



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

**Council on Environmental Quality
Chief FOIA Officer Report for 2012**

This Chief FOIA Officer's Report is issued in accordance with the March 19, 2009, Attorney General's FOIA Guidelines. In compliance with those Guidelines, CEQ's Chief FOIA Officer has reviewed all aspects of CEQ's FOIA administration and issues this report on the concrete steps that CEQ has taken to facilitate information disclosure.

CEQ's FOIA Requester Service Site, www.whitehouse.gov/administration/eop/ceq/foia (the Site), includes a copy of this report and other useful information on CEQ's FOIA administration. In particular, CEQ encourages the public to consult its FOIA Handbook, which explains some of the key provisions in CEQ's FOIA regulations and procedures and is available on the Site. Additional FOIA resources—such as FOIA contact information for each agency, including their Chief FOIA Officer, FOIA Requester Services Centers, and FOIA Public Liaisons—are available at www.foia.gov.

I. Steps Taken to Apply the Presumption of Openness

- Describe steps taken to ensure that the presumption of openness is applied to all decisions involving FOIA.

As reported in previous Chief FOIA Officer reports, all new 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.

Given CEQ's relatively small size, CEQ's FOIA Public Liaison and Chief FOIA Officer personally provide targeted training and legal counseling to all CEQ staff, detailees, and clerks who help process incoming FOIA requests and consults.

- Did your agency hold an agency FOIA conference or otherwise conduct training during this reporting period?
- Did your FOIA professionals attend any FOIA training?

CEQ's Chief FOIA Officer and FOIA Public Liaison attended the Department of Justice Office of Information Policy's (OIP) October 15, 2012, *Refresher Training for FY 2012 Annual FOIA Reports and 2013 Chief FOIA Officer Reports*. CEQ's FOIA Public Liaison also attended OIP's June 20, 2012, training, entitled *FOIA Fundamentals*, part of OIP's Director Lecture Series, as well as OIP's February 21, 2009, training, entitled *Exploring the Benefits of Leveraging*

Digital Tools for FOIA Administration. CEQ has actively incorporated best practices and guidance discussed at these trainings into its FOIA administration.

As stated above, CEQ's FOIA Public Liaison and Chief FOIA Officer also provide 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 is developing a FOIA manual to comprehensively outline internal FOIA procedures. CEQ will update this manual as necessary to keep abreast of FOIA administration best practices across the Federal Executive Branch.

- Did your agency make any discretionary releases of otherwise exempt information? What exemptions would have covered the information that was released as a matter of discretion? Provide a narrative description, or some examples of, the types of information your agency released as a matter of discretion.

Consistent with CEQ's commitment to transparency and openness, CEQ has released information in agency records that is otherwise exempt from disclosure under the deliberative process privilege, per 5 U.S.C. § 552(b)(5). For example, CEQ released records of the cases used to create the NEPA Litigation Survey from 2001 to 2008, found CEQ's website (<http://www.ceq.hss.doe.gov/nepa/nepanet/htm>). As another example, CEQ released records of representative text from various CEQ responses to FOIA requests.

- Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

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. The following are examples of two such CEQ responses:

Example 1: We understand your request as seeking any CEQ documents referencing "Back Bay Center," and Perchloroethylene or other contaminants, and one or more of the six businesses listed above. In fulfillment of your request, CEQ completed a records search, but our search did not return any responsive documents.

Note, reference to the subject of your CEQ FOIA request may be located by using the EPA tool called "MyPropertyInfo," available at <http://www.epa.gov/enviro/html/fii/myproperty.html>. Per EPA's website:

MyPropertyInfo is a single reporting tool for printing from multiple EPA databases... This tool allows Real Estate Agents, Mortgage Banks, Engineering and Environmental Consulting Firms and the public to determine if EPA databases have records on a specific property without filing a Freedom of Information Act (FOIA) request. The results of this search will be identical to the

information you would receive by filing a FOIA request with EPA for these records.

Example 2: In fulfillment of your request, CEQ completed a records search but our search did not return any responsive documents. As a courtesy, CEQ is providing a list of the following publically available sources, which may be helpful to you:

White House Office of Management and Budget (OMB) July 19, 2010, Memorandum, *Improving the Accessibility of Government Information*: http://www.whitehouse.gov/sites/default/files/omb/assets/procurement_memo/improving_accessibility_gov_info_07192010.pdf.

White House Office of the Press Secretary (OPS) July 26, 2011, Press Release, *On Anniversary of the Americans with Disabilities Act, Obama Administration Recommits to Enforcing and Protecting the Civil Rights of All*: <http://www.whitehouse.gov/the-press-office/2011/07/26/anniversary-americans-disabilities-act-obama-administration-recommits-en>.

White House Office of Public Engagement (OPE) March 19, 2012, Blog Post, *Implementing Section 508: Improving Access to Government Information and Data for Persons with Disabilities*: <http://www.whitehouse.gov/blog/2012/03/19/implementing-section-508-improving-access-government-information-and-data-persons-di>

The Chief Acquisition Officers Council (CAOC), the Chief Information Officers Council (CIOOC) and the U.S. General Services Administration (GSA) *National Dialogue on Improving the Section 508 Program*: <http://section508.ideascale.com>.

Whitehouse.gov Accessibility Information:
<http://www.whitehouse.gov/accessibility>.

CEQ FOIA Handbook:
<http://www.whitehouse.gov/administration/eop/ceq/foia>.

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

- Describe steps taken to ensure that the system for responding to requests is effective and efficient.

CEQ's Chief FOIA Officer and FOIA Public Liaison set weekly FOIA processing goals to ensure effective and efficient responses to pending requests. CEQ's FOIA Public Liaison also routinely contacts FOIA requesters to keep them apprised of CEQ's processing status and the estimated timing of CEQ's response. The FOIA Public Liaison schedules phone calls with a requester upon CEQ's receipt of his or her request. Such phone conversations help clarify the

information of greatest interest to the requester, which, in turn, focuses CEQ's records search and processing. This process leads to a better, more effective and efficient response by CEQ to the requester.

- Do FOIA professionals within your agency have sufficient IT support?

CEQ's FOIA staff regularly consults OIP's FOIA Hotline to learn the latest best practices in FOIA administration. CEQ also has access to the Executive Office of the President's IT services.

- Do your FOIA professionals work with your agency's Open Government Team?

CEQ's FOIA Public Liaison attends the Open Government Working Group's monthly meetings. These meetings highlight the best practices and current initiatives across the Federal Government to promote the three tenets of open government: transparency, participation, and collaboration. Tracking these developments is useful to CEQ's FOIA program, because (i) CEQ does not have on-staff technology expertise, and (ii) CEQ's ability to identify and deploy new technology tools to expand participation is tied to its partnerships with other agencies, as CEQ shares web infrastructure with the broader Executive Office of the President and other agencies participating in CEQ-led interagency efforts.

- Has your agency assessed whether adequate staffing is being devoted to FOIA administration?

Unlike larger Federal agencies who receive voluminous FOIA requests, CEQ is a lean operation and receives fewer requests on an annual basis. CEQ has one full-time Attorney Advisor who serves as CEQ's FOIA Public Liaison. This role includes: handling correspondence between CEQ and FOIA requesters; overseeing records searches; independently reviewing search results for completeness, accuracy, responsiveness; and managing interagency FOIA consults and referrals. CEQ law clerks assist the FOIA Public Liaison as necessary. CEQ's Deputy General Counsel serves as CEQ's Chief FOIA Officer, overseeing CEQ's FOIA administration. CEQ's Senior Counsel serves as CEQ's FOIA Appeals Officer and works with the FOIA Chief Officer and FOIA Public Liaison to evaluate and process CEQ FOIA appeals. CEQ will continue to evaluate its needs and resources to adequately support CEQ's FOIA administration.

- If your agency is decentralized, can FOIA requests be made electronically to all components of your agency?

CEQ is not a decentralized agency. CEQ's FOIA Public Liaison routes misdirected inquiries received by CEQ (electronically or otherwise) to other agencies, as appropriate.

III. Steps Taken To Increase Proactive Disclosures

- Describe steps 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.

CEQ receives the services and support of the Office of Administration, Executive Office of the President and the Department of Energy to maintain two websites, CEQ's White House website, available at <http://www.whitehouse.gov/administration/eop/ceq> and NEPA website, available at www.nepa.gov. CEQ uses these two websites to provide information about CEQ initiatives and operations, as well as information about the Federal Government's Executive Branch responsibilities under the National Environmental Policy Act (NEPA). Both websites are frequently refreshed with new or updated content, including CEQ publications, press releases, and blog posts regarding environment, energy, and natural resources issues. Moreover, CEQ has led and systematically supported inter-agency efforts to pro-actively disclose information related to environmental reviews, namely through the online posting of background environmental data, agency analyses, and public comments.

CEQ's FOIA Requester Service Site (www.whitehouse.gov/administration/eop/ceq/foia) is being updated to improve user friendliness. CEQ aims to complete an initial round of updates this spring, and CEQ will continue to explore opportunities to adopt IT tools, such as those that other agencies are piloting.

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

CEQ is exploring an IT tool, FOIAonline to enable CEQ to proactively disclose records of interest to FOIA requesters. This effort is described in greater detail in the section below.

IV. Steps Taken to Greater Utilize Technology

- Can FOIA requests be made electronically to your agency?

Yes, FOIA requests can be submitted via email to CEQ.

- Can a FOIA requester track the status of his/her request electronically?
- If not, is your agency taking steps to establish this capacity?

CEQ's FOIA Public Liaison is available to provide status updates in lieu of an electronic request tracker. When FOIA requesters ask for a status update, they generally receive a response within one business day, by phone, email, or both, as requested. CEQ feels strongly that it provides requesters with better service by providing a point of contact to provide real-time information and address any questions a requester raises.

- Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency? If so, describe them.

In addition to pursuing implementation of the FOIA Online tool, CEQ is also updating the, as discussed above.

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

- Does your agency utilize a separate track for simple requests?
- Is the average time taken to process a simple request fewer than 20 days?

CEQ uses a separate track to process simple, complex, and expedited requests. CEQ's average response time for simple requests is 26 days.

- Did backlog of requests decrease as compared with last year?

Yes, the number of backlogged requests decreased. CEQ had 14 backlogged requests pending at the end of FY2011, compared with 11 backlogged requests at the end of FY2012.

- Did backlog of administrative appeals decrease as compared with last year?

CEQ had zero backlogged administrative appeals during both years.

- Did we close 10 oldest requests from FY2011 during FY2012?

CEQ closed eight of the oldest requests from FY2011 during FY2012.

- Did we close 10 oldest administrative appeals from FY2011 during 2012?

There were no pending administrative appeals at the end of FY2011.

- Was lack of reduction a result in increase in number of requests, loss of staff, increase in complexity, or other causes?

For the second consecutive year, CEQ experienced a substantial increase in FOIA requests. In FY2012, CEQ received 50 FOIA requests. This request rate represented a greater than 20% increase from FY2011, which was itself a record-setting FOIA year for CEQ. In FY2011, requests submitted to CEQ increased 60% over the FY2010 rate, from 25 to 40 requests. In a two-year time span, therefore, the rate of requests received by CEQ per year has doubled. Even with this sharp increase in requests, CEQ significantly reduced its backlog by processing more requests than we received in FY2012. Complex requests also constituted a larger percentage of CEQ's FOIA docket in FY2012 than previous years. In FY 2011, CEQ processed four complex requests. In FY2012, CEQ processed 23 complex requests, a nearly six-fold increase over FY2011.

- Estimate the number of cases where a substantive interim response was provided during the fiscal year.
- Describe any other steps taken to improve timeliness at your agency.

To promote timely responses to FOIA requests, CEQ continually assesses and improves its FOIA administration procedures and staffing. As discussed above, CEQ's Chief FOIA Officer and FOIA Public Liaison set weekly FOIA processing goals, train and closely supervise law clerks to assist with day-to-day FOIA work, and develop and apply tools to streamline and expedite internal procedures wherever possible.

VI. Use of FOIA's Law Enforcement "Exclusions"

- *See* 5 U.S.C. 552(c)(1),(2),(3).
- Did your agency invoke these statutory exclusions during FY 12?

CEQ did not invoke the statutory law enforcement exclusions during FY 2012.

VII. Spotlight on Success

CEQ is reviewing whether FOIAonline is compatible with CEQ's FOIA administration and the dual goals of improving FOIA request processing times and proactively disclosing records of interest to the public. CEQ believes it is important to devote FOIA staff resources to identify and explore useful IT tools, such as FOIAonline. Such tools can reduce the number of redundant requests and enable government agencies to better understand pending and similar requests. CEQ looks forward to exploring how to adopt innovative approaches to FOIA by leveraging efficient IT tools.