

**NATIONAL SCIENCE FOUNDATION
CHIEF FOIA OFFICER REPORT
March 2013 to March 2014**

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

FOIA Training:

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

The NSF FOIA and Privacy Officer conduct bi-weekly FOIA/PA training for all new employees and for subgroups of employees as needed.

2. If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.

There are approximately 20 sessions per calendar year for new employees (over 200 participants) and topics include an overview of FOIA and how it may intersect with the Privacy Act, the type of NSF information that may or may not be released to the general public, and whom to contact in case there are any questions or special circumstances. The employees are provided with a brochure on Privacy and Personally Identifiable Information with contact information and NSF's internal policies on FOIA and Privacy Act.

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

Yes, the part-time FOIA FTE attended the American Society of Access Professionals (ASAP) National Training Conference in April of 2013. The part-time FOIA FTE and the staff assistant for FOIA attended a DoJ Director's Lecture in July 2013.

4. Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period.

Sixty-six percent.

5. OIP has issued guidance that [every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year](#). Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year.

The part-time FOIA FTE is planning to attend the May training session provided by the DoJ – OIP (“The Freedom of Information Act for Attorneys and Access Professionals”). The FOIA staff assistant is planning on attending the annual ASAP conference in May. The FOIA Officer is planning on attending the FOIA Administrative Forum in July. Due to budget cuts, NSF FOIA staff also keeps abreast of the ASAP Food For Thought Seminars and the ASAP webinars and training offered by OGIS to supplement our core training. NSF is committed to ensuring that their FOIA staff receives annual training.

Outreach:

6. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement.

The majority of the FOIA requests NSF receives are for funded grant proposals. Our FOIA staff has frequent dialogue with the requester community on how to use the NSF award search database to aid them in their search for responsive records.

Discretionary Disclosures:

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.

7. Does your agency have a formal process in place to review records for discretionary release? If so, please briefly describe this process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases.

As a small agency, NSF has only one full time FOIA employee and that is the FOIA Officer. The FOIA Officer reviews responsive documents and discretionary disclosure is part of this review.

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

Yes.

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

Exemption 5.

10. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.

Typically, deliberative material whose disclosure would be unlikely to discourage future candor in recommendations. Examples may include suggestions for minor, non-substantive changes to a draft document, or drafts that are nearly identical to final documents and would not reveal substantive deliberations, or deliberative materials whose content has been effectively disclosed.

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

Not Applicable.

Other Initiatives:

12. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014.

No. NSF was without a FOIA Officer for over 4 months. However, for 2014, our new FOIA Officer will ensure that the quarterly report information is posted.

13. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please provide links in our description.

The FOIA Officer reviews responsive records prior to disclosure, and discretionary disclosure is an integral part of the review, and of the General Counsel's determination on appeals. Various factors go into this decision-making. These include the age of the document, the sensitivity of the issues being discussed in the documents, and the potential for harm to the agency deliberative process.

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.

Describe here the steps your agency has taken to ensure that your management of your FOIA program 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.

Personnel:

During Sunshine Week 2012, OPM announced the creation of a new job series entitled the Government Information Series, to address the work performed by FOIA and Privacy Act professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

1. Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series?

Yes.

2. If not, what proportion of personnel has been converted to the new job series?

Not Applicable.

3. If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted?

Not Applicable.

Processing Procedures:

4. For Fiscal Year 2013 did your agency maintain an average of ten or fewer calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Yes.

5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.

NSF reviews the documents before consultation and we mark our proposed redactions as well as what we feel may be sensitive for the other agency. This helps alert the other agency to identify content that may be sensitive and we found this helps to expedite the review. For example, NSF recently consulted with the U.S. Marshal's Service and sent them the pre-marked documents and a response was received within a few hours.

Requester Services:

6. Do you use e-mail or other electronic means to communicate with requesters when feasible?

Yes.

7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?

Yes. Information is included with each final determination.

8. Describe 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.

NSF administrative processes are reviewed and further systematized to create greater efficiency in handling routine steps. The NSF FOIA database is continually reviewed for efficiency and updated with any additional requirements. NSF's core business processes for research proposal electronic receipt and processing allow for electronic access to most all awarded proposal records. This provides the FOIA Officer with direct access to requested records. Most redacting is done electronically.

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 2013 to March 2014). 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.

Posting Material:

1. Do your FOIA professionals have a system in place to identify records for proactive disclosures?

The NSF has outlined ways in which to increase transparency in its Open Government Plan. NSF has been in transition with the departure of the former FOIA Officer and is re-evaluating procedures for more proactive disclosure.

2. If so, describe the system that is in place.

Currently NSF reviews records for proactive disclosure on a case-by-case basis, but we are trying to anticipate the information in which the public would have an interest and post it accordingly.

3. Provide examples of material that your agency has posted this past reporting period, 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/>]. Research is also highlighted on the agency web site at [nsf.gov](http://www.nsf.gov).

Making Posted Material More Useful:

4. 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, such as soliciting feedback on the content and presentation of posted material, improving search capabilities on the site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.?

Yes, NSF employs a variety of social media tools to share news about NSF-funded research, especially exciting new findings; funding opportunities offered by the Foundation; job openings at NSF and more. NSF also can be followed on the social media sites listed: <http://www.nsf.gov/social>. NSF has a "Feedback" link for website users to provide them an opportunity to evaluate the NSF website.

5. If so, provide examples of such improvements.

NSF has updated its award search database to provide more efficient data queries for the public. In addition, NSF instituted the website [Research.gov](http://www.research.gov) which provides easy access to research-related information and grants management services in one location. This site also provides links to Science, Engineering, and Education Innovation, Research Spending and Results, Policy Library, and Research Headlines. NSF's webpage provides the options of reading the webpage in the "full version," "text version," or "mobile version."

6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized?

Yes. NSF has the following social media accounts: Facebook, Twitter, and YouTube.

7. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.

Making significant amounts of additional material proactively available will require additional resources that are currently not available. With such a limited staff, our priority is decreasing the backlog and processing new requests.

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

In addition to social media efforts, NSF's Open Government Plan seeks out additional records that may be added to the NSF public web site. See <http://www.nsf.gov/open/>.

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. Over the past several years agencies have reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2014, as we have done over the past years, the questions have been further refined and now also address different, more innovative aspects of technology use.

Online tracking of FOIA requests:

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

Not at this time.

2. If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?

Not Applicable.

3. Describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.

Not Applicable.

4. In particular, does your agency tracking system provide the requester with an estimated date of completion for his/her request?

All requesters are provided an estimated response time in the agency email of acknowledgment.

5. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability? If not, please explain why.

This capability has been requested and is under review for funding, security and privacy concerns.

Use of technology to facilitate processing of requests:

6. 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?

Yes.

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

NSF has installed the Accellion software to securely provide FOIA responses and document sharing for FOIA referrals and consultations.

8. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program?

NSF is researching e-Discovery software to aid in more comprehensive and targeted searches.

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. *For the figures required in this Section, please use those contained in the specified sections of your agency's 2013 Annual FOIA Report and, when applicable, your agency's 2012 Annual FOIA Report.*

Simple Track Requests:

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.

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

Yes, as of October 1, 2013.

- b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?

The multi-track system was implemented with the beginning of Fiscal Year 2014, so it will not be until the Fiscal Year 2015 report that we will be able to report on this.

- 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?

Thirty-three days.

Backlogs and "Ten Oldest" Requests, Appeals and Consultations:

2. 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. 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 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.

Backlogs

- a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012?

No – 36 for Fiscal Year 2012; 125 for Fiscal Year 2013

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?

NSF has no backlog of administrative appeals. (NSF discovered that the administrative appeals we thought were pending had actually been closed in FY13, but the FOIA log had not been updated to reflect the closure.)

Ten Oldest Requests

- c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?

No.

- d. 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 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed two of them, you should note that you closed two out of seven "oldest" requests.

None.

Ten Oldest Appeals

- e. In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?

NSF had no backlog of appeals.

- f. If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C.(5) of your Fiscal Year 2012 Annual FOIA Report.

Ten Oldest Consultations

- g. In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012?

NSF has no backlog of consultations.

- h. If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report.

NSF has no outstanding consultations.

Reasons for Any Backlogs:

3. If you answered “no” to any of the questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:

Request and/or Appeal Backlog

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals?

Yes – an increase in the volume requested.

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

Yes. NSF has a single FOIA Officer who left to take another job. NSF was without a FOIA Officer for over four months during Fiscal Year 2013.

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

Yes

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

Most requests are for awarded grant proposals. Because these contain potentially confidential, proprietary information, each award requires a “submitter” notice. See E.O. 12,600 and NSF FOIA regulation, 45 CFR §612.8. The agency continues to see an increase in the number of proposals requested in a single FOIA request. For example, the work required to process a request for ten proposals is the same as if the agency received ten requests for a single proposal. One request received in Fiscal Year 2013 was for 72 proposals. It is virtually impossible to process such requests within 20 working days.

“Ten oldest” Not Closed

- e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012.

Due to the amount of the documentation requested and the absence of a FOIA Officer for over four months during Fiscal Year 2013, the agency had to focus its efforts on processing new requests coming in.

- f. If your agency was unable to close any of its ten oldest requests or appeals 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.

Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:

Given the importance of these milestones, it is critical that Chief FOIA Officers assess the causes for not achieving success and create plans to address them.

4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2014.

One staff member will be assigned to address the ten oldest requests, while the others will address backlog and current requests. Once the ten oldest requests are closed, that staff member will assist with the backlog and current requests.

5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency’s plan for achieving backlog reduction in the year ahead.

Not Applicable.

Interim Responses:

OIP has issued [guidance](#) encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information.

6. Does your agency have a system in place to provide interim responses to requesters when appropriate?

Yes

7. If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

Twenty percent.

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 2013?

No.

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

Not Applicable.

Spotlight on Success

Out of all the activities undertaken by your agency since March 2013 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 a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

The FOIA report figures alone do not provide the full picture of the FOIA processing workload at the NSF. Most FOIA requests to NSF are for funded grant proposals, and each request typically requests multiple proposals. Because these proposals may contain confidential, proprietary business information that may be protected by exemption 4, NSF is required by E.O. 12,600 and NSF’s regulations at 45 CFR 612.8 to do a submitter notice to each submitter of every proposal requested. These notices provide an opportunity to object to disclosure and say why. Most notices generate a back and forth conversation with submitters. NSF then makes a determination whether information is disclosable or not. A request for ten proposals is the same amount of processing effort as ten requests for one proposal.

To provide a snapshot of this work, we received a request during the month of April 2013 for copies of 72 proposals and NSF created and processed 72 submitter notifications. Our repeated efforts to narrow the scope of proposals requested failed. For the entire reporting period NSF generated 742 submitter notification letters and worked with many submitters who often do not understand the process. While this number is down from last year’s report, it is especially significant considering that NSF was without a FOIA Officer for four months, and more and more often requesters asked for more than four proposals in one request.

This highlights the administrative efforts to provide excellent, responsive service to the FOIA requester community with very limited staff.