



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

**Council on Environmental Quality
Chief FOIA Officer Report for 2010**

March 8, 2011

I. Steps Taken to Apply the Presumption of Openness

Since January 21, 2009, the Council on Environmental Quality (CEQ) has made substantial changes to its FOIA practices to comply with the President's FOIA Memorandum and the Attorney General's FOIA Guidelines.

First, CEQ revised its FOIA regulations to incorporate the presumption in favor of disclosure established in the two memoranda, as well as the requirements of the Openness in Government Act of 2007, and the Electronic FOIA Amendments of 1996. This was CEQ's first revision to its FOIA regulations since they were promulgated in 1977. The draft revisions were published for public comment in the *Federal Register* in November 2009. Specifically, the amendments notify the public that, although communications between CEQ, the White House, and other Federal agencies may be confidential and thus may be withheld should they fall within a FOIA exemption, CEQ will implement a presumption of disclosure except in those particular cases where disclosure may impair Executive Branch policymaking processes or CEQ's participation in interagency deliberations. Three comments were received on the draft regulations. The commenters were generally supportive of CEQ's proposed revisions. The draft regulations were further revised to respond to the comments, and were published in final form on August 11, 2010. See CEQ, Revision of Freedom of Information Act Regulations, 74 Fed. Reg. 48,585 (August 11, 2010).

As mentioned in CEQ's Chief FOIA Officer Report for 2009, the revision of CEQ's FOIA regulations also prompted the issuance of written FOIA procedures for CEQ staff. These procedures continue to be refined as they are applied to speed the processing of FOIA requests. The presumption of openness is fully integrated into each step of substantive review by the FOIA Officer, the Deputy General Counsel, and the General Counsel during their respective initial reviews of responsive documents, as well as during any consultations with Federal agencies, initiated pursuant to 5 U.S.C. § 552(a)(6)(B), regarding documents that contain information originating with, furnished by, or of special interest to another agency. As such, it is difficult to quantify the extent to which otherwise exempt information has been made available to requesters by discretionary release. In 2009, CEQ completed 14 requests in which records were released in full, and 12 requests in which records were released in part. In 2010, CEQ completed three



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requests in which records were released in full, and eight requests in which records were released in part.

In the course of implementing the President's Memorandum and the Attorney General's Guidelines, CEQ began in 2009 to review more than 20,000 pages of responsive documents produced in the U.S. v. Citizens for Responsibility and Ethics (CREW) in Washington litigation, No. 07-365 (D.D.C.) (RMU), regarding climate change science. Many of these pages were withheld in full or in part. This review has absorbed a significant amount of CEQ staff time, to compare original documents against redacted versions that were previously released. As this review progresses, CEQ expects to make discretionary release of information that was previously withheld, primarily under Exemption (b)(5).

Finally, new training and guidance materials have been developed to ensure that CEQ staff are properly informed about the new FOIA Guidelines, and to promote a culture of transparency within CEQ. As part of CEQ's regular orientation process, incoming staff is briefed on the presumption of openness in the President's FOIA Memorandum and the Attorney General's Guidelines on transparency. A copy of the President's Memorandum is also provided in CEQ's Employee Handbook for ready reference.

In late 2010, CEQ FOIA staff drafted records management guidance for all CEQ staff, which includes step-by-step instructions for conducting a search for records responsive to a FOIA request. Most CEQ staff have now attended a one-hour training on this guidance, which includes a discussion of the President's Memorandum and the presumption of openness, as well as an overview of the process for conducting a FOIA search. Going forward, this training will be offered on a monthly basis to all CEQ staff.

II. Steps Taken to Ensure that CEQ has an Effective System for Responding to Requests

CEQ took several steps in 2010 to continue to ensure that its system for responding to FOIA requests is effective. Many of these steps involved the use of electronic tracking and processing of requests, and are therefore described in more detail in Section IV, below. CEQ continues to work with the Office of Administration, Executive Office of the President (EOP), to ensure adequate IT support for CEQ's FOIA operation. CEQ has no IT staff in-house and has historically depended on the Office of Administration to provide the necessary technical support and expertise. CEQ's FOIA staff interact on a frequent, informal basis with the Open Government Team at CEQ, in part due to the small size of CEQ's staff. For example, the Open Government team has, in the past, polled the FOIA team for ideas of documents or data sets to proactively post online.



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During 2010, CEQ experienced turnover in its FOIA Coordinator and Chief FOIA Officer. CEQ has assessed the adequacy of its FOIA staffing as part of the process of filling these two positions.

III. Steps Taken To Increase Proactive Disclosures

In January 2010, CEQ launched its new FOIA Requester Service Center at www.whitehouse.gov/administration/eop/ceq/foia, revamping its existing site in line with the President's Memorandum and the Attorney General's Guidelines. The Service Center includes a Proactive Disclosure Reading Room. Material posted on the Service Center website includes Environmental Laws and Regulations, Legislative History of NEPA, Publications, CEQ Chief FOIA Officer Reports, and CEQ's Annual Environmental Quality Reports from 1970-1997, as well as CEQ FOIA responses, which were not previously made available except by FOIA request. CEQ continues to review the material released in each FOIA response to determine whether it is appropriate for inclusion in the Proactive Disclosure Reading Room. CEQ is will be updating its written procedures to include a routine process for identifying records that are appropriate for posting. In 2010, CEQ increased the material available on the Proactive Disclosure Reading Room when it posted the additional pages that are being released in the CEQ v. CREW FOIA litigation as part of the CEQ's ongoing review, described in Section I. See <http://www.slideshare.net/whitehouse/tag/crewfoia>. CEQ does not use social media to disseminate information related to FOIA requests.

IV. Steps taken to Greater Utilize Technology

Since the filing of its 2009 Chief FOIA Officer Report, CEQ has taken several steps to make greater use of modern technology in the receipt, tracking, and processing of FOIA requests, and in the preparation of the Annual FOIA Report.

CEQ has the capacity to receive all of its FOIA requests electronically, via efoia@ceq.eop.gov. The CEQ FOIA Requester Service Center features a Frequently Asked Questions page to educate the public about the Freedom of Information Act and clarify how the FOIA process works at CEQ. Instructions about how to submit a FOIA request to CEQ are posted on the Service Center site. Most FOIA requests received by CEQ are submitted by email.

In 2010, CEQ switched to electronic tracking and processing for all incoming FOIA requests and consultations. CEQ's FOIA docket is now logged on a central electronic spreadsheet, with worksheets tracking outstanding requests, the elapsed time on each



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request, and other relevant metrics. CEQ now also uses a standardized system to file documents related to pending and closed FOIA requests on the CEQ shared drive. As a result of this filing effort, a library of templates for FOIA correspondence has been developed on the CEQ shared drive, to enhance the speed and consistency of CEQ's correspondence with requesters. In addition, a uniform electronic spreadsheet template has been developed to inventory documents responsive to a request, and to track their status in the review process. CEQ does not use special technology to prepare its Annual FOIA Report, other than an electronic spreadsheet and an electronic word processing program. The spreadsheet-based system does, however, facilitate the data gathering needed to prepare the report. Therefore, CEQ is satisfied with the current technology used for the Annual FOIA Report. CEQ was able to successfully post its 2010 Annual FOIA Report in a machine-readable format on the EOP-maintained website where CEQ's FOIA page is hosted.

All documents responsive to a CEQ FOIA request are now also processed electronically. In 2010, a new program was installed on computers to enable CEQ staff to process FOIA requests. Responsive documents are scanned into .pdf documents, and are reviewed and preliminarily redacted using this program. Among other things, the use of this program for preliminary redactions allows CEQ to handle consults with other agencies electronically, thus cutting down on the time and resources needed to duplicate and transfer hard copies of responsive documents to other agencies for consultation.

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

CEQ has a backlog of FOIA requests. The number of backlogged requests has increased by one, from five pending requests at the end of FY 2009, to six pending requests at the end of FY 2010. Of the five requests pending at the end of FY 2009, which constitute CEQ's oldest pending requests, one was closed in FY 2010. Two more FOIA requests were received shortly before the close of the FY 2009 (on August 30th and August 8th, 2010) and were pending at the close of the fiscal year. The remaining four requests share the same topic, and involve the same set of responsive records. In addition, one of the cases, *CREW v. CEQ*, No.0 7-365(D.D.C) (RMU), has been in litigation since February 2007, which has made it impossible to close out the other three. As described in Section I of this Report, there is a review ongoing of responsive documents in CREW for discretionary release under the presumption of openness. The complexity of this review has, in part, contributed to the increase in the backlog. With the resolution of the CREW litigation, we anticipate that the remaining requests from 2009 will be closed.



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CEQ routinely sets goals and monitors the progress of its FOIA caseload, under the direct supervision of CEQ's Chief FOIA Officer. The IT improvements described in Section IV have enabled CEQ to decrease the time involved in responding to FOIA requests. CEQ has a very small staff, and is limited in its ability to increase its FOIA staffing. Efforts have been made to standardize a protocol for document production and processing, so that additional CEQ staff can be quickly trained and enlisted from time to time to help reduce backlogged FOIA requests.

Spotlight on Success

The publication of final revisions to CEQ's FOIA Regulations marks CEQ's greatest success this year in implementing the President's FOIA Memorandum and the Attorney General's FOIA Guidelines. This was CEQ's first revision to its FOIA regulations since they were promulgated in 1977. CEQ revised the FOIA regulations to incorporate the presumption in favor of disclosure established in the two memoranda, as well as the requirements of the Openness in Government Act of 2007, and the Electronic FOIA Amendments of 1996. This revision ensures that the President's pro-transparency policies are part of the formal regulations governing CEQ's FOIA compliance. The revised regulations were published in final form on August 11, 2010. See CEQ, Revision of Freedom of Information Act Regulations, 74 Fed. Reg. 48,585 (August 11, 2010).