

National Endowment for the Humanities

2019 Chief FOIA Officer Report

Section I: 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?

Answer: Yes.

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

Answer: Carlos Díaz-Rosillo, Senior Deputy Chairman.

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?

Answer: Yes.

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

Answer: In April 2018, NEH's staff attorney with FOIA responsibilities, who is also the agency's primary FOIA professional, attended OIP's *Continuing FOIA Education Seminar*. NEH also regularly provides substantive training for its agency personnel who have FOIA responsibilities, as detailed in response to Question I.D.8, below.

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.

Answer: One hundred percent of the agency's FOIA professionals attended substantive FOIA training during the reporting period. In addition, NEH expects that 100 percent of its staff with FOIA responsibilities will attend substantive FOIA training before the end of the reporting period; many have already received such training, and the rest will complete the mandatory "FOIA Refresher Training" described in response to Question I.D.8, below.

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.

Answer: Not applicable. One hundred percent of NEH's FOIA professionals attended substantive FOIA training during the reporting period.

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.

Answer: NEH did not engage in any outreach or dialogue with the requestor community or open government groups regarding its administration of the FOIA. Nonetheless, during the reporting period NEH took affirmative steps to improve its FOIA administration, including by updating its website so it is easier for potential FOIA requestors to navigate (see Answer to Question IV.6), and by streamlining internal processing procedures to help the agency reply to requestors more quickly (see Answer to Question II.3).

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.

Answer: Before the end of the reporting period, NEH intends to hold a mandatory "FOIA Refresher Training" for agency personnel with FOIA responsibilities. This one-hour, in-person training will review NEH's FOIA policies and procedures and reinforce the agency's commitment to responding accurately and promptly to all FOIA requests.

Throughout the reporting period, NEH's primary FOIA professional conducted one-on-one training verbally and in writing, as needed, to remind agency staff of their FOIA responsibilities and to answer specific FOIA-related questions.

In addition, NEH recently issued two substantive internal guidance documents addressing recurring questions related to processing specific types of records consistent with FOIA and the Privacy Act. NEH distributed this guidance widely throughout the agency to ensure that even non-FOIA professionals are aware of their obligations under FOIA.

Due to the size of the agency (approximately 150 employees), FOIA responsibilities tend to shift frequently among agency staff. Accordingly, NEH has not considered including FOIA-related performance standards in employees work plans for employees who have any role in administering FOIA.

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.

Answer: NEH is committed to applying the presumption of openness when it makes decisions about releasing agency records under the FOIA. For example, even when an agency record falls within one of the nine FOIA exemptions, NEH will only withhold the record if it is reasonably foreseeable that the disclosure would harm an interest protected by one of the exemptions. Also, NEH will segregate and release information not protected by one of the exemptions when a record contains both protected and unprotected information.

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.

Answer: 1.75 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.

Answer: Not applicable. NEH's average number of days to adjudicate requests for expedited processing was 1.75 days.

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.

Answer: During the reporting period, NEH reviewed and ultimately revised one of its procedures for processing certain requests related to successful NEH grant applications. The new, streamlined procedure eliminates an unnecessary administrative step and helps NEH respond to requestors—typically, prospective NEH grant applicants who would like to use the requested records to improve their own applications—as quickly as possible.

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 2018 (please provide a total number or an estimate of the number).

Answer: No requestor sought assistance from NEH’s FOIA Public Liaison during FY 2018.

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.

Answer: NEH continues to implement an efficient and effective system for responding to FOIA requests. First, a single office within NEH—the Office of the General Counsel—handles all FOIA requests submitted to the agency. When NEH receives a request, a FOIA professional assigns it a tracking number and contacts the relevant NEH offices to initiate a records search. Within each office, a single staff member tasked with handling FOIA requests coordinates the search process. NEH’s FOIA professionals are available to agency staff for consultations on the search process, FOIA regulations, and any related issues that may arise.

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.

Answer: By far, the majority of FOIA requests that NEH receives concern grant application materials. Most requestors are prospective NEH funding applicants who would like to see examples of what a successful application looks like. To that end, NEH maintains—and updated during the reporting period—an electronic library containing dozens of sample grant application narratives, which NEH FOIA professionals have reviewed and redacted, as appropriate (<https://www.neh.gov/about/foia/freedom-information-act-sample-grant-application-narratives>).

Also during the reporting period, NEH added a large volume of materials to its “digital repository,” a collection of archival records documenting NEH’s history and archives that is publicly available at <https://neh.dspacedirect.org/>.

Additionally, in FY 2018, NEH posted on its website (at <https://www.neh.gov/about/foia/responses>) most of the records produced in response to a FOIA request (except, generally, those requesting first-party records or those concerning NEH’s Office of the Inspector General investigations into an individual), thereby ensuring that most disclosures released to an individual requestor are available to the public at large.

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)).

Answer: NEH maintains a detailed log of all requests the agency receives. This allows the agency to keep track of the number of times a particular record has been requested

and to post it on the NEH website (if it has not already done so consistent with its other proactive disclosure procedures). In addition, NEH proactively posts on its website most records for which it is *likely* to receive three or more requests (such budget documents, the list of agency credit-card holders, and staff contact information), as well as the majority of the other records it has released pursuant to a FOIA request (such as successful grant applications and congressional correspondence).

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?

Answer: Yes.

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

Answer: As noted in response to Question IV.6, NEH recently launched its redesigned and updated website, which features improved layout and navigability as well as a refined "search" feature—all of which make the information posted on NEH's website more useful to the public.

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

Answer: NEH routinely takes steps to increase proactive disclosures. For example, program officers in the various NEH divisions regularly select samples of grant application narratives from NEH-funded projects for posting on the NEH website alongside agency grant guidelines and in its electronic FOIA library. NEH also regularly releases financial reports concerning NEH's grant-making and budget; maintains a list of NEH credit card holders (which is frequently requested information); and publishes its complete staff directory on its website.

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.

Answer: Yes. NEH's FOIA professionals work closely with the agency's Office of Information Resources Management (OIRM) to conduct efficient searches for responsive emails in Microsoft Outlook and other information stored in the agency's electronic databases. OIRM staff are skilled at performing Boolean searches in order to produce efficient yet comprehensive search results; they are also deeply familiar with and proficient at extracting information from NEH's electronic databases.

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?

Answer: Yes.

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

Answer: NEH timely posted all four of its FY 2018 quarterly reports on its website; this information also appeared on FOIA.gov, with the exception of the Quarter 4 report.

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.

Answer: The Quarter 4 report was due around the time that NEH was finalizing updates to its new website. As part of the data migration process, NEH inadvertently renamed the quarterly reports directory (www.neh.gov/foia/quarterly); we suspect that, consequently, the API was not able to collect the information necessary to update FOIA.gov. NEH has since addressed this issue and expects to successfully post all four quarterly reports, with information appearing on FOIA.gov, for FY 2019.

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.

Answer: The raw statistical data used to compile NEH's FY 2017 Annual FOIA Report is available at: <https://www.neh.gov/about/foia>.

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

Answer: During the reporting period, NEH launched its redesigned and updated website. The new website features improved layout and navigability so that potential FOIA requestors can easily locate and view records that NEH has already posted, and also quickly learn how to request NEH records pursuant to FOIA. In addition, NEH recently refined the "search" feature of its website so that users can now filter and sort results by keywords and topic areas; this makes it easier for potential FOIA requestors to locate records and information NEH has already made available to the public. Furthermore, NEH ensures that every page of its website, including posted material, is accessible on mobile devices.

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.

Answer: NEH uses a separate track for simple requests. It does not use a multi-track system beyond simple, complex, and expedited to process 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?

Answer: Yes.

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

Answer: Ninety-one percent.

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?

Answer: Not applicable. NEH uses a separate track for simple requests.

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?

Answer: Yes. NEH had one backlogged request at the end of FY 2017 and no backlogged requests at the end of FY 2018.

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

Answer: Not applicable. NEH's request backlog decreased between FY 2017 and FY 2018.

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.
- A loss of staff.
- 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.
- Any other reasons – please briefly describe or provide examples when possible.

Answer: Not applicable. NEH's request backlog did not increase during FY 2018.

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."

Answer: Not applicable. NEH did not have any backlogged requests at the end of FY 2018.

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?

Answer: Not applicable. NEH did not have any backlogged appeals at the end of either FY 2018 or FY 2017.

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

Answer: Not applicable. NEH did not have any backlogged appeals at the end of either FY 2018 or FY 2017.

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 appeals.
- A loss of staff.
- 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.
- Any other reasons – please briefly describe or provide examples when possible.

Answer: Not applicable. NEH did not have any backlogged appeals at the end of either FY 2018 or FY 2017.

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."

Answer: Not applicable. NEH did not have any backlogged appeals at the end of FY 2018.

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?

Answer: Not applicable. NEH did not have any backlogged appeals at the end of FY 2017.

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?

Answer: Not applicable. NEH did not have any backlogged appeals at the end of FY 2018.

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?

Answer: Yes.

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.

Answer: Not applicable. In FY 2018, NEH closed all six requests pending at the end of FY 2017.

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?

Answer: None.

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

Answer: NEH had only six pending requests at the end of FY 2017.

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?

Answer: NEH did not have any pending appeals at the end of FY 2017.

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.

Answer: Not applicable. NEH did not have any pending appeals at the end of FY 2017.

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

Answer: Not applicable. NEH did not have any pending appeals at the end of FY 2017.

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?

Answer: NEH did not have any pending consultations at the end of FY 2017.

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.

Answer: Not applicable. NEH did not have any pending consultations at the end of FY 2017.

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.

Answer: NEH did not encounter any obstacles in closing its pending requests from FY 2018. NEH did not have any pending appeals or consultations at the end of FY 2018.

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.

Answer: Not applicable. NEH did not encounter any obstacles in closing its pending requests from FY 2018.

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.

Answer: Not applicable. NEH closed its pending requests from FY 2018.

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.

- **NEH processed 93 percent of its requests within the 20-day statutory timeframe.**
- **NEH did not have any backlogged requests at the end of FY 2018.**
- **NEH expects that 100 percent of its personnel with FOIA responsibilities will receive substantive FOIA training within the reporting period.**
- **NEH revised one of its FOIA processing procedures so as to eliminate an unnecessary administrative step and enable NEH to respond to requestors more quickly and efficiently.**