THE NATIONAL SCIENCE FOUNDATION

2019 CHIEF FOIA OFFICER REPORT

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

Section I: Steps Taken to Apply the Presumption of Openness

A. FOIA Leadership

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. Is your agency's Chief FOIA Officer at or above this level?

No. NSF is a small agency with only two politically appointed positions in the Director's Office – the Director of NSF and her Deputy. Accordingly, NSF designated the individual who has the appropriate level of expertise to be the Chief FOIA Officer.

2. Erin Dawson, Assistant General Counsel.

B. FOIA Training

3. 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.

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

The Chief FOIA Officer, the FOIA Officer, and the FOIA Public Liaison watched a training module from the American Society of Access Professionals titled "Significant Recent FOIA Decisions."

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

100%

6. 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

C. Outreach

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

No.

D. Other Initiatives

8. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In 2016, the Department publicized FOIA-related performance standards for employees that have any role in administering the FOIA, including non-FOIA professionals. Please also indicated whether your agency has considered including FOIA-related performance standards in employee work plans for employees who have any role in administering the FOIA.

The FOIA Public Liaison makes a presentation about FOIA at bi-weekly New Employee Orientation Training sessions. The Chief FOIA Officer, FOIA Officer, and FOIA Public Liaison all have FOIA-related performance standards. At this time, non-FOIA professionals do not have any role in administering the FOIA at NSF. Given that NSF is a small agency with a centralized FOIA program, NSF has considered but not implemented FOIA-related performance standards in the employee work plans for non-FOIA professionals.

7. 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 NSF Chief FOIA Officer, FOIA Officer, and FOIA Public Liaison meet with NSF staff who are affected by FOIA requests on an as needed basis and explain applicable FOIA obligations. In addition, NSF has two Data Fellows who are participating in the development of the Federal Data Strategy. NSF also has internal working groups, such as the Data Accountability Group and the Enterprise Data Governance and Education group that work on data governance and proactive data disclosure issues.

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

A. Processing Procedures

1. For Fiscal Year 2018, what was the average number of days your agency reported for adjudicating requests for expedited processing?

15 days.

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.

NSF only received two requests for expedited processing. They were not processed within ten days because of scheduling difficulties. The NSF FOIA team will more closely monitor the FOIA log to ensure that all requests for expedited processing are adjudicated within ten days.

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.

The NSF FOIA team frequently meets to look over the FOIA log and discuss strategies to improve its FOIA program, reduce the FOIA backlog, and speed up the processing of requests.

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 2018 (please provide a total number or an estimate of the number).

The NSF FOIA Public Liaison was not contacted by the public during the Fiscal Year 2018.

5. Please describe the best practices used to ensure that your FOIA system operates efficiently and effectively and any challenges your agency faces in this area.

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 FOIA Public Liaison 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.

<u>**Section III: Steps Taken to Increase Proactive Disclosures**</u>

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

NSF continually updates its public database of awards with abstracts of awarded proposals, resulting publications, and final reports on research results: https://www.nsf.gov/awardsearch/. *In addition, 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* (https://www.nsf.gov/data/) *and Developer* (https://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* https://www.nsf.gov.

2. Please describe how your agency identifies records that have been requested and released three or more times (and are therefore required to be proactively disclosed pursuant to 5 U.S.C. § 552(a)(2)(D)).

The NSF FOIA Officer and FOIA Public Liaison process all FOIA requests received by NSF. The majority of the requests NSF receives are for research proposals. While NSF rarely receives a request for the same research proposal more than once, the NSF FOIA staff maintain all requested proposals in a central electronic file by proposal number to facilitate easy identification of frequently requested records.

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.

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

NSF recognizes that individuals who regularly accesses the NSF website primarily come from the scientific community. NSF strives to make data of particular interest to this community available in a variety of ways. For example, NSF currently has 112,196 data sets available on data.gov. NSF also currently has 3,226 current records available in the NSF document library found here: https://www.nsf.gov/publications/. *Which can be searched by document type, organization type, publication date, and document title. An additional 4,850 records are available in the archived document library.*

On the agency website, NSF publicizes 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.

5. Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.

NSF periodically inventories data assets not yet publicly available, by following the processes and goals outlined in the Open Data Policy inventory schedule (https://www.nsf.gov/data/). In addition, 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.

Section IV: Steps Taken to Greater Utilize Technology

1. Is your agency leveraging technology to facilitate efficiency in conducting searches, including searches for emails? If so, please describe the type of technology used. If not, please explain why and please describe the typical search process used instead.

As a small agency, NSF doesn't use a specific technological tool to facilitate searches. However, the FOIA team routinely works with the NSF Division of Information Services (DIS) to conduct electronic searches for records, including email.

2. OIP issued guidance in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

Yes.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2018?

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 2019.

N/A

5. 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 2017 Annual FOIA Report and, if available, for your agency's Fiscal Year 2018 Annual FOIA Report.

NSF does not currently have a link to this data available. NSF is working to get this information posted and anticipates that it will be available on the NSF website FOIA page in the near future.

6. Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

As a small agency that does not receive a high volume of FOIA requests, NSF does not have the same resources as a larger agency to access technology specifically for FOIA. NSF staff utilize Adobe Acrobat for document processing and work with the NSF DIS to facilitate use of existing technologies for the FOIA program.

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.

2. If your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2018?

No, the average number of days to process simple requests was 48 days. However, the average was inflated by a limited number of requests that took much longer than 20 days. The majority of simple track requests were processed in less than 20 days as reflected in the median number of days to process simple requests, which was 9 days.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2018 that were placed in your simple track.

26%

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 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

Yes.

6. If not, did your agency process more requests during Fiscal Year 2018 than it did during Fiscal Year 2017?

N/A

7. 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

8. 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.

75%

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

NSF did not have a backlog of appeals in Fiscal Year 2017 or Fiscal Year 2018.

10. If not, did your agency process more appeals during Fiscal Year 2018 than it did during Fiscal Year 2017?

N/A

11. If your agency's appeal backlog increased during Fiscal Year 2018, please 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

12. 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 2018. If your agency did not receive any appeals in Fiscal Year 2018 and/or has no appeal backlog, please answer with "N/A."

N/A

C. Backlog Reduction Plans

13. In the 2018 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2017 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 2018?

NSF does not have a backlog of over 1000 requests and did not implement a specific backlog reduction plan. Nevertheless, NSF was able to achieve backlog reduction using existing agency resources and processes.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2018, what is your agency's plan to reduce this backlog during Fiscal Year 2019.

N/A

D. Status of Oldest Requests, Appeals, and Consultations

TEN OLDEST REQUESTS

15. In Fiscal Year 2018, did your agency close the ten oldest requests that were reported pending in your Fiscal 2017 Annual FOIA Report?

Yes.

16. 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 2017 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

N/A

17. 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 2018 were closed because the request was withdrawn by the requester.

18. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

NSF brought in three law school students for internships over the summer of 2018. These interns focused solely on assisting the NSF FOIA staff with processing older backlogged requests.

TEN OLDEST APPEALS

19. In Fiscal Year 2018, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

NSF did not have any pending appeals in the Fiscal Year 2017 Annual FOIA Report.

20. 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 2017 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A

21. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

N/A

TEN OLDEST CONSULTATIONS

22. In Fiscal Year 2018, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

NSF did not have any consultations pending in its Fiscal Year 2017 Annual FOIA Report.

23. 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 2017 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

N/A

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

24. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2018.

NSF was able to successfully close its ten oldest FOIA requests and did not have any pending appeals or consultations. Nevertheless, balancing the workload of responding to new FOIA requests and working on the ten oldest requests, which are usually complex and involve reviewing voluminous records, is an annual challenge for NSF's small FOIA staff.

25. 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

26. 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 2018.

N/A

F. Success Stories

Out of all the activities undertaken by your agency since March 2018 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, these agency success stories will be highlighted during Sunshine Week by OIP. 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.

NSF recognized that its small FOIA staff of two was having a difficult time addressing older backlogged cases while also keeping up with new incoming requests. To help address this issue, NSF brought in three law school students for internships over the summer of 2018. These interns focused solely on assisting the NSF FOIA staff with processing older backlogged requests. As a result of this effort, and the hard work of NSF's FOIA team, NSF was able to reduce its backlog for the first time in six years.