2019 U.S. Nuclear Regulatory Commission

Chief FOIA Officer Report

David Nelson

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 Leadership

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. Is your agency's Chief FOIA Officer at or above this level?

      Yes.

2. Please provide the name and title of your agency's Chief FOIA Officer.

      David Nelson.

B. FOIA Training

3. 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.

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

      Several NRC FOIA professionals attended the American Society of Access Professionals annual training conference, held in Arlington, VA and Chicago, IL. In addition, FOIA professionals participated in DOJ on-line training and FOIA e-learning modules.

      The NRC FOIA Officer and FOIA professionals hosted annual FOIA training, which was open to all agency employees, including agency FOIA coordinators. The training covered a variety of topics, such as what is FOIA, agency forms, search and fee estimates, personal records, CAPSTONE, draft documents, and critical energy/electric infrastructure information (CEII).

5. Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

      85%.

6. 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

C. Outreach

7. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

 Yes, the NRC issues a survey to each FOIA requester when their FOIA request has been completed. The requester community can use the survey to provide feedback on the NRC's administration of the FOIA. The NRC has a distribution list to receive information from the NRC FOIA program.

D. Other Initiatives

8. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In 2016, the Department publicized FOIA-related performance standards for employees that have any role in administering the FOIA, including non-FOIA professionals. Please also indicate whether your agency has considered including FOIA-related performance standards in employee work plans for employees who have any role in administering the FOIA.

 The NRC FOIA Officer and staff hosted annual FOIA training, which was open to all agency employees, including agency FOIA coordinators. The training covered a variety of topics, such as what is FOIA, agency forms, search and fee estimates, personal records, CAPSTONE, draft documents, and critical energy/electric infrastructure information (CEII). This training was presented by the FOIA Officer, FOIA staff, Records Officer, Office of the General Counsel, and a Division Director as a subject matter expert.

 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 training.

 The NRC has internal metrics to track the timeliness of responsive records to a FOIA request being provided to the FOIA office for processing. The internal metric has helped the NRC to be able to respond to simple FOIA requests, on average, within 23 days.

 The NRC had not previously considered adopting the DOJ sample standards, but we will consider adopting aspects which are not already covered by current NRC elements and standards for our Government Information Specialist beginning with the FY 2020 rating period.

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.

 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 that describes your agency's efforts in this area.

1. For Fiscal Year 2018, 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 2018 Annual FOIA Report.

     1.14

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 has drafted an updated management directive on FOIA, as well is continuously looking for ways to improve our FOIA program. The NRC contacted the Office of Government Information Services and we are anticipating an assessment of the FOIA program to begin in FY2019 Quarter 2.

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 FY2018 (please provide a total number or an estimate of the number).

    1

5. Please describe the best practices used to ensure that your FOIA system operates efficiently and effectively and any challenges your agency faces in this area.

    The NRC switched FOIA processing systems in November 2017, from FOIAXpress to FOIAOnline and RedactXpress. FOIAOnline is a shared service which is hosted by the

Environmental Protection Agency (EPA). Throughout FY2018, agencies, including the NRC, experienced several challenges with FOIAOnline. Some of the challenges the NRC has experienced is learning this new system and understanding the capabilities of the system and how they work with the way that NRC processes FOIA requests. NRC FOIA staff participate in regular FOIAOnline Advisory Board calls with EPA and other agencies to discuss enhancements and report problems.

The NRC tracks program offices response times against agency goals and provides quarterly metrics to the heads of each program office. This has been a challenge with FOIAOnline, the NRC had to find alternatives in the calculating the statistics to continue to monitor timeliness.

The FOIA Officer meets regularly with the Office of General Counsel (OGC) and periodically with the Office of the Inspector General (OIG) to discuss FOIA activities, new case law, and more efficient ways to process challenging FOIA requests.

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 actively 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/reg-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. Please describe how your agency identifies records that have been requested and released three or more times (and are therefore required to be proactively disclosed pursuant to 5 U.S.C. § 552(a)(2)(D)).

　　The NRC FOIA staff will perform searches to determine if the records have been requested and released three or more times.

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?

　　Yes.

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

　　In 2018, NRC has developed and posted on YouTube 13 "How To" videos on using the LSN. The 13 videos are (1) Introduction, (2) Basic and Advanced Searches, (3) Accessing the LSN Library Search Page, (4) Finding a Record by the LSN Accession number, (5) Performing a Simple Content Search with Search Terms, (6) Advanced Search – Using Search Terms, Dates and Record Properties, (7) Saving Search Criteria for Future Use, (8) Wildcard Searches, (9) Refining a Search, 10) Using the Facet Tree and Facet Chart, (11) Using the Time-Series Chart, (12) Working with the Results, (12) Viewing the Results and Document Properties, (14) Saving and Printing the Results. A link to the video series can be found on the public LSN Library web site at https://www.nrc.gov/reading-rm/lsn/index.html.

5. Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.

　　To improve proactive disclosures, the agency produces a quarterly Public Release Timeliness Report to let the offices know how they are doing on proactively releasing documents to the public. Staff works with the offices to improve their statistics. The agency has dedicated some resources to be used for contractor support to review prioritized documents to see if they can be released to the public. Also, the agency has purchased software which is being tested for use in electronically searching documents for terms which may indicate documents that should not be released. This is anticipated to reduce the staff time to review documents for release to the public.

　　Reduced staffing across the agency has limited the resources for the review of older documents for public release. A significant digitization project the agency is commencing will significantly increase the number of documents that need to be reviewed for public release.

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 that describes your agency's efforts in this area.

1. Is your agency leveraging technology to facilitate efficiency in conducting searches, including searches for emails? If so, please describe the type of technology used. If not, please explain why and please describe the typical search process used instead.

      Yes, the NRC is leveraging technology to facilitate efficiency in conducting searches. For instance, in FY2018, the NRC moved to Microsoft Office 365 in the cloud. Office 365 offers capabilities to conduct searches of email messages, SharePoint sites, and OneDrive accounts. These capabilities can be used on information created/generated in the Azure cloud as well as information uploaded into the Azure cloud. In addition, the NRC can search its other content repositories, such as ADAMS.

2. OIP issued guidance in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

      Yes.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2018?

      Yes.

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 2019.

      N/A.

5. 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 2017 Annual FOIA Report and, if available, for your agency's Fiscal Year 2018 Annual FOIA Report.

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

6. Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

      NRC has made processing more efficient by providing RedactXpress to all Government Information Specialist, and to OGC attorneys performing the reviews, OIG FOIA staff, and Office of Enforcement FOIA staff. Providing these licenses to these offices allows them to review and redact more efficiently. In addition, they can utilize the "Find and Redact" feature within RedactXpress.

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 2018 Annual FOIA Report and, when applicable, your agency's 2017 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? If your agency uses a multi-track system beyond simple, complex, and expedited to process requests, please describe the tracks you use and how they promote efficiency.

  Yes, the NRC utilizes separate tracks for simple, complex and expedited requests.

2. If your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2018?

  No, our average was 22.96 days.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2018 that were placed in your simple track.

  78%.

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 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

    No.

6. If not, did your agency process more requests during Fiscal Year 2018 than it did during Fiscal Year 2017?

    No.

7. If your agency's request backlog increased during Fiscal Year 2018, please 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. – No.
- A loss of staff. – Yes, the NRC had a decrease in Government Information Specialists as well as contractor support during FY2017. The NRC was able to fill the Government Information Specialist position during FY2018 Quarter 2, as well as bring on additional contract support during FY2018 Quarter 2 and FY2019 Quarter 1.
- 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. – The NRC has had frequent FOIA requesters who has contributed significantly to the increase in the NRC's backlog. The requests account for over 50% of our incoming FOIA requests and 98% of our appeals. With the loss of staff, the NRC has been continuously looking for more efficient ways to process the FOIA requests, which included a trial of assigning all the FOIA requests and appeals to 1 person to designating all the requests to a small team to respond.   The NRC switched FOIA processing/tracking systems in early FY2018 Quarter 1, from FOIAXpress to FOIAOnline. The switch to FOIAOnline has not been a smooth transition. FOIAOnline experienced a lot of technical difficulties during FY2018, which contributed to the slower processing times.

8. 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 2018. If your agency has no request backlog, please answer with "N/A."

    19%.

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

    No.

10. If not, did your agency process more appeals during Fiscal Year 2018 than it did during Fiscal Year 2017?

No.

11. If your agency's appeal backlog increased during Fiscal Year 2018, please 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. – No.
- A loss of staff. – Yes, the NRC had a decrease in Government Information Specialists as well as contractor support during FY2017. The NRC was able to fill the Government Information Specialist position during FY2018 Quarter 2, as well as bring on additional contract support during FY2018 Quarter 2 and FY2019 Quarter 1.
- 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. – The NRC has had a frequent FOIA requester who has contributed significantly to the increase in the NRC's backlog. The frequent requester accounts for over 50% of our incoming FOIA requests and 98% of our appeals. With the loss of staff, the NRC has been continuously looking for more efficient ways to process the FOIA requests, which included a trial of assigning all the FOIA requests and appeals to 1 person to designating all the requests to a small team to respond.   The NRC switched FOIA processing/tracking systems in early FY2018 Quarter 1, from FOIAXpress to FOIAOnline. The switch to FOIAOnline has not been a smooth transition. FOIAOnline experienced a lot of technical difficulties during FY2018, which contributed to the slower processing times.

12. 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 2018. If your agency did not receive any appeals in Fiscal Year 2018 and/or has no appeal backlog, please answer with "N/A."

13%.

C. Backlog Reduction Plans

13. In the 2018 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2017 was asked to provide a plan for achieving backlog reduction in the year ahead. Did you 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 2018?

N/A

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2018, what is your agency's plan to reduce this backlog during Fiscal Year 2019?

N/A

D. Status of 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.

OLDEST REQUESTS

15. In Fiscal Year 2018, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

     No.

16. 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 fewer than ten total oldest requests to close, please indicate that.

     4 out of 10.

17. 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?

     Two of the four closed requests were closed since they were withdrawn by the requester. Neither of the 2 withdrawn FOIA requests prior to the withdrawal.

18. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

     The NRC continues to take steps to reduce the overall age of our pending requests through communication. This communication can be internal to the NRC with the record owners, with other agencies, and with public submitters. Through communication we stress the importance of timeliness in searching, reviewing, redacting (if needed) and providing the requested information to the FOIA requester. The NRC provides the requester with status updates regarding their FOIA request, as well as always offering the opportunity for narrowing the scope to receive their request more expeditiously.

TEN OLDEST APPEALS

19. In Fiscal Year 2018, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

     No.

20. 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 2017 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

     The NRC was able to close 2 of the 5 oldest appeals during fiscal year 2018, which were pending in our fiscal year 2017 Annual FOIA report.

21. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

The NRC continues to take steps to reduce the overall age of our pending appeals through communication. This communication is often internal with our program offices to make sure they are timely performing reasonable searches and clarifying how they searched so we can inform the requester.

TEN OLDEST CONSULTATIONS

22. In Fiscal Year 2018, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

N/A.

23. 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 2017 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

N/A.

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

24. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2018.

The main obstacle the NRC faced in closing it ten oldest requests, and appeals from FY2018, was due to the voluminous nature of the requests. In addition, one obstacle the NRC lacked equipment to view/listen to older records stored on out-of-date technology no longer routinely available. The NRC has taken steps to obtain the proper equipment and anticipates that it will be successful in closing this request during FY2019.

25. 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.

None of our 10 oldest requests were late due to waiting to hear back from another agency on a consultation.

26. 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 2018.

The NRC will continue to work aggressively and focus necessary resources to successfully reach our goal of completing the 10 oldest requests during FY2019. So far, the NRC has already closed 3 of its 10 oldest pending requests and 7 of its 10 oldest appeals as of FY2019.

F. Success Stories

Out of all the activities undertaken by your agency since March 2018 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 is continuing to look for more efficient ways to improve the NRC FOIA program. The NRC reached out to the Office of Government Information Services requesting an assessment of our program. This assessment is scheduled to begin in FY2019 Quarter 2.