

Council on Environmental Quality



2023 Chief FOIA Officer Report to the Attorney General

Section I: FOIA Leadership and Applying the Presumption of Openness

The guiding principle underlying the Attorney General’s FOIA Guidelines is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

A. Leadership Support for FOIA

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. See 5 U.S.C. § 552(j)(1) (2018). 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: Amy B. Coyle, Deputy General Counsel

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

Answer: Yes. CEQ is currently updating its FOIA regulations, looking for ways to provide more proactive disclosures, and providing FOIA training for non-FOIA personnel.

B. Presumption of Openness

4. The Attorney General’s 2022 FOIA Guidelines provides that “agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.” Does your agency provide such confirmation in its response letters?

Answer: Yes.

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interested protected by a FOIA exemption. This is commonly referred to as a Glomar response. With respect to these responses, please answer the below questions:

In addition to tracking the asserted exemption, does your agency specifically track whether a request involved a Glomar response?

If yes, please provide:

- a. the number of times your agency issued a full or partial Glomar response (separate full and partial if possible);

- b. the number of times a Glomar response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).
- c. If your agency does not track the use of Glomar responses, what would your agency need to do to track in the future? If possible, please describe the resources and time involved.

Answer: CEQ made 0 Glomar responses in FY2022.

6. Optional -- 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: CEQ periodically reviews its redaction process and look for ways to maximize government transparency.

Section II: Ensuring Fair and Effective FOIA Administration

The Attorney General’s FOIA Guidelines provide that “[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of FOIA obligations by the entire agency workforce.” The Guidelines reinforce longstanding guidance to “work with FOIA requesters in a spirit of cooperation.” The Attorney General also “urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency’s FOIA administration” as part of ensuring fair and effective FOIA administration.

A. FOIA Training

1. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

Answer: The Council on Environmental Quality (CEQ) Chief FOIA Officer actively encourages FOIA Personnel to attend training offered by the Department of Justice Office of Information Policy. Additionally, the CEQ FOIA Public Liaison provided advanced FOIA training to all CEQ FOIA personnel during the reporting period.

2. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend substantive FOIA training during the reporting period such as that provided by the Department of Justice?

Answer: Yes.

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

Answer: CEQ FOIA professionals attended a FOIA summit offered jointly by the Department of Justice Office of Information Policy and Department of Homeland Security, as well as training

on the Privacy Act. Additionally, CEQ conducted internal FOIA training focused on disclosure exemptions, White House-specific FOIA issues, and CEQ-specific workflow.

4. Please 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: CEQ estimates that 80 percent of CEQ FOIA professionals and staff with FOIA responsibilities attended substantive FOIA training during this reporting period.

5. 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: N/A.

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and if senior leaders at your agency received a briefing on your agency’s FOIA resources, obligations and expectations during the FOIA process?

Answer: All new CEQ entrants, including staff, detailees, interns, and law clerks, attend records training within 30 days of their start date. This training instructs new entrants on their obligations under the Federal Records Act (FRA) and on the role of FOIA. CEQ FOIA professionals regularly inform CEQ non-FOIA professionals of their FOIA obligations, including the presumption of openness, and provide updates and information on the FOIA process as necessary. Given CEQ’s relatively small size, CEQ provides targeted in-person training and legal counseling to all CEQ staff, detailees, interns, and law clerks who help process incoming FOIA requests and consultations.

B. Outreach

7. Did your FOIA professionals engage in any outreach or dialogue, outside of the standard request process, 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: CEQ FOIA professionals routinely communicate with requesters regarding CEQ’s administration of FOIA and continually work to improve customer service when processing and responding to requests. CEQ complies with the U.S. National Action Plan for Open Government standards and has a Director of Public Engagement, Director of Communications, and a Press Secretary who engage with the public.

8. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue, and, if applicable, any specific examples.

Answer: Yes. CEQ regularly reaches out to requesters concerning complex or voluminous requests. For example, CEQ received a request in FY2022 that resulted in over 22,000 pages of responsive records. CEQ made three initial productions in response to the request; after each production, the requester provided amendments to narrow the scope of the request.

9. 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 Fiscal Year 2022 (please provide a total number or an estimate of the number).

Answer: There were approximately 10 times during FY2022 when requesters sought assistance from the CEQ FOIA Public Liaison.

C. Other Initiatives

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

Answer: Yes. In FY2022 CEQ employed additional detailees and continued to employ two FOIA Specialist contractors to assist with FOIA demands.

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

Answer: CEQ uses an internal spreadsheet to monitor and track FOIA cases. This tool is capable of generating statistical information on demand, including: a list of open cases sorted by date; open cases belonging to an assigned attorney or FOIA specialist; complex, simple, or expedited cases; timelines of cases closed in a particular way; among others. This spreadsheet is used to identify trends and manage workflow.

In addition, all of CEQ's FOIA professionals and staff with FOIA responsibilities meet regularly to discuss the status of CEQ's open FOIA requests and manage CEQ's FOIA workload. These meetings typically take place twice weekly, together with a more comprehensive meeting that takes place each month.

12. Optional -- If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.

CEQ directs FOIA requesters to the information they are seeking when such information is publicly available. In addition, CEQ periodically makes proactive disclosures.

Section III: Proactive Disclosures

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 describes your agency's efforts in this area.

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

Answer: CEQ staff regularly meet to consider proactively disclosing FOIA productions and other agency documents that we expect will be of public interest. CEQ is currently considering measures to expand the scope of CEQ's proactive disclosures.

2. Provide examples of any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

Answer: CEQ posts and periodically updates a list of agency staff names and titles on its FOIA webpage at <https://www.whitehouse.gov/ceq/foia/> (at end of page under "Frequently Requested").

In the reporting period, CEQ did not identify any additional records that 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?

Answer: In addition to posting new material, CEQ regularly reviews and makes changes to the organization of the materials on its websites, in an effort to make the information more useful and accessible to the public.

4. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

Answer: CEQ typically posts in Portable Document Format (PDF), an open format recognized by the International Standards Organization (ISO); also known as ISO 32000.

5. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

Answer: Because of CEQ's small size, several of CEQ's FOIA professionals also are agency attorneys responsible for providing counsel on CEQ programs as well as records management. As such, they are well-positioned to identify documents for proactive disclosure. Additionally, because CEQ's primary public website is hosted by the Executive Office of the President (EOP), CEQ coordinates with EOP when making proactive disclosures, particularly when the disclosures have technical requirements.

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

Answer: Due to CEQ's small agency size, CEQ does not have enterprise software to track and manage previously disclosed records.

Section IV: Steps Take to Greater Utilize Technology

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's FOIA Guidelines emphasize the importance of making FOIA websites easily navigable and complying with the FOIA.gov interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

Answer: Yes.

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program.

Answer: Kiteworks, Webex

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.

Answer: Yes. CEQ uses NUIX Discovery and Adobe Acrobat to conduct searches and make redactions. These software suites have a multitude of technologies that assist in searches and

redactions. For example, CEQ uses a script developed by its staff to identify the frequency and type of redactions in a particular PDF record.

4. 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.

5. Did all four of your agency's quarterly reports for Fiscal Year 2022 appear on FOIA.gov?

Answer: Yes.

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2023.

Answer: N/A.

7. 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 2021 Annual FOIA Report and, if available, for your agency's Fiscal Year 2022 Annual FOIA Report.

Answer: CEQ's FOIA Annual Reports are posted at <https://www.whitehouse.gov/ceq/foia>.

8. In February 2019, DOJ and OMB issued joint Guidance establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

Answer: Yes.

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

Answer: CEQ has modest resources and must coordinate with the EOP Office of Administration on the adoption of any new technologies.

Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness in Responding to Requests, and Reduce Backlogs

The Attorney General's FOIA Guidelines instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

A. Remove Barriers to Access

1. Has your agency established alternative means of access to first-party requested records outside of the FOIA process?

Answer: Yes.

2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.

Answer: CEQ accepts first-party requests for records under the Privacy Act. In FY2022, CEQ also has responded to informal first-party requests for records.

B. Timeliness

3. For Fiscal Year 2022, 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 2022 Annual FOIA Report.

Answer: N/A. CEQ did not receive requests for expedited processing during the reporting period.

4. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2022 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Answer: N/A.

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

Answer: For reporting purposes, CEQ labels each FOIA request as simple or complex. CEQ prioritizes cases by striving to achieve the lowest average wait time for requestors.

6. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2022?

Answer: No. For FY 2022, the average number of days to process simple requests was 63.96 days.

7. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?

Answer: Yes.

8. Please provide the percentage of requests processed by your agency in Fiscal Year 2022 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100.

Answer: 61 percent.

9. 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: N/A.

C. Backlogs

BACKLOGGED REQUESTS

10. If your agency had a backlog of requests at the close of Fiscal Year 2022, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

Answer: No.

11. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2022 than it did during Fiscal Year 2021?

Answer: No.

12. If your agency's request backlog increased during Fiscal Year 2022, 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)

Impact of COVID-19 and workplace and safety precautions

Any other reasons – please briefly describe or provide examples when possible

Answer: CEQ experienced a 22 percent increase in the number of incoming requests in FY2022 compared to the previous fiscal year. Additionally, litigation also occupied a significant portion of CEQ's FOIA staff time. Finally, because CEQ's FOIA professionals handle other legal matters, an increase in personnel and other legal matters reduced their overall availability to work on FOIA matters.

13. 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 2022. Please

use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A."

Answer: The percentage of requests that make up the backlog out of the total number of requests CEQ received in FY2022 is 33.8 percent.

BACKLOGGED APPEALS

14. If your agency had a backlog of appeals at the close of Fiscal Year 2022, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

Answer: N/A.

15. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2022 than it did during Fiscal Year 2021?

Answer: No.

16. If your agency's appeal backlog increased during Fiscal Year 2022, 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)

Impact of COVID-19 and workplace and safety precautions

Any other reasons – please briefly describe or provide examples when possible

Answer: N/A.

17. 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 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2022 and/or has no appeal backlog, please answer with "N/A."

Answer: N/A.

D. Backlog Reduction Plans

18. In the 2022 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2021 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your 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 2022?

Answer: N/A.

19. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2022, please explain your agency's plan to reduce this backlog during Fiscal Year 2023.

Answer: N/A.

E. Reducing the Age of Requests, Appeals, and Consultations

TEN OLDEST REQUESTS

20. In Fiscal Year 2022, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2021 Annual FOIA Report?

Answer: No.

21. 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 2021 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

Answer: In FY2022, CEQ closed 5 of its 10 oldest requests that CEQ reported pending in its Fiscal Year 2021 Annual FOIA Report.

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

Answer: CEQ continued to employ two FOIA specialist contractors during the reporting period to assist with the agency backlog. CEQ focused on addressing older requests and closed more of its "ten oldest" than in the previous year.

TEN OLDEST APPEALS

23. In Fiscal Year 2022, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2021 Annual FOIA Report?

Answer: N/A. CEQ had no backlogged appeals in FY2021.

24. 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 2021 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

Answer: N/A.

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

Answer: CEQ currently has no backlogged or pending appeals.

TEN OLDEST CONSULTATIONS

26. In Fiscal Year 2022, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2021 Annual FOIA Report?

Answer: Yes.

27. 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 2021 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Answer: N/A.

ADDITIONAL INFORMATION REGARDING TEN OLDEST

28. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2023.

Answer: CEQ continues to prioritize a portion of its personnel resources to process CEQ’s oldest FOIA requests. CEQ continues to employ contract FOIA specialists to assist with its oldest requests.

F. Additional Information about FOIA Processing

29. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency’s overall FOIA request processing and backlog. If possible, please indicate the number and nature of requests subject to litigation, common causes leading to litigation, and any other information to illustrate the impact of litigation on your overall FOIA administration.

Answer: Yes. In FY2022, CEQ had one open request that became the subject of FOIA litigation. As this case is still in active litigation, CEQ is unable to provide further details at this time.

30. How many requests during Fiscal Year 2022 involved unusual circumstances as defined by the FOIA? (This information is available in your agency’s FY22 raw data).

Answer: 14