

ASSESSMENT OF THE NRC'S FREEDOM OF INFORMATION ACT PROGRAM

Status of Findings

Finding 1: NRC's FOIA administrative appeals process does not follow U.S. Department of Justice (DOJ) guidance.

Recommendation 1: *NRC should reform its administrative appeals process to conform with DOJ guidance.*

Response: The U.S. Nuclear Regulatory Commission (NRC) appreciates the recommendation to reform its administrative appeals process and is committed to reviewing its process relative to the DOJ guidance.

Target Completion Date: March 2021 to present recommendations to the Chief Freedom of Information Act (FOIA) Officer.

Recommendation 2: *NRC should provide requesters with appeal rights in full release responses.*

Response: The NRC respectfully disagrees with the Office of Government Information Services recommendation. The FOIA statute directs agencies to provide administrative appeal rights in "adverse determinations." DOJ guidance interprets this phrase to mean denials, in part or whole, and where no responsive records are located. Consistent with the statute, DOJ's guidance, and your first recommendation that the NRC's appeal process follow DOJ guidance, the NRC's FOIA regulations afford administrative appeal rights to requesters who want to challenge a denial of information (including no-record responses), the adequacy of searches, a fee waiver denial, and an expedited processing denial.

Target Completion Date: N/A.

Finding 2: NRC's regulations and official guidance for administering the FOIA are out of date and do not consistently or accurately reflect the agency's practices for implementing the statute.

Recommendation 3: *NRC should update its FOIA regulations, FOIA Management Directive and FOIA Desk Guide to ensure they are plainly written and reflect current processes and statutory requirements.*

Response: The NRC is in the process of updating its FOIA Management Directive and Desk Guide. The NRC staff will request authority to undertake a rulemaking from the NRC Commission.

Target Completion Date: March 2021 for updating the Desk Guide. May 2021 for reviewing the NRC's FOIA regulations. September 2021 for completing the FOIA Management Directive.

Finding 3: NRC's FOIA program lacks management and oversight controls.

Recommendation 4: *NRC should establish a process to respond more quickly to simple requests such as those that might be answered with publicly available records and those that may result in "no records" responses.*

Response: The NRC currently employs a practice of responding to simple requests that may be answered quickly, such as those with records already publicly available or that result in "no-records" responses. The agency will formally document these practices in the appropriate management and oversight controls, such as the updated NRC FOIA desk guide.

Target Completion Date: March 2021.

Recommendation 5: *NRC should use data to develop individual performance standards and metrics and goals for each processor (e.g., number of cases closed, and pages reviewed) to reduce the backlog and improve timeliness. The agency should also consider incorporating FOIA performance standards into performance plans for all employees, including subject-matter experts, with FOIA responsibilities.*

Response: The NRC has incorporated language into the performance plans of the agency's Government Information Specialists and their supervisors. DOJ provided the language in a 2015 memorandum, "Ensuring Compliance with Freedom of Information Act and Open Government Directive Requirements in Employee Performance Appraisal Records and Work Plans."

At this time, the NRC has not included similar language in all FOIA employee performance plans.

Target Completion Date: Completed.

Finding 4:

Technology and records management challenges limit the FOIA program's effectiveness.

Recommendation 6:

NRC should assess its FOIA technology and records management needs and establish a plan to develop a more seamless approach to processing records responsive to FOIA.

Response:

The NRC continuously assesses its technology and records management needs, including ways to identify duplicate records for the FOIA team using the agency's currently owned software. The NRC, also, is engaged in the process of identifying a technological product that will offer the agency, as a whole, a means to identify duplicate records, electronically, prior to responding to a FOIA request. The NRC will reassess available FOIA technology during its market research when the agency's agreement for its current technology expires.

Target Completion Date: September 2022.

Finding 5:

Communication with requesters is sometimes unclear about the FOIA process.

Recommendation 7:

NRC should review and update its communications with requesters, including its acknowledgements, responses, FOIA Desk Guide, and FOIA website to ensure they are up-to-date, written in plain language and include all relevant information so that requesters can more easily understand the agency's FOIA process and actions on requests.

Response: The NRC reviewed and updated its templates for communications with requesters, including acknowledgements and responses, in October 2020. The NRC will update its FOIA Desk Guide and public FOIA Web site so that both the agency's FOIA process is more easily understood.

Target Completion Date: March 2021 for updating the desk guide. August 2021 (Web site update).

Recommendation 8: *NRC must comply with FOIA's statutory mandate by providing estimated dates of completion to requesters upon request.*

Response: The NRC has included estimated due dates in its acknowledgement letters since 2016 and will provide estimated due dates to requesters upon request.

Target Completion Date: Completed.

Finding 6: Training for NRC FOIA staff needs improvement.

Recommendation 9: *NRC should assess and meet the training needs of staff with FOIA duties.*

Response: The NRC provides regular training to agency staff on both FOIA and records management. Upon the completion of updates to NRC regulations and other guidance documents, the agency will provide additional training to FOIA staff.

Target Completion Date: September 2021 for FOIA and records management training.

Recommendation 10: *NRC should train staff on records management procedures for FOIA case files and update its FOIA Desk Guide to include such procedures.*

Response: The NRC already provides records management training during annual FOIA training targeted to employees with specialized FOIA responsibilities. This training is also available to all NRC employees. The NRC will also ensure that its records procedures are included in its update to the FOIA desk guide.

Target Completion Date: March 2021.