

**U.S. Nuclear Regulatory Commission
Chief FOIA Officer Report
March 1, 2015 to March 1, 2016**

Darren B. Ash

Chief Information Officer, Office of the Chief Information Officer

Section I: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's 2009 FOIA Guidelines is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates 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?**

During the reporting period, agency Government information specialists attended Freedom of Information Act (FOIA) training sessions offered by the U.S. Department of Justice on a wide variety of FOIA topics.

The U.S. Nuclear Regulatory Commission (NRC) FOIA staff planned and conducted a FOIA town hall meeting in May 2015, which was open to all agency employees and covered a variety of topics of interest to staff.

Multiple members of the NRC FOIA staff attended the Office of Government Information Services (OGIS) dispute resolution training in July 2015, in Washington, DC.

A senior FOIA specialist attended the American Society of Access Professionals 8th Annual Training Conference, held in Arlington, VA, July 27–29, 2015.

The agency's FOIA officer provided FOIA training to agency leadership and program office personnel. Topics covered included an overview of the FOIA, exemptions, and the role and responsibilities of program offices and employees.

- 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.**

100 percent

- 3. 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

Outreach:

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

In March 2016, the NRC FOIA staff in, collaboration with OGIS, will hold an open meeting with members of the public, members of the media, and special interest groups. The meeting will be an opportunity for the FOIA staff to inform the FOIA requester community on steps the agency has undertaken to improve FOIA administration in four key areas and to solicit feedback on how the agency could further improve its FOIA process.

Discretionary Releases:

4. Does your agency have a distinct process or system in place to review records for discretionary release?

Yes.

The NRC has codified in its FOIA regulations a distinct process for reviewing documents for discretionary release (Title 10 of the *Code of Federal Regulations* 9.25(f). The office director of each responsible office is required to make initial determinations on records responsive to a FOIA request and may authorize the discretionary release of records which, although exempt from release, would not be contrary to the public interest or affect the rights of any person.

A foreseeable harm statement in writing is required if a program office recommends the withholding of information under FOIA exemptions (b)(2) or (b)(5). The harm statement must explain the harm that would result from the disclosure of the requested information.

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

Yes.

6. What exemption(s) would have covered the material released as a matter of discretion?

The NRC released material that could have been withheld under exemptions (b)(2) or (b)(5).

7. **Provide a narrative description, as well as some specific examples, of the types of information that your agency released as a matter of discretion during the reporting year.**

The types of information that the NRC released as a matter of discretion included pre-decisional documents, drafts, and internal personnel-related information. Some examples of the discretionary releases made by the agency this past year include:

- the NRC Facility Security Program organization chart and program purpose
- Occupant Emergency Program organization chart and program purpose
- travel charge card management plan
- e-mails exchanges of points of view among staff regarding Dr. Michael Peck's dissenting professional opinion in regard to Diablo Canyon Units 1 and 2
- lessons learned review of the Force-on-Force Inspection Program

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

N/A

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.**

The Commission has approved the staff's recommendation to proactively review and release, consistent with the NRC's Sensitive Unclassified Non-Safeguard Information (SUNSI) Policy, final safety analysis reports (FSARs) and updated FSARs submitted to the agency by licensees of nuclear power plants.

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

The Attorney General's 2009 FOIA Guidelines emphasized that "[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 the management of your FOIA program is effective and efficient. You should also include any additional information that that describes your agency's efforts in this area.

Processing Procedures:

1. **For Fiscal Year 2015, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. Of your agency's Fiscal Year 2015 Annual FOIA Report.**

One day.

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. **On July 2, 2015, OIP issued new guidance to agencies on the proper procedures to be used in the event an agency has a reason to inquire whether a requester is still interested in the processing of his or her request. Please confirm here that to the extent your agency may have had occasion to send a "still interested" inquiry, it has done so in accordance with the new guidelines for doing so, including affording requesters thirty working days to respond.**

The agency sent one "still interested" letter before the new guidance was issued on July 2, 2015. The requester was given less than 30 days to respond.

Requester Services:

4. **Agency FOIA Requester Service Centers and FOIA Public Liaisons serve as the face and voice of an agency. In this capacity they provide a very important service for requesters, informing them about how the FOIA process works and providing specific details on the handling of their individual requests. The FOIA also calls on agency FOIA Requester Service Centers and FOIA Public Liaisons to assist requesters in resolving disputes. Please explain here any steps your agency has taken to strengthen these services to better inform requesters about their requests and to prevent or resolve FOIA disputes.**

- **If your agency has not taken any steps recently to strengthen these services, either because there has been no need to due to low demand or because these services are already robust, please briefly explain that that here.**

The name, phone number, and e-mail address of the FOIA public liaison is publicized on the NRC FOIA page. The agency has an online electronic submission form for the public to submit concerns, comments, and questions:

<http://www.nrc.gov/reading-rm/foia/contact-foia.html>

Other Initiatives:

5. **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 NRC FOIA staff has planned and implemented several new strategies for streamlining the FOIA process by reviewing current practices. Specifically, those newly implemented practices and initiatives are:

- The NRC FOIA office tracks program office response times against agency goals and provides monthly metrics to the heads of each program office. By the end of fiscal year (FY) 2015, the overall average for program offices responding within the metric for search and review of documents had risen to 89 percent, an increase of 6 percent from FY 2014.
- The FOIA officer each week requests status updates from FOIA specialists on their assigned cases, including backlogged cases.
- NRC FOIA staff worked with the Office of the Chief Human Capital Officer to make the U.S. Department of Justice E-FOIA training modules available to NRC employees in iLearn, the agency's online training site.
- The FOIA officer instituted regular meetings with the FOIA coordinators, who serve as liaisons between the program offices and the FOIA office.
- The NRC updated its FOIA staff standard operating procedure guide to reflect significant changes in the way the team handles FOIA requests and to ensure greater consistency in handling FOIA requests.
- The agency revised and created over a dozen new correspondence templates in FOIA Xpress (the NRC's FOIA processing system) for use by FOIA staff in communicating with NRC staff, other agencies, commercial submitters, and FOIA requesters.
- The NRC created or revised all of forms used by FOIA and other NRC staff throughout the processing of FOIA requests, including making them PDF-fillable.
- It revised the online FOIA request form for the NRC's Web site.
- In addition to the paper FOIA User Survey Form, the agency introduced an electronic version of the form.

Section III: Steps Taken to Increase Proactive Disclosures

Both the President's and Attorney General's FOIA memoranda 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. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

Posting Material:

- 1. Describe your agency's process or system for identifying "frequently requested" records required to be posted online under Subsection (a)(2) of the FOIA. For example, does your agency monitor its FOIA logs or is there some other system in place to identify these records for posting.**

The agency's FOIA processing system links similar or duplicate requests and identifies frequently requested records.

- 2. Does your agency have a distinct process or system in place to identify other records for proactive disclosure? If so, please describe your agency's process or system.**

The NRC has a longstanding policy of conducting its regulatory responsibilities in an open and transparent manner and proactively makes records publicly available without waiting for a FOIA request. NRC Management Directive 3.4, "Release of Information to the Public," provides policy guidance on proactive disclosures of agency information of interest to the public when no request for information has been made under the FOIA.

- 3. When making proactive disclosures of records, are your agency's FOIA professionals involved in coding the records for Section 508 compliance or otherwise preparing them for posting? If so, provide an estimate of how much time is involved for each of your FOIA professionals and your agency overall.**

No.

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

Yes.

- 5. If so, please briefly explain those challenges.**

Records that pre-date digitization and are in paper or microfiche format require digitization and individual review before posting to the NRC's public Agencywide Documents Access and Management System online library.

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

performance and accountability reports (NUREG-1542):
<http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1542/>

NRC regulatory guides: <http://www.nrc.gov/reading-rm/doc-collections/reg-guides/>

Office of the Inspector General reports:
<http://www.nrc.gov/reading-rm/doc-collections/insp-gen/>

Commission documents:
<http://www.nrc.gov/reading-rm/doc-collections/commission/recent/2015/>

quarterly generic issues:
<http://www.nrc.gov/reading-rm/doc-collections/generic-issues/quarterly/index.html>

Congressional testimony:
<http://www.nrc.gov/reading-rm/doc-collections/congress-docs/congress-testimony/>

- 7. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe those efforts.**

No.

Other Initiatives:

- 8. If there are any other steps your agency has taken to increase proactive disclosures, please describe them here.**

In meetings and discussions with representatives of program offices, the FOIA staff strongly recommends the proactive release of program office records of interest to the public.

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.

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 that describes your agency's efforts in this area.

Making Material Posted Online More Usable:

- 1. Beyond posting new material, is your agency taking steps to make the posted information more useable to the public, especially to the community of individuals who regularly access your agency's website?**

Yes.

- 2. If yes, please provide examples of such improvements.**

The agency has a single, unified public site, available at <http://www.nrc.gov>, for public users to perform full-text searches of all NRC public records, Web pages, and files. A search can

be conducted by a specific topic. The site also has an advanced search feature for all NRC public records with full access to metadata attributes.

After a review of the NRC FOIA Web site, a new search field was added to shorten the time spent by the public searching for records that have been provided to requesters in FOIA responses. The addition of the search field box makes the public repository of FOIA responses more user-friendly because it enables the public to more effectively wade through thousands of pages of FOIA responses and find what they may be looking for; which reduces the need for making a FOIA request.

Use of Technology to Facilitate Processing of Requests:

Not required, but agencies may answer the questions for this section from the high-volume guidelines if they have information they would like to include.

Other Initiatives

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2015?

Yes. All quarterly reports were posted and made available to the public in a timely manner.

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 2016.

N/A

5. Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? See OIP Guidance, "The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications." (Nov. 22, 2013) If yes, what are the different types of electronic means that are utilized by your agency to communicate with requesters?

NRC FOIA staff use e-mail routinely to communicate and respond to inquiries from requesters. FOIA requesters who provide e-mail addresses receive notices, fee estimates, acknowledgment letters, and all communications related to their request by e-mail.

6. If your agency does not communicate electronically with requests as a default, are there any limitations or restrictions for the use of such means? If yes, does your agency inform requesters about such limitations? See *id*

N/A

**Section V: Steps Taken to Improve Timeliness in Responding to Requests
and Reducing Backlogs**

The President's FOIA Memorandum and the Attorney General's 2009 FOIA Guidelines have emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report 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 the numbers contained in the specified sections of your agency's 2015 Annual FOIA Report and, when applicable, your agency's 2014 Annual FOIA Report.

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 in Fiscal Year 2015, was the average number of days to process simple requests twenty working days or fewer?

Yes.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2015 that were placed in your simple track.

58 percent

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

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 2014 and Fiscal Year 2015 when completing this section of your Chief FOIA Officer Report.

BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

Yes. The reported backlog for 2015 was 8, as compared to the previous year when it was 21.

6. If not, explain why and describe the causes that contributed to your agency not being able reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

N/A

7. 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 2015.

1.4 percent.

BACKLOGGED APPEALS

8. If your agency had a backlog of appeals at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

The agency had no backlogged appeals at the end of FY 2015.

9. If not, explain why and describe the causes that contributed to your agency not being able reduce backlog. When doing so, please also indicate if any of the following were contributing factors:

N/A

10. 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 2015. If your agency did not receive any appeals in Fiscal Year 2015 and/or has no appeal backlog, please answer with "N/A."

N/A

Backlog Reduction Plans:

Not required, but agencies may answer the questions for this section from the high-volume guidelines if they have information they would like to include.

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 2014 and Fiscal Year 2015 when completing this section of your Chief FOIA Officer Report.

TEN OLDEST REQUESTS

11. In Fiscal Year 2015, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

Yes. The NRC closed all of the 10 oldest requests.

12. 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 2014 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

N/A

13. 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?

N/A

TEN OLDEST APPEALS

14. In Fiscal Year 2015, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

Yes. In FY 2015, the NRC reported that there were no appeals in the backlog. However, in the previous year, there were two appeals in the backlog.

15. 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 2014 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A

TEN OLDEST CONSULTATIONS

16. In Fiscal Year 2015, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

Yes.

17. 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 2014 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

N/A

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

18. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2014.

N/A

19. 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

20. 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 2016.

N/A

Use of the FOIA's Law Enforcement Exclusions

1. Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2015?

N/A

2. If so, please provide the total number of times exclusions were invoked.

N/A