

THE NATIONAL SCIENCE FOUNDATION

2023 CHIEF FOIA OFFICER REPORT

Chief FOIA Officer: Ona Hahs, Acting General Counsel, Office of the General Counsel

**Section I: FOIA Leadership and Applying the Presumption of Openness**

The guiding principle underlying the Attorney General’s FOIA Guidelines is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

**A. Leadership Support for FOIA**

1. The FOIA requires each agency to designate a Chief FOIA Officer who is at least at the Assistant Secretary or equivalent level. *See* 5 U.S.C. § (j)(1) (2018). Is your agency’s Chief FOIA Officer at or above this level?

*Yes. NSF has designated the NSF General Counsel as the Chief FOIA Officer.*

2. Please provide the name and title of your agency’s Chief FOIA Officer.

*Ona Hahs, Acting General Counsel.*

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

*NSF has increasingly recognized the important contributions of its FOIA program towards achieving agency goals of transparency and accountability. The Chief FOIA Officer has advocated for more resources to support the NSF FOIA program and this resulted in the addition of another Government Information Specialist position and the procurement of a FOIA support tool.*

**B. Presumption of Openness**

4. The Attorney General’s 2022 FOIA Guidelines provides that “agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard with reviewing records and applying FOIA exemptions.” Does your agency provide such confirmation in its response letters?

*Yes.*

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interest protected by a FOIA exemption. This is commonly referred to as a *Glomar* response. With respect to these responses, please answer the below questions:

a. In addition to tracking the asserted exemption, does your agency specifically track whether a request involved a *Glomar* response?

*Yes.*

b. If yes, please provide:

i. the number of times your agency issued a full or partial *Glomar* response;

*1 partial.*

*1 full.*

ii. the number of times a *Glomar* response was issued by exemption.

*Response 1: Exemption (b)(6)*

*Response 2: Exemption (b)(7)(C)*

c. If your agency does not track the use of *Glomar* responses, what would your agency need to do to track in the future? If possible, please describe the resources and time involved.

*N/A*

## **Section II: Ensuring Fair and Effective FOIA Administration**

The Attorney General's FOIA Guidelines provide that "[e]nsuring fair and effective FOIA administration requires...proper training, and a full understanding of FOIA obligations by the entire agency workforce." The Guidelines reinforce longstanding guidance to "work with FOIA requesters in a spirit of cooperation." The Attorney General also "urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency's FOIA administration" as part of ensuring fair and effective FOIA administration.

### **A. FOIA Training**

1. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. *See* 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your

agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

*The FOIA Public Liaison or FOIA Officer makes a presentation about FOIA at bi-weekly New Employee Orientation Training sessions. The NSF FOIA Attorneys, FOIA Officer, and Government Information Specialists, provide guidance and advice regarding FOIA obligations on an ad-hoc basis at the request of Directorates and individuals within NSF. In addition, one of the NSF FOIA Attorneys conducted FOIA training for NSF FOIA staff on the topics of exemption (b)(4), exemption (b)(6), and recent FOIA caselaw updates.*

2. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend substantive FOIA training during the reporting period such as that provided by the Department of Justice?

*Yes.*

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

*NSF FOIA staff participated in at least one of the following FOIA training sessions: the DOJ virtual course "FOIA Training for FOIA Professionals," the DOJ virtual course "FOIA Training for Federal Employees," the DOJ virtual course "FOIA Training for Executives," the DOJ training course "Privacy/FOIA Considerations," and/or the American Society of Access Professionals 15<sup>th</sup> Annual Training Conference.*

4. Please 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%*

5. 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*

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and if senior leaders at your agency received a briefing on your agency's FOIA resources, obligations and expectations during the FOIA process?

*As also described above in response to question 1, the FOIA Public Liaison or FOIA Officer makes a presentation about FOIA at bi-weekly New Employee Orientation Training sessions. The NSF FOIA Attorneys, FOIA Officer, and Government Information Specialists, provide guidance and advice regarding FOIA obligations on an ad-hoc basis at the request of Directorates and individuals within NSF. These presentations are typically done using Power Point slides. In addition, the NSF Chief FOIA Officer has had conversations with the NSF Office of the Director regarding additional resources for the NSF FOIA program. These conversations resulted in NSF creating an additional Government Information Specialist position and procuring a FOIA support tool.*

## **B. Outreach**

7. Did your FOIA professionals engage in any outreach or dialogue, outside of the standard request process with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

*No.*

8. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue, and, if applicable, and specific examples.

*Yes. NSF's FOIA professionals proactively contact requesters to discuss pending FOIA requests on an almost daily basis. Many of NSF's FOIA requests ask for scientific research grant proposals that are submitted to NSF for potential funding. NSF's FOIA professionals often reach out to requestors to see if they can reduce the number of proposals that they are asking for or if they are willing to limit the request to specific parts of a proposal in an effort to speed up the response process.*

9. 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 the assistance from your agency's FOIA Public Liaison during Fiscal Year 2022.

*No requesters sought the services of the NSF FOIA Public Liaison this year.*

## **C. Other Initiatives**

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

*NSF has evaluated the needs of its FOIA program given the current number of incoming FOIA requests, the complexity of those requests and the current FOIA request backlog. NSF previously had two full time staff processing FOIA requests. Late this year, NSF created and filled a new Government Information Specialist position for its FOIA program. In addition, NSF procured a FOIA support tool to help its FOIA staff more efficiently process and track FOIA requests.*

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

*NSF does not currently use data or processing metrics, but with the recent procurement of a FOIA support tool, the NSF FOIA program anticipates exploring the use of this type of analysis in the future.*

### **Section III: Proactive Disclosures**

The Attorney General’s FOIA Guidelines emphasize that “proactive disclosure of information is...fundamental to the faithful application of the FOIA.” The Guidelines direct agencies to post records online quickly and systematically in advance of any public request” and reiterate that agencies should post records “in the most useful, searchable, and open formats possible.”

1. Please describe what steps your agency takes to identify, track and post (a)(2) proactive disclosures.

*The NSF e-Gov Content Inventory, [https://www.nsf.gov/policies/egov\\_inventory.jsp](https://www.nsf.gov/policies/egov_inventory.jsp), describes NSF’s commitment to providing useful information to the public. This policy also provides information about the four-priority approach NSF uses to provide information content along with a table laying out the different types of information that are made available under each of the priorities.*

2. Provide examples of any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552 (a)(2)(D). Please include links to these materials as well.

*NSF proactively posted the Sexual Assault/Harassment Prevention and Response (SAHPR) Final Report June 22, 2022. NSF also launched a searchable database “NSF by the Numbers” containing information about the NSF that is frequently requested by the public: <https://beta.nsf.gov/about/about-nsf-by-the-numbers>. In addition, 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*

Digital Strategy <https://www.nsf.gov/digitalstrategy/>, Open Government <https://www.nsf.gov/open/>, 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. Data from the National Center for Science and Engineering Statistics can be found here: <https://www.nsf.gov/statistics/data.cfm>. Information about public access to the results of NSF funded research can be found here: [https://www.nsf.gov/news/special\\_reports/public\\_access/index.jsp](https://www.nsf.gov/news/special_reports/public_access/index.jsp). In addition, NSF makes its Proposal and Award Policies and Procedures Guide available here: [https://nsf.gov/publications/pub\\_summ.jsp?ods\\_key=pappg](https://nsf.gov/publications/pub_summ.jsp?ods_key=pappg)

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. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats to the extent feasible. If not posting in open formats, please explain why and note any challenges.

*This year NSF launched "NSF by the Numbers," which is a database that includes NSF award, proposal, and budget data. To make this database more useful to the public, all the views in the dashboard are interactive, with the exception of trend lines. Information can be sorted using global filters, by geographic area, NSF Directorate, type of academic institution, etc.*

<https://beta.nsf.gov/about/about-nsf-by-the-numbers>

5. Does your proactive disclosure process or system involve a collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

*Yes. The NSF Office of Legislative and Public Affairs coordinates the majority of information that appears on NSF's website. In addition, components of NSF, including but not limited to, the NSF CIO, CDO, NCSES, and the NSB, all routinely produce reports, statistics, and other data that is of interest to the public.*

6. Optional – Please describe the best practices used to improve proactive disclosure and any challenges your agency faces in this area.

N/A

#### **Section IV: Steps Taken to Greater Utilize Technology**

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's FOIA Guidelines emphasize the importance of making FOIA websites easily navigable and complying with the FOIA.gov interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

*Yes. The NSF FOIA program reviewed its technological needs and as a result has recently procured a FOIA tool to support the FOIA program.*

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program.

*NSF procured the FOIA tool FOIAXpress and is in the beginning phases of implementing the use of FOIAXpress to support the NSF FOIA program.*

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions?

*No.*

4. 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.*

5. Did all four of your agency's quarterly reports for Fiscal Year 2022 appear on FOIA.gov?

*Yes.*

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2023.

*N/A*

7. 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 2021 Annual FOIA Report and, if available, for your agency's Fiscal Year 2022 Annual FOIA Report.

[https://www.nsf.gov/policies/foia\\_annual\\_reports.jsp#rawdata](https://www.nsf.gov/policies/foia_annual_reports.jsp#rawdata)

8. In February 2019, DOJ and OMB issued joint Guidance establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

*Yes.*

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

*N/A*

### **Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness in Responding to Requests, and Reduce Backlogs**

The Attorney General's FOIA Guidelines instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

#### **A. Remove Barriers to Access**

1. Has your agency established alternative means of access to first-party requested records outside of the FOIA process?

*No.*

2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.

*Most records at NSF consist of scientific research proposals and grant awards to academic or other types of institutions. These records do not contain the type of first-party information that would be appropriate to disclose outside of the FOIA process.*

#### **B. Timeliness**

3. For Fiscal Year 2022, what was the average number of days your agency reported for adjudicating requests for expedited processing?

*NSF did not receive any requests for expedited processing.*

4. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to section VIII.A of your agency's Fiscal Year 2022 Annual FOIA Report, 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*

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

*Yes.*

6. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2022?

*No, the average number of days to process simple requests was 61.2 days.*

7. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?

*Yes.*

8. Please provide the percentage of requests processed by your agency in Fiscal Year 2022 that were placed in your simple track.

*25%*

9. 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*

## **C. Backlogs**

### **Backlogged Requests**

10. If your agency had a backlog of requests at the close of Fiscal Year 2022, according to Annual FOIA Report section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

*No.*

11. If not, according to Annual FOIA Report section XII.D.1, did your agency process more requests during Fiscal Year 2022 than it did during Fiscal Year 2021?

No.

12. If your agency's request backlog increased during Fiscal Year 2022, 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 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.
- Impact of COVID-19 and workplace and safety precautions.
- Any other reasons – please briefly describe or provide examples when possible.

*With a small FOIA processing staff of two individuals (a Government Information Specialist and the FOIA Officer), tackling backlogged FOIA requests, which are often complex and voluminous, while also processing new simple track requests, is challenging. Approximately 70% of the FOIA requests NSF receives are “complex” and thus take more time and effort to close. NSF is taking steps to address the FOIA program staffing issues and has filled a second Government Information Specialist position and procured a FOIA tool, to help support the program.*

13. 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 2022.

160%

### **Backlogged Appeals**

14. If your agency had a backlog of appeals at the close of Fiscal Year 2022, according to section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

*NSF did not have a backlog of appeals during Fiscal Year 2022.*

15. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2022 than it did during Fiscal Year 2021?

N/A

16. If your agency's appeal backlog increased during Fiscal Year 2022, 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.
- Impact of COVID-19 and workplace and safety precautions.
- Any other reasons – please briefly describe or provide examples when possible.

*N/A*

17. 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 2022.

*N/A*

#### **D. Backlog Reduction Plans**

18. In the 2022 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1,000 requests in Fiscal Year 2021 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 2022?

*NSF has fewer than 1,000 backlogged FOIA requests and did not implement a backlog reduction plan last year. However, as described above in this report, NSF has taken steps such as hiring an additional Government Information Specialist and procuring a FOIA tool that is hopes will help lead to a reduction in the FOIA request backlog in the future.*

19. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2022, please explain your agency’s plan to reduce this backlog during Fiscal Year 2023.

*N/A*

#### **E. Reducing the Age of Requests, Appeals, and Consultations**

##### **Ten Oldest Requests**

20. In Fiscal Year 2022, did your agency close the ten oldest pending perfected requests that were reported in section VII.E. of your Fiscal Year 2021 Annual FOIA Report?

*No.*

21. 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 2021 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

*None.*

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

*NSF has focused on balancing the closure of old requests, most of which are complex, with the closure of new requests. NSF only has two full time staff members who process FOIA requests and receives hundreds of new requests each year, so achieving this balance is challenging.*

### **Ten Oldest Appeals**

23. In Fiscal Year 2022, did your agency close the ten oldest appeals that were reported pending in section VI.C.5 of your Fiscal Year 2021 Annual FOIA Report?

*NSF did not have any pending appeals.*

24. 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 2021 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicated that.

*NSF did not have any pending appeals.*

25. 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**

26. In Fiscal Year 2022, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2021 Annual FOIA Report?

*No.*

27. 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 2021 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicated that.

*NSF had one pending consultation at the end of Fiscal Year 2021, and that consultation remains open and pending.*

### **Additional Information Regarding Ten Oldest**

28. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2023.

*As described above in this report, NSF has taken steps, such as hiring an additional Government Information Specialist and procuring a FOIA tool, which it hopes will help lead to a reduction in the FOIA request backlog, including the closure of its oldest requests and consultations, in the future.*

## **F. Additional Information about FOIA Processing**

29. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency’s overall FOIA request processing and backlog. If possible, please indicate the number and nature of requests subject to litigation, common causes leading to litigation, and any other information to illustrate the impact of litigation on your overall FOIA administration.

*One FOIA request submitted to the NSF OIG was the subject of FOIA litigation during the reporting period. This litigation is ongoing. This particular case didn’t have a huge impact on the NSF FOIA team but did require a significant amount of work by the individual who processes FOIA requests for the NSF OIG and one of the NSF FOIA attorneys.*

30. How many requests during Fiscal Year 2022 involved unusual circumstances as defined by the FOIA?

*None.*