIA professionals involved in coding the records for Section 508 compliance or otherwise preparing them for posting? If so, provide an estimate of how much time is involved for each of your FOIA professionals and your agency overall.

The NSF FOIA professionals are not involved in coding records for Section 508 compliance.

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

Yes.

5. If so, please briefly explain those challenges.

The majority of FOIA requests that NSF receives are for research proposals, if these records were proactively disclosed it would significantly reduce the amount of FOIA requests that the agency receives. However, research proposals are protected by the Privacy Act and most contain confidential commercial information. Proactively engaging in the submitter notification process and a Privacy Act review to clear and then post these records would take a prohibitively large amount of time and agency resources.

6. Provide examples of material that your agency has proactively posted during the past reporting year, including links to where this material can be found online.

NSF continually updates its public database of awards with abstracts of awarded proposals, resulting publications, and final reports on research results. [<http://www.nsf.gov/awardsearch/>]. NSF publicizes agency data sets on the agency's Open Government (<https://www.nsf.gov/open/>), Digital Strategy (<https://www.nsf.gov/digitalstrategy/>), Open Data (<http://www.nsf.gov/data>) and

Developer (<http://www.nsf.gov/developer/>) web pages, as well as through the agency's social media sites. Research is also highlighted on the agency website at nsf.gov.

On the www.nsf.gov website, NSF also posts information about National Science Board meeting announcements and minutes; NSF solicitations; NSF funding trends data; NSF budget information; NSF-related statistical information; lists of publications available for download; award and funding information; minutes from the various directorate, office and NSF-wide advisory committees; committee of visitor reports for the various directorates and offices; an events calendar; texts of speeches given by the NSF Director and Deputy Director; a list of NSF-related congressional hearings; news releases and media advisories; factsheets about NSF programs and priorities; feature articles; audio podcasts and videos about NSF-supported research results; and the NSF Multimedia Gallery which provides images and other visual media for educational and informational use.

In addition, NSF participates in several government-wide initiatives that provide the public with access to NSF data including Data.gov, Science and Engineering indicators State Data Tool, Science and Engineering Indicators Digest, USASpending.gov, and the Federal IT Dashboard.

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

The NSF award search feature and links to NSF datasets are available on the landing page of the NSF public website. NSF also engages with the public through various social media outlets, posting links to information that is of public interest.

Other Initiatives:

8. If there are any other steps your agency has taken to increase proactive disclosures, please describe them here.

The NSF FOIA Officer, Chief FOIA officer, and members of the team working on the NSF Open Government Plan continue to meet and discuss potential proactive disclosures and ways to make access to this information easier for the public.

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.

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.

Making Material Posted Online More Usable:

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?

NSF engages in many public outreach activities to promote awareness of the agency, its policies and the information and services NSF provides to the public. NSF also posts information on Facebook, Twitter, and YouTube. These activities allow the public to interact with NSF and access information in many different formats.

During the past year NSF also updated its FOIA and Privacy Act webpages to make them more user friendly.

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

NSF engages in public outreach through presentations and exhibit booths at key outreach events such as meetings and conferences held by research administration associations, and at meetings of NSF's core science and engineering community. NSF also interacts and provides information directly to the public through online outreach mechanisms such as websites described above and interactive webinars. A list of previous and upcoming webinars can be found at:

http://nsf.gov/events/event_group.jsp?group_id=20018&org=NSF.

Other Initiatives:

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2015?

Yes.

4. 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 2016.

Not applicable.

5. Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? If yes, what are the different types of electronic means that are utilized by your agency to communicate with requestors?

NSF engages almost exclusively with requestors via electronic means. E-mail is the primary communication tool.

6. If your agency does not communicate electronically with requesters as a default, are there any limitations or restrictions for the use of such means?

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, appeals, and consultations.

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.

2. If so, for your agency overall, for Fiscal Year 2015, was the average number of days to process simple requests twenty working days or fewer?

Yes.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2015 that were placed in your simple track.

6%

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.

Not applicable.

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 2014 and Fiscal Year 2015 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 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

No.

6. If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog.

NSF received several FOIA requests that were very complex, involving searches and review of thousands of pages of e-mail and potential confidential commercial information. Processing these large requests along with more "typical" requests while also addressing complex cases that were part of the backlog was a challenge for NSF's small FOIA staff.

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 2015.

55%

Backlogged Appeals:

8. If your agency had a backlog of appeals at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

Yes, the backlog decreased from one in Fiscal Year 2014 to zero in Fiscal Year 2015.

9. If not, explain why and describe the causes that contributed to your agency not being able to reduce backlog.

Not applicable.

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 2015.

Not applicable.

Status of Ten Oldest Requests, Appeals, and Consultations: Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., 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 2014 and Fiscal Year 2015 when completing this section of your Chief FOIA Officer Report.

TEN OLDEST REQUESTS

11. In Fiscal Year 2015, did your agency close the ten oldest requests that were reported pending your Fiscal Year 2014 Annual FOIA Report?

Yes.

12. 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 2014 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

Not applicable.

13. 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 of the ten oldest requests closed in Fiscal Year 2015 were closed due to withdrawal by the requester.

TEN OLDEST APPEALS

14. In Fiscal Year 2015, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

Yes. NSF had one pending appeal in its Fiscal Year 2014 Annual FOIA Report and that appeal was closed in Fiscal Year 2015.

15. 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 2013 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

Not Applicable.

TEN OLDEST CONSULTATIONS

16. In Fiscal Year 2015, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

Not Applicable. NSF did not have any consultations pending in its Fiscal Year 2014 Annual FOIA Report.

17. 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 2014 Annual

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

Not Applicable.

Additional Information on Ten Oldest Requests, Appeals, and Consultations and Plans:

18. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2014.

The ten oldest requests were complex and involved multiple sets of documents from different agency components.

19. 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.

Not applicable.

20. 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 2015.

Not applicable.

Use of the FOIA’s Law Enforcement Exclusions

1. Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c),(1), (2), (3), during Fiscal Year 2015?

No.

2. If so, please provide the total number of times exclusions were invoked.

Not applicable.