

THE NATIONAL SCIENCE FOUNDATION

2020 CHIEF FOIA OFFICER REPORT

Chief FOIA Officer: Lawrence Rudolph, 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?

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.

Lawrence Rudolph, 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 NSF Assistant General Counsel with FOIA responsibilities, the FOIA Officer, and the FOIA Public Liaison attended a DOJ Advanced FOIA Seminar on May 14, 2019.

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.

The FOIA Public Liaison makes a presentation about FOIA at bi-weekly New Employee Orientation Training sessions. The NSF Assistant General Counsel with FOIA responsibilities, FOIA Officer, and FOIA Public Liaison provide guidance and advice regarding FOIA obligations on an ad-hoc basis at the request of Divisions and individuals within NSF.

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.

The NSF Assistant General Counsel with FOIA responsibilities, FOIA Officer, and FOIA Public Liaison meet with NSF staff on an as needed basis and explain applicable FOIA obligations. 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 2019, what was the average number of days your agency reported for adjudicating requests for expedited processing?

9 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.

N/A

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 2019 (please provide a total number or an estimate of the number).

Requesters did not seek the assistance of the NSF FOIA Public Liaison during Fiscal Year 2019.

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 that the information will necessarily be withheld under an exemption, the identification does make the submitter notice process more efficient if a proposal is subsequently requested pursuant to FOIA.

Section III: Steps Taken to Increase Proactive Disclosures

1. Provide examples of 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). Please include links to these materials as well.

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/>. 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 (<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>.

NSF did not have any records that were requested and released three or more times in FY 2019.

2. 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.

3. 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 98 data sets available on [data.gov](https://www.nsf.gov). NSF also currently has 3,255 records available in the NSF document library found here: <https://www.nsf.gov/publications/>. These documents can be searched by document type, organization type, publication date, and document title. An additional 5,050 records are available in the archived document library.

NSF also provides an annual report to the National Science Board that is publicly posted and includes data on proposals and awards and other pertinent information that is of great interest to the scientific community (<https://www.nsf.gov/nsb/publications/pubmeritreview.jsp>).

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.

4. 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 (<http://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 its FOIA administration that you have not previously reported? If so, please describe the type of technology.

The NSF FOIA team routinely works with the NSF Division of Information Services (DIS) to conduct electronic searches for records and maintain its FOIA log.

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 2019?

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 2020.

The NSF FOIA team was focused on closing FOIA backlogged FOIA requests and as a result didn't get the second two quarterly reports for Fiscal Year 2019 posted. The reports will be posted shortly.

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 2018 Annual FOIA Report and, if available, for your agency's Fiscal Year 2019 Annual FOIA Report.

Yes.

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 2019?

No. The average number of days to process simple track requests was 32.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2019 that were placed in your simple track.

25%

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 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?

No.

6. If not, did your agency process more requests during Fiscal Year 2019 than it did during Fiscal Year 2018?

No.

7. If your agency's request backlog increased during Fiscal Year 2019, 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.
- Any other reasons – please briefly describe or provide examples when possible.

Last year NSF was able to have three law student interns assist the NSF FOIA team during the summer. This year, NSF was not able to obtain that assistance. With a small FOIA staff of two, tackling backlogged FOIA requests, which are often complex and voluminous, while also processing new simple track requests is challenging.

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 2019.

92%

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?

NSF did not have a backlog of appeals during Fiscal Year 2019.

10. If not, did your agency process more appeals during Fiscal Year 2019 than it did during Fiscal Year 2018?

N/A

11. If your agency's appeal backlog increased during Fiscal Year 2019, 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 2019. If your agency did not receive any appeals in Fiscal Year 2019 and/or has no appeal backlog, please answer with "N/A."

N/A

C. Backlog Reduction Plans

13. In the 2019 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2018 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 2019?

NSF does not have a backlog of over 1000 requests and did not implement a specific backlog reduction plan.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2019, what is your agency's plan to reduce this backlog during Fiscal Year 2020.

N/A

D. Status of Oldest Requests, Appeals, and Consultations

TEN OLDEST REQUESTS

15. In Fiscal Year 2019, did your agency close the ten oldest requests that were reported pending in your Fiscal 2018 Annual FOIA Report?

No.

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 2018 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

One.

17. 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, almost all of which are complex, with the closure of new simple track requests. NSF only has two FOIA staff members and receives hundreds of new requests each year so achieving this balance is challenging.

TEN OLDEST APPEALS

18. In Fiscal Year 2019, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

NSF did not have any pending appeals in the Fiscal Year 2018 Annual FOIA Report.

19. 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 2018 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A

20. 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

21. In Fiscal Year 2019, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

NSF did not have any pending consultations in its Fiscal Year 2018 Annual FOIA Report.

22. 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 2018 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.

23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2019.

Balancing the workload of responding to new FOIA requests and working on the ten oldest requests, which are complex and involve reviewing voluminous records, is a challenge for NSF's small FOIA staff.

24. 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 2019.

NSF plans to prioritize the ten oldest pending FOIA requests and ensure that they get processed in the coming fiscal year.

F. Success Stories

Out of all the activities undertaken by your agency since March 2019 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 received a couple of requests for patent related information in FY 2019. This was a new type of request that NSF had not seen before. Through multiple conversations with the requestor and NSF patent staff, the FOIA Office was able to get the requestors useful information while appropriately protecting sensitive confidential commercial information. One of the requestors expressed his appreciation of NSF's handling of the matter given the novel and complex nature of the request.