

CHIEF FOIA OFFICER REPORT TO THE ATTORNEY GENERAL

COUNCIL ON ENVIRONMENTAL QUALITY

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Section I: Steps Taken to Apply the Presumption of Openness

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.

FOIA Training:

- 1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?**

Consistent with previous years, all new Council on Environmental Quality (“CEQ”) entrants – interns, clerks, detailees, and staff – are required to attend training within 30 days of their start date. This training instructs new entrants on their obligations under the FOIA and the Federal Records Act. The training also covers the January 21, 2009, President’s FOIA Memorandum, the 2009 Attorney General’s FOIA Guidelines, and the presumption of openness. Also, long-term employees must attend an annual refresher training which reiterates CEQ’s FOIA obligations and the presumption of openness.

Personnel who work on FOIA issues have reviewed the President’s FOIA Memorandum and the Attorney General’s FOIA Guidelines. Given CEQ’s relatively small size, CEQ personally provides targeted training and legal counseling to all CEQ staff, detailees, and clerks who help process incoming FOIA requests and consults.

- 2. If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.**

In 2013, CEQ held at least six FOIA training meetings for new interns, detailees and employees. Long-term employees were required to attend to refresh their knowledge and understanding of CEQ’s obligations under FOIA. The topics covered included the presumption of openness and transparency in Government, responding to FOIA requests and the processing of FOIA requests. On average, seven to ten people attended the meetings.

- 3. Did your FOIA professionals attend any FOIA training during the reporting period such as that provided by the Department of Justice?**

Yes, the Chief FOIA Officer and the FOIA Public Liaison attended the FOIA trainings held by OIP.

4. Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period.

An estimate of the percentage of CEQ's FOIA professionals who attended substantive FOIA training during this reporting period is 100%.

5. OIP has issued guidance that every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year. Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year.

CEQ has actively incorporated best practices and guidance discussed at the OIP trainings into its FOIA administration. Also, CEQ provided targeted training and legal counseling to the CEQ staff, detailees, and clerks who help process incoming FOIA requests and consults. To enhance training efforts and overall FOIA administration, CEQ has developed a FOIA manual to comprehensively outline internal FOIA procedures and periodically updates this manual to keep abreast of FOIA administration best practices across the Federal Executive Branch. CEQ conducts FOIA training for all staff on a semi-annual basis and the most recent FOIA training was held in February 2014.

Outreach:

6. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement.

CEQ has engaged in dialogue with the requester community regarding CEQ's administration of FOIA and contacts requesters if more specific information is required to clarify a request.

Discretionary Disclosures:

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

- 7. Does your agency have a formal process in place to review records for discretionary release? If so, please briefly describe this process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases.**

CEQ conducts a line-by-line review of material proposed for redaction and makes discretionary releases in the furtherance of transparency and openness. CEQ also actively works with requesters to right size the scope of certain broad requests to balance CEQ's resources with the information needs of requesters.

- 8. During the reporting period did your agency make any discretionary releases of otherwise exempt information?**

Yes, CEQ did make discretionary releases of otherwise exempt information during the reporting period.

- 9. What exemptions would have covered the information that was released as a matter of discretion?**

The exemption that would have covered parts of the information that was released as a matter of discretion in Fiscal Year 2013 is exemption 5 U.S.C. § 552b(5), the exemption that applies to interagency or intra-agency communications. CEQ rarely relies on exemptions other than 5 U.S.C. § 552b(5) or b(6).

- 10. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.**

Information that CEQ released as a matter of discretion includes communications between agency or interagency officials that were otherwise subject to a privilege claim under 5 U.S.C. § 552b(5).

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

This question is inapplicable because CEQ did make discretionary releases during Fiscal Year 2013.

Other Initiatives:

- 12. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014.**

CEQ posted three of the four quarterly reports for Fiscal Year 2013. Additionally, CEQ has posted the first quarterly report for Fiscal Year 2014. CEQ's plan for ensuring that

such reporting is successfully accomplished for Fiscal Year 2014 is to continue to fully utilize available resources to gather the reporting requirements and produce the reports. The reports are submitted by the Chief FOIA Officer.

13. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please provide links in your description.

When possible, CEQ directs FOIA requesters to the information they seek when such information is not contained within agency records subject to disclosure under FOIA. Also, CEQ periodically makes proactive disclosures and discretionary releases to further transparency and apply the presumption of openness.

Section II: Steps Taken to Ensure that Your Agency

As the Attorney General emphasized in his FOIA Guidelines, "[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.

Describe here the steps your agency has taken to ensure that your management of your FOIA program is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

Personnel:

During Sunshine Week 2012 OPM announced the creation of a new job series entitled the Government Information Series, to address the work performed by FOIA and Privacy Act professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

1. Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series?

CEQ has not converted any of its FOIA professionals to the new Government Information Specialist job series because CEQ is a small agency with limited funding and staff and does not have personnel dedicated solely to FOIA administration.

2. If not, what proportion of personnel has been converted to the new job series?

Due to the reasons stated in the answer to Section III, Question 1, none of CEQ personnel have been converted to the new job series.

3. If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted?

As stated in the answer to Section III, Question 1, CEQ is a small agency with limited funding and staff and does not have personnel dedicated solely to FOIA administration. Therefore, CEQ does not have a plan to convert FOIA professionals' position descriptions to the new job series.

Processing Procedures:

4. For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

During Fiscal Year 2013, CEQ did not maintain an average of ten or less calendar days to adjudicate requests for expedited processing. To ensure that expedited requests are adjudicated within ten calendar days, CEQ has begun promptly notifying requesters of the decision to grant or deny expedited processing.

5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.

CEQ frequently communicates with other federal agencies about the need for consultations and about coordinating interagency review of documents. Additionally, CEQ has completed processing of several pending consultations as a result of this coordination.

Requester Services:

6. Do you use e-mail or other electronic means to communicate with requesters when feasible?

CEQ does use electronic mail to communicate with requesters whenever feasible.

7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?

CEQ does not currently notify requester of the mediation services offered by the Office of Government Information Services (OGIS) at NARA, but will begin to include this information in response letters, when appropriate.

- 8. Describe 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.**

CEQ is currently conducting a self-assessment to improve FOIA processing efficiency and to improve search processes. Additionally, CEQ is implementing new search procedures and information technology tools to ensure accuracy and efficiency of searches.

Section III: Steps Taken to Increase Proactive Disclosures

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Describe here the steps your agency has taken both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2013 to March 2014). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

Posting Material:

- 1. Do your FOIA professionals have a system in place to identify records for proactive disclosures?**

Yes, CEQ does have a system in place to identify records for proactive disclosure.

- 2. If so, describe the system that is in place.**

CEQ maintains guidance on proactive disclosures and categorical areas that can be considered for proactive disclosure such as FOIA resources, FOIA responses, FOIA requests, CEQ historical documents and environmental laws and regulations.

- 3. Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.**

Examples of proactive disclosures by CEQ during Fiscal Year 2013 include updating the FOIA backlog reduction goals for FY2014 for both appeals and requests, providing a link to the Administration's Climate Action Plan, and posting a 2013 FOIA log, which is a frequently requested document under FOIA.

Making Posted Material More Useful:

- 4. 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, such as soliciting feedback on the content and presentation of posted material, improving search capabilities on the site, posting**

material in open formats, making information available through mobile applications, providing explanatory material, etc.?

Yes, CEQ solicits feedback from the public on transparency through the agency's website, posts material in open formats and provides explanatory material.

5. If so, provide examples of such improvements.

CEQ provides an email address through which members of the public can submit ideas for open government and transparency. Also, CEQ maintains an online reading room where it posts and updates agency reports, publications, and documents frequently requested under FOIA. The site also contains historical materials such as the legislative history of NEPA and CEQ's past annual reports on NEPA compliance.

6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized?

CEQ posts proactive disclosures and solicits comments through its website. CEQ also sends out email alerts and provides opportunity for the public to stay connected to CEQ through social media.

7. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.

CEQ has not faced challenges that make material difficult to post that it would otherwise like to post.

8. Describe any other steps taken to increase proactive disclosures at your agency.

CEQ periodically determines which information is commonly requested and considers whether the subject matter(s) are appropriate for proactive disclosures.

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. Over the past several years agencies have reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2014, as we have done over the past years, the questions have been further refined and now also address different, more innovative aspects of technology use.

Online tracking of FOIA requests:

1. Can a FOIA requester track the status of his/her request electronically?

Yes, a FOIA requester is able to track the status of his or her request electronically by emailing the FOIA Public Liaison who replies with the status of the request.

2. If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?

CEQ corresponds timely and regularly with FOIA requesters who request the status of their request. In most cases, CEQ also provides updates to requesters through email communication. Also, CEQ has begun posting FOIA logs online that allow requesters to track requests.

3. Describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.

The tracking system for CEQ FOIA requests lists the tracking number of the requests, the name of the requester and a description of the request.

4. In particular, does your agency tracking system provide the requester with an estimated date of completion for his/her request?

The tracking system does not currently provide an estimated date of completion for requests. However, a requester may submit a status inquiry at any time about their request and may request an estimated date of completion.

5. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability? If not, please explain why.

CEQ does currently provide online tracking of requests through the posting of updated FOIA logs on its website.

Use of technology to facilitate processing of requests:

6. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced 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?

Yes, in the past year, CEQ has purchased, installed, and is utilizing new software to improve the efficiency of FOIA processing.

7. If so, describe the technological improvements being made.

The software purchased by CEQ allows for the extraction of PDF portfolios to create a single PDF document that includes emails and all attachments. This software has greatly improved response time and review of documents.

8. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program?

CEQ seeks to improve its record searching capabilities and to incorporate technological tools and training on e-discovery to achieve further efficiencies in FOIA processing.

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

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section 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 those contained in the specified sections of your agency's 2013 Annual FOIA Report and, when applicable, your agency's 2012 Annual FOIA Report.*

Simple Track Requests:

1. 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.

a. Does your agency utilize a separate track for simple requests?

Yes, CEQ employs a separate track for simple requests.

b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?

Although the average number of days to close a simple request was longer than twenty days, the average number of days to make a determination on a request, notify the requester of the determination, and commence the search process was in many, but not all, cases fewer than twenty days. On average, during Fiscal Year 2013, CEQ determined within twenty days after the receipt of simple requests whether to comply with the request and notified the requester of the determination.

- c. If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?**

CEQ does track simple requests separately.

Backlogs and “Ten Oldest” Requests, Appeals and Consultations:

- 2. 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. 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 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.**

Backlogs

- a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012?**

The FOIA backlog for Fiscal Year 2013 increased compared with Fiscal Year 2012.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?**

CEQ did not have a backlog of administrative appeals in Fiscal Year 2013.

Ten Oldest Requests

- c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?**

CEQ was not able to close all of the ten oldest requests that were pending as of the end of Fiscal Year 2012. However, in Fiscal Year 2013, CEQ was able to close seven of the ten oldest pending requests that were reported in Fiscal Year 2012.

- d. **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 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed two of them, you should note that you closed two out of seven "oldest" requests.**

As stated above, in Fiscal Year 2013, CEQ was able to close seven of the ten oldest pending requests that were reported in Fiscal Year 2012.

Ten Oldest Appeals

- e. **In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?**

CEQ did not have any administrative appeals that were pending as of the end of Fiscal Year 2012.

- f. **If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C.(5) of your Fiscal Year 2012 Annual FOIA Report.**

This question is inapplicable.

Ten Oldest Consultations

- g. **In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012?**

At the end of Fiscal Year 2012, CEQ had only two pending consultations and both of these were closed during Fiscal Year 2013.

- h. **If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report.**

This question is inapplicable.

Reasons for Any Backlogs:

3. **If you answered "no" to any of the questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:**

Request and/or Appeal Backlog

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals?**

The lack of reduction in the request backlog was a result of an increase in the number of incoming requests.

- b. Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff?**

As stated below, the lack of reduction in the request backlog was due, in part, to a reduction in staff.

- c. Was the lack of a reduction in the request and/or appeal backlog caused by an increase in the complexity of the requests received?**

The lack of reduction in the request backlog was caused, in part, by an increase in the complexity of the requests received.

- d. What other causes, if any, contributed to the lack of a decrease in the request and/or appeal backlog?**

Besides those listed above, no other causes contributed to the lack of a decrease in the request backlog.

“Ten oldest” Not Closed

- e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012.**

CEQ did not have any backlogged appeals in Fiscal Years 2012 or 2013. The greatest obstacle that CEQ faced in Fiscal Year 2013 in closing its ten oldest requests and consultations from Fiscal Year 2012 was an increase in the number of requests and consultations received. This challenge is being addressed by utilizing new processing software and by employing new information law staff.

- f. If your agency was unable to close any of its ten oldest requests or appeals 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.**

This question is inapplicable.

Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:

Given the importance of these milestones, it is critical that Chief FOIA Officers assess the causes for not achieving success and create plans to address them.

- 4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2014.**

CEQ has formulated a plan for closing its ten oldest pending requests and consultations. This plan consists of employing newly purchased software to increase the efficiency of document review and to continue to fully utilize all of the available personnel resources to aid in FOIA request and consultation processing. Further, CEQ is making efforts to contact requesters to determine if CEQ maintains the type of document that the request seeks.

- 5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency’s plan for achieving backlog reduction in the year ahead.**

CEQ does not have a backlog of more than 1000 pending requests.

Interim Responses:

OIP has issued guidance encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information.

- 6. Does your agency have a system in place to provide interim responses to requesters when appropriate?**

Yes, CEQ does have a system in place to provide interim responses to requesters when appropriate.

- 7. If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.**

In about 12% of backlogged cases for Fiscal Year 2013, CEQ provided a substantive, interim response during the fiscal year.

Use of FOIA's Law Enforcement "Exclusions"

In order to increase transparency regarding the use of the FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to "treat the records as not subject to the requirements of [the FOIA]," 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. Did your agency invoke a statutory exclusion during Fiscal Year 2013?

CEQ did not invoke a statutory exclusion during Fiscal Year 2013.

2. If so, what was the total number of times exclusions were invoked?

This question is inapplicable.

Spotlight on Success

Out of all the activities undertaken by your agency since March 2013 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 a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

Answer:

- In Fiscal Year 2013, CEQ received a complex FOIA request regarding coal exports that was entered into the CEQ complex request tracking system.
- CEQ communicated by email with the requester regarding the status of the request and commenced a search for potentially responsive documents.
- CEQ conducted interagency consultations, reviewed for partial release of information and reviewed for discretionary release to further transparency and openness. CEQ determined to make a discretionary release to the requester.
- In Fiscal Year 2013, CEQ made an interim release of documents. Also, CEQ made a final release and reply to the requester and completed processing of the request.