NATIONAL SCIENCE FOUNDATION

CHIEF FOIA OFFICER REPORT

The National Science Foundation ("NSF")

March 2014 to March 2015

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 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 attended the FOIA training that is part of NSF new employee orientation in April, 2014. The part-time FOIA FTE, FOIA staff assistant and the FOIA Officer attended the American Society of Access Professionals ("ASAP") National Training Conference in May, 2014. The part-time FOIA FTE attended FOIA training at the Department of Justice in July, 2014. The FOIA staff assistant attended another ASAP FOIA/Privacy Act Training Workshop in September, 2014. The Chief FOIA Officer attended a Chief FOIA Officers Meeting in September, 2014. In addition, the Chief FOIA Officer and the NSF FOIA Officer attended a FOIA demonstration at the General Services Administration in December, 2014.

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. In the 2014 Chief FOIA Officer Report Guidelines, OIP asked agencies to provide a plan for ensuring that core, substantive FOIA training is offered to all agency FOIA professionals at least once each year. Please provide the status of your agency's implementation of this plan.

In its 2013 Chief FOIA Officer Report NSF stated that it was committed to making sure that each of its FOIA professionals receives annual training. NSF followed through with this commitment and over the past year each of NSF's FOIA professionals attended at least two FOIA events. This raised the percentage of NSF FOIA professionals and staff attending FOIA training from sixty-six percent in 2013 to one hundred percent in 2014.

One of the challenges NSF has encountered is finding a greater variety of FOIA training opportunities. NSF would like its FOIA professionals to get broader FOIA experience and not have them attend the same training sessions year after year.

Discretionary Disclosures:

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, or some 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. 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 already been effectively disclosed.

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.

   On June 2, 2014, NSF published an update of its Open Government Plan. The key principle that will be applied in executing the elements of the updated NSF Open Government Plan is: to maximize information that will be made available within the constraints of confidentiality and privacy concerns. Unless shown otherwise, the default position will be to make NSF data and information available in an open machine‑readable format. NSF is committed to publishing its data and information in this manner and seeks public input and review on a regular basis.

   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 an efficient. You should also include any additional information that describes your agency's efforts.

Processing Procedures:

1. For Fiscal Year 2014, 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. The NSF OIG adjudicated one request for expedited processing, that case was adjudicated within ten 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.

   Not applicable.

Requester Services:

3. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services ("OGIS") at the National Archives and Records Administration ("NARA")?

Yes. Information is included with each final determination.

4. When assessing fees, does your agency provide a breakdown of how FOIA fees were calculated and assessed to the FOIA requester?

   Yes. FOIA requesters who are charged fees are notified as to which fee category they are being charged under, and are provided information about the amount of fees attributable to search, review, and/or duplication costs. The explanation includes an hourly breakdown of fees.

5. If estimated fees are particularly high, does your agency provide an explanation for the estimate to the requester?

   Yes. NSF does not typically receive requests that require a high fee assessment, but in the rare circumstance where estimated fees are particularly high NSF provides an explanation for the estimate.

Other Initiatives:

6. 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.

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Section III: Steps Taken to Increase Proactive Disclosures

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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.

Posting Material:

1. 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.

   NSF reviews records for proactive disclosure on a case-by-case basis. NSF is working to better anticipate what information the public has an interest in and then get it posted to the NSF website proactively.

   NSF has also outlined ways in which to increase transparency in its Open Government Plan, described above. 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/).

2. Does your process or system involve any collaboration with agency staff outside the FOIA office?

   Yes. The FOIA office works with NSF staff across the agency, including those involved with the NSF Open Government Plan and IT personnel, to identify and publicly post information.

3. Describe your agency's process or system for identifying "frequently requested" records that should be posted online.

   The NSF FOIA Officer processes all requests for the agency and accordingly, is able to identify records that are "frequently requested" and should be posted online. 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.

4. 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/]. 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, Federal IT Dashboard, and Recovery.gov.

Other Initiatives:

5. 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.

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Section IV: Steps Taken to Greater Utilize Technology

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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.

Online tracking of FOIA requests and Appeals:

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.

   NSF is also in the process of updating the FOIA and Privacy Act pages on the NSF website.

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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.

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

    Yes.

4. If so, please briefly explain what those challenges are.

    NSF has a limited FOIA staff so identifying and proactively disclosing material while also processing a FOIA requests and appeals in a timely manner can be difficult.

Other Initiatives:

5. Did your agency successfully post all four quarterly reports for Fiscal Year 2014?

    Yes.

6. 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 2015.

    Not applicable.

7. Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible?

    Yes.

8. 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 2014, was the average number of days to process simple requests twenty working days or fewer?

   No.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2014 that were placed in your simple track.

   45%.

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 2013 and Fiscal Year 2014 when completing this section of your Chief FOIA Officer Report.

5. If your agency had a backlog of requests at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013? If not, explain why and describe the causes that contributed to your agency not being able to reduce the backlog.

   No. The primary reason the backlog increased this year is because NSF received a greater number of complex FOIA requests that sought multiple sets of documents found in different component parts of the agency, and that required contacting multiple people

through the submitter notice process. These types of requests took longer to process, especially taking into consideration NSF's small FOIA staff.

6. 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 2014. If your agency did not receive any requests in Fiscal Year 2014 and/or has no request backlog, please answer with "N/A."

   44%.

Backlogged Appeals:

7. If your agency had a backlog of appeals at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013? If not, explain why and describe the causes that contributed to your agency not being able to reduce 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; or an increase in the complexity of the appeals received.

   NSF did not have any backlogged appeals for Fiscal Year 2013. NSF had one backlogged appeal for Fiscal Year 2014. This appeal was complex and at the end of Fiscal Year 2014, NSF was engaged in a rolling production of documents to the requestor. NSF has subsequently closed this appeal.

8. 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 2014.

   11%.

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 2013 and Fiscal Year 2014 when completing this section of your Chief FOIA Officer Report.

TEN OLDEST REQUESTS

9. In Fiscal Year 2014, did your agency close the ten oldest requests that were reported pending your Fiscal Year 2013 Annual FOIA Report?

   Yes.

10. 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 2013 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

    Not applicable.

11. 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 2014 were closed due to withdrawal by the requester.

TEN OLDEST APPEALS

12. In Fiscal Year 2014, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

    Not Applicable. NSF did not have any appeals pending in its Fiscal Year 2013 Annual FOIA Report.

13. 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. NSF did not have any appeals pending in its Fiscal Year 2013 Annual FOIA Report.

TEN OLDEST CONSULTATIONS

14. In Fiscal Year 2014, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

    Not Applicable. NSF did not have any consultations pending in its Fiscal Year 2013 Annual FOIA Report.

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

    Not Applicable. NSF did not have any consultations pending in its Fiscal Year 2013 Annual FOIA Report.

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

16. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2013.

    The ten oldest requests were complex and involved multiple sets of documents from difference agency components. In addition, while these requests were pending, there was a transition in NSF FOIA personnel.

    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.

17. 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

Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1),(2),(3), during Fiscal Year 2014?

    No.