

2018 U.S. Nuclear Regulatory Commission

Chief FOIA Officer Report

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Section 1: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying DOJ's **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.

A. FOIA Training

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

Yes.

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

The U.S. Nuclear Regulatory Commission (NRC) Freedom of Information Act (FOIA) professionals have attended various FOIA training sessions offered by the U.S. Department of Justice (DOJ) on a variety of topics, such as Introduction to the FOIA and The FOIA for Attorneys and Access Professionals.

The NRC FOIA Officer, Privacy Officer and Deputy Chief Information Officer attended the American Society of Access Professionals annual training conference, held in Arlington, VA.

The NRC FOIA staff planned and conducted annual FOIA training, which was open to all agency employees, including agency FOIA coordinators, and covered a variety of topics, such as overview of the FOIA, agency record and retention policies, FOIA process – roles and responsibilities of the staff, coordinators and subject matter experts, addressing non-responsive matter within a responsive record, and foreseeable harm statements.

3. 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% FOIA Staff.

4. 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

B. Outreach

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

Yes, the NRC issues a survey to each FOIA requester when their FOIA has been completed. The NRC has a distribution list to receive information from the NRC FOIA program.

C. Other Initiatives

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA.

The NRC FOIA staff planned and conducted annual FOIA training, which was open to all agency employees and covered a variety of topics, such as overview of the FOIA, agency record and retention policies, FOIA process – roles and responsibilities of the staff, coordinators and subject matter experts, addressing non-responsive matter within a responsive record, and foreseeable harm statements.

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

The NRC also recommends that non-FOIA staff take the DOJ Module “FOIA Training for Federal Employees” as well as participate in the above-mentioned trainings.

7. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

N/A

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

DOJ's **FOIA Guidelines** emphasize 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 describes your agency's efforts in this area.

1. For Fiscal Year 2017, 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 2017 Annual FOIA Report.

2.33 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.

- Note: In September 2017, OIP released a FOIA Self-Assessment Toolkit as a resource for agencies conducting a self-assessment of their FOIA program. The Toolkit is available on OIP's website for all agencies to use.

The NRC is continuously looking for ways to improve our FOIA program. The NRC reached out to the Office of Government Information Services and is anticipating an assessment of the FOIA program in FY 2018.

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 2017 (please provide a total number or an estimate of the number).

Estimated at 3-5 times.

5. Optional Survey Question: If possible, please provide an estimate of the average number of pages that your agency processes for each request. You may provide estimates for each track.

N/A

6. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as improving search processes, eliminating redundancy, etc., please describe them here.

- The NRC switched from the FOIAxpress processing system to FOIAonline and RedactXpress

- The NRC tracks program offices response times against agency goals and provides quarterly metrics to the heads of each program office.

- The FOIA Officer meets regularly with the Office of General Counsel (OGC) and the Office of the Inspector General (OIG).

- The FOIA Officer holds weekly meetings with the FOIA staff.

- The NRC performed a review of their FOIA Fees and submitted a Rule to reflect the changes.

- The NRC has requested program offices utilize the Adobe redaction tool to provide their electronic disclosure recommendations.

Section III: Steps Taken to Increase Proactive Disclosures

The Department of Justice has long 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.

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

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. The NRC has made available to the public at ML072770468, Guidance for Determining the Public Availability of Documents. NRC MD 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. The policy statement found within MD 3.4 reads, "The U.S. Nuclear Regulatory Commission makes as much information as possible available to the public relating to its health and safety mission, in accordance with its legal responsibilities to protect specific types of information. It is the intent of NRC to routinely make information publicly available that is anticipated to be of interest to the public to make it unnecessary for persons to file a request for the information under the Freedom of Information Act (FOIA). This directive requires review of Commission Decision Documents (SECY papers [SECY's], Commission memoranda [COMs], and staff requirements memoranda [SRMs] for mandatory release under the FOIA, 5 U.S.C. 552(a)(1) and (a)(2)."

The records are released in Agencywide Documents Access and Management System (ADAMS) with stringent time constraints to ensure timely release of non-sensitive records to the public in an accessible electronic format. <https://adams.nrc.gov/wba/>

- NRC regulatory guides: <http://www.nrc.gov/reading-rm/doc-collections/req-guides/>
- Office of the Inspector General reports: <https://www.nrc.gov/reading-rm/doc-collections/insp-gen/>
- Commission documents: <https://www.nrc.gov/reading-rm/doc-collections/commission/recent/2017/>
- Quarterly generic issues: <https://www.nrc.gov/reading-rm/doc-collections/generic-issues/quarterly/index.html>
- Congressional testimony: <https://www.nrc.gov/reading-rm/doc-collections/congress-docs/congress-testimony/>
- Nuclear Reactor Information - <https://www.nrc.gov/reactors.html>

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

No.

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

In 2017, the NRC provided two Webinars to instruct (1) the members of the Licensing Support Network (LSN) Advisory Review Panel and (2) the public about how to effectively search the publicly available ADAMS LSN Library.

The NRC also has been developing a "How To Video Series" for ADAMS.

4. If yes, please provide examples of such improvements.

NRC has developed and posted onto YouTube three "How To" videos on using the public library, ADAMS, two of which were posted this past year. The three videos are (1) Introduction, (2) What is ADAMS, and (3) Advanced Search by Docket Number. A link to the video series can be found on the public ADAMS web site at <https://www.nrc.gov/reading-rm/adams.html>. Additionally, when a new video is posted, the agency notifies the public on the NRC's Facebook page and by Twitter.

5. If there are any other steps your agency has taken to improve proactive disclosures, please describe them here. For example, has your agency engaged requesters in determining how and what to post? Has your agency used web analytics to inform your proactive disclosures?

This year, the NRC publicly disclosed the agency's Guidance for Determining the Public Availability of NRC Records to help the public better understand what is publicly available in ADAMS.

Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information more accessible. 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.

1. Has your agency identified any best practices to leverage 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? If yes please describe the best practices, the types of technology used and the impact on your agency's processing.

The NRC has switched from the FOIAxpress processing system to FOIAonline and RedactXpress, which utilizes document sharing platforms for consultations and referrals with other federal agencies that are users of FOIAonline. FOIAonline offers a tracking system for the requester community to provide better updates as to the actual status of their FOIA requests.

The NRC has created a SharePoint site and secure share drive for internal users to confer and post their responsive records. The NRC encourages the use of Adobe for the staff's electronic redacting.

The NRC frequently updates its public site, <https://www.nrc.gov/>, for public users to perform full-text searches of all NRC public records.

2. Did your agency successfully post all four quarterly reports for Fiscal Year 2017?

Yes.

3. 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 2018.

N/A

4. 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 2016 Annual FOIA Report and, if available, for your agency's Fiscal Year 2017 Annual FOIA Report.

<https://www.nrc.gov/reading-rm/foia/annual-reports/>

5. If there are any other steps your agency has taken to improve use of technology in FOIA, please describe them here.

Creation of electronic templates for common correspondence, creation of an electronic file of all responses to a vexatious FOIA requester.

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

The Department of Justice has 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 2017 Annual FOIA Report and, when applicable, your agency's 2016 Annual FOIA Report.

A. 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 2017, 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 2017 that were placed in your simple track.

76%

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

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 2016 and Fiscal Year 2017 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 2017, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2016?

No. The NRC FOIA request backlog increased by 39 requests in FY 2017. This increase is attributed to the confluence of two circumstances. First, the NRC experienced an increase in the total number of requests and appeals received in FY2017. Second, the NRC experienced a decrease in staffing levels between FY 2016 and FY 2017.

6. If not, 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. Note the agency actually received fewer FOIA requests, but an increase in FOIA appeals.
- A loss of staff. – Yes a decrease of 4 Government Information Specialists.
- 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. – No there was not an increase in complexity of requests received.
- Any other reasons – please briefly describe or provide examples when possible.
– 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 2017.

Approximately 9%

BACKLOGGED APPEALS

8. If your agency had a backlog of appeals at the close of Fiscal Year 2017, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2016?

The FOIA appeals backlog increased by 2 appeals.

9. If not, 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. – Yes the FOIA appeals increased by 18 appeals from FY 2016.
- A loss of staff. – Yes a decrease of 4 Government Information Specialists.

- 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. - No
- Any other reasons – please briefly describe or provide examples when possible. -

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 2017. If your agency did not receive any appeals in Fiscal Year 2017 and/or has no appeal backlog, please answer with "N/A."

1%

C. Backlog Reduction Plans

11. In the 2017 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2016 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 2017?

N/A

12. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2017, what is your agency's plan to reduce this backlog during Fiscal Year 2018?

N/A

D. 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 2016 and Fiscal Year 2017 when completing this section of your Chief FOIA Officer Report.

TEN OLDEST REQUESTS

13. In Fiscal Year 2017, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2016 Annual FOIA Report?

Yes, the NRC closed all ten of the oldest requests from FY 2016.

14. 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 2016 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

N/A

15. 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?

0.

TEN OLDEST APPEALS

16. In Fiscal Year 2017, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2016 Annual FOIA Report?

Yes.

17. 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 2016 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A

TEN OLDEST CONSULTATIONS

18. In Fiscal Year 2017, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2016 Annual FOIA Report?

N/A, there were no pending consultations at the start of FY 2017.

19. 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 2016 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

N/A

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

20. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2017.

Requesters continue to ask for any and all records pertaining to a subject. The subject matter of these requests are typically complex, sometimes/often classified, and generally involve a voluminous number of records. These requests often require consultations with other federal agencies, licensees or other outside entities. Also, budget constraints across the NRC have severely limited the NRC's ability to purchase better software that will aid in the search and redaction of the records, or to purchase software that will facilitate de-duplication, as well as not allowed the agency to backfill positions or increase staffing, and provide additional training outside of what is already provided by DOJ.

21. 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

22. 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 2017.

N/A

F. Success Stories

Out of all the activities undertaken by your agency since March 2017 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, OIP will highlight these agency success stories during Sunshine Week. 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.

The NRC has switched from the FOIAxpress processing system to FOIAonline and RedactXpress, which utilizes document sharing platforms for consultations and referrals with other federal agencies that are users of FOIAonline. FOIAonline offers a tracking system for the requester community to provide better updates as to the actual status of their FOIA requests.

Also, this past fiscal year the NRC has had a decline in senior level Government Information Specialists. The NRC was able to continue processing FOIA requests with limited impact on the requester community.