

## **Time frame for 2014 Chief FOIA Officer Reports**

Unless otherwise noted, your 2014 Chief FOIA Officer Report should address agency activities that have occurred since the filing of last year's Report, which was March 11, 2013, up until the filing of the 2014 Report, which will be March 10, 2014. Thus, the general reporting period for the Chief FOIA Officer Reports is March 2013 to March 2014.

## **Content of 2014 Chief FOIA Officer Reports**

Name of agency: **National Endowment for the Humanities**

Name and Title of agency Chief FOIA Officer: **Carole M. Watson, Deputy Chairman**

### **Section I: Steps Taken to Apply the Presumption of Openness**

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.

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

#### *FOIA Training:*

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

**Answer: Yes. The National Endowment for the Humanities' (NEH) Office of the General Counsel (OGC), which is responsible for processing the agency's FOIA requests and appeals, provided training on an as-needed basis to NEH staff who assist the OGC with searching for and identifying records responsive to a FOIA request. Furthermore, a training session was held for new FOIA contacts within NEH.**

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

**Answer: NEH held one formal training in 2013 for newly assigned FOIA contacts which covered the basics of how to review and process a FOIA request per internal policy and procedures as well as how to make initial identification of potentially exempted material. Also, we held one-on-one training in the form of conversations and clarification e-mails with approximately nine employees, all of whom are staff members in our various program divisions tasked with handling FOIA requests for records from their divisions.**

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

**Answer: Yes. OGC staff with FOIA responsibilities (FOIA professionals) attended the seminar *FOIA for Attorneys and Access Professionals* by the Department of Justice.**

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

**Answer: 100%**

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

**Answer: By March 2015, our FOIA professionals will attend at least one of the Director's Lecture Series held by the Department of Justice, in addition to other workshops and lectures that are available.**

*Outreach:*

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

**Answer: No.**

*Discretionary Disclosures:*

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

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

**Answer: Yes. For every FOIA request received, NEH FOIA professionals review the records requested and carefully assess whether they may make discretionary disclosures of information, even if the information requested could have been properly withheld under one or more FOIA exemptions.**

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

**Answer: Yes.**

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

**Answer: Exemption 5.**

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

**Answer: NEH released multiple internal agency staff e-mails discussing deliberative matters.**

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

**Answer: As described above, NEH made discretionary releases during the reporting period.**

*Other Initiatives:*

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

**Answer: Yes.**

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

**Answer: We regularly proactively release sample agency publications, program activities and grant narratives as well as financial reports concerning NEH's grant-making and budget; we also maintain on our public website a list of NEH credit card holders and our complete staff directory.**

**<http://www.neh.gov/about/legal/reports> (financial reports)**

**<http://www.neh.gov/news/press-release/2013-12-02> (grants awarded)**

**<http://www.neh.gov/about/foia/electronic-reading-room> (credit card holders)**

**<http://www.neh.gov/about/staff> (searchable staff directory)**

**Furthermore, NEH is in the process of updating its FOIA regulations, which were last revised in 1987, to ensure that they are consistent with current FOIA laws and the President's FOIA Memorandum and the Attorney General's FOIA Guidelines. The agency has received and taken into account public comments on its proposed new FOIA regulations which were published in the Federal Register in 2013. NEH anticipates publishing its final FOIA regulations in March 2014.**

## **Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests**

As the Attorney General emphasized in his FOIA Guidelines, "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." It is essential that agencies effectively manage their FOIA program.

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

*Personnel:*

During Sunshine Week 2012 OPM announced the creation of a new job series entitled the Government Information Series, to address the work performed by FOIA and Privacy Act

professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

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

**Answer: No, NEH is a small agency with a limited number of FOIA requests each year (in FY 2013 we received thirty-five requests), as such, we do not have full-time dedicated FOIA personnel. Two attorneys and one paralegal process all of the agency's FOIA requests as part of their duties within the OGC.**

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

**Answer: NEH has not converted any of its FOIA personnel to the new series. See answer to Question 1.**

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

**Answer: NEH will not convert its FOIA professionals' position descriptions. As described above, NEH does not have full-time FOIA personnel, and therefore there is no position eligible for conversion to the new series.**

*Processing Procedures:*

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

**Answer: Yes, in FY 2013 NEH adjudicated requests for expedited processing within one day in and processed the associated FOIA requests on average within six days.**

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

**Answer: NEH already has in place procedures to expediently handle referrals and consultations. We had no consultations and made no referrals in the reporting period; in the last three fiscal years, NEH has had only two consultations and made no referrals**

*Requester Services:*

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

**Answer: Yes.**

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

**Answer: Yes. In our initial response to an administrative appeal, we notify requesters of the mediation services offered by OGIS.**

8. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc.

**Answer: Last year NEH put procedures in place to more efficiently notify relevant divisions within the agency about FOIA requests for records of that office, and also to tailor internal deadlines – depending on the scope of the request – for the relevant office to provide responsive documents to FOIA staff for processing. These procedures have continued to reduce NEH’s overall FOIA response times. Our FOIA professionals are in regular contact with the various NEH divisions responsible for searching for records responsive to a FOIA request, to offer assistance or advice.**

### **Section III: Steps Taken to Increase Proactive Disclosures**

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

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

#### *Posting Material:*

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

**Answer: Yes.**

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

**Answer: Program officers in the various NEH divisions select grant narratives samples and forward them to the OGC FOIA professionals for review before the documents are published or released.**

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

**Answer: NEH regularly posts new information about agency activities on its website. For example, it posts press releases about funded projects, lists of recent grant awards, sample grant application narratives, speeches by the NEH Chairman, information on grant administration, application guidelines, annual agency reports (e.g., Performance and Accountability reports, Service Contract Inventory reports, etc.) and the full text of *Humanities*, NEH’s bimonthly magazine.**

NEH also maintains on our website our organizational chart and staff directory; biographies and photographs of some of its senior staff; webpages for its Office of Communications and Public Affairs, and its Office of Congressional Affairs; a social media index, which contains NEH as well as office and division specific RSS feeds and Twitter page links; a section called *Explore*, which contains an interactive database of websites, applications, and NEH-supported digital projects; and guidelines on using NEH's logo (e.g., how to use it in print and electronic communications).

<http://www.neh.gov/about/legal/reports> (financial reports)  
<http://www.neh.gov/news/press-release/2013-12-02> (grants awarded)  
<http://www.neh.gov/about/foia/freedom-information-act-sample-grant-application-narratives> (sample grant narratives)  
<http://www.neh.gov/grants/research/awards-faculty-hispanic-serving-institutions> (sample of grant guidelines)  
<http://www.neh.gov/about/staff> (searchable staff directory)  
<http://www.neh.gov/humanities> (*Humanities* magazine)  
<http://www.neh.gov/about/chairman/deputy-chairman> (biography of Deputy Chairman, links on this site include those to the Chairman's speeches, Office of Communications and White House Affairs)  
<http://www.neh.gov/news/press-releases> (press releases)  
<http://www.neh.gov/brand-materials> (guidelines for use of NEH logo)

*Making Posted Material More Useful:*

4. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of posted material, improving search capabilities on the site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.?

**Answer: Yes. NEH continues to fine-tune the search feature of its website. Furthermore, NEH is currently working on a mobile redesign initiative.**

5. If so, provide examples of such improvements.

**Answer: For example, search results now provide search term suggestions and search results that include "stemmer" algorithms, thus providing users with more results (e.g., a search for "walk" will result in "walks", "walker", "walked", etc.). Furthermore, NEH has implemented a more accessible interface for search results.**

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

**Answer: Yes. NEH regularly uses social media platforms to further disseminate information about its programs and activities, to connect with people who are interested in the humanities, and to provide a place for the public to communicate and exchange ideas with those who are interested in the agency's work. This past year, NEH posted on its Facebook page press releases, information about recently awarded grants, examples of funded projects, information about recently appointed National Council on the Humanities members, and upcoming NEH-sponsored events. On Twitter, NEH posted tweets about new grant programs, grant deadlines, staff travel to conferences, and sample grant application narratives. Finally, on YouTube, NEH posted videos of NEH-funded projects, past**

**NEH conferences, past Jefferson Lectures, and interviews with humanities scholars.**

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

**Answer: No.**

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

**Answer: We have encouraged program officers and divisional staff to review their records for documents they feel would be of interest to the public.**

## **Section IV: Steps Taken to Greater Utilize Technology**

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. Over the past several years agencies have reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2014, as we have done over the past years, the questions have been further refined and now also address different, more innovative aspects of technology use.

*Online tracking of FOIA requests:*

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

**Answer: No. As a small government agency, NEH receives relatively few FOIA requests each year. For example, in FY 2013, NEH received only thirty-five requests. Accordingly, NEH has determined that it is unnecessary and would not be cost-effective for the agency to offer an electronic tracking system for its requesters at this time.**

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

**Answer: Not Applicable.**

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

**Answer: Not Applicable.**

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

**Answer: Not Applicable.**

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

**Answer: No. See IV. 1. Furthermore, our FOIA officials respond directly to requestors and provide them with a direct e-mail address for any questions and status requests.**

*Use of technology to facilitate processing of requests:*

6. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

**Answer: No. As explained in IV.1. above, NEH receives a limited number of FOIA requests each year, and therefore, the agency is not taking steps at this time to utilize more advanced technologies. However, should the number or complexity of FOIA requests increase, NEH will reassess whether it should implement advanced technologies to facilitate the agency's overall FOIA efficiency.**

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

**Answer: Not Applicable.**

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

**Answer: No.**

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

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations. *For the figures required in this Section, please use those contained in the specified sections of your agency's 2013 Annual FOIA Report and, when applicable, your agency's 2012 Annual FOIA Report.*

*Simple Track Requests:*

1. Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.



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

**Answer: Yes.**

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

**Answer: Yes. In FY 2013, the NEH spent an average of twelve days to process simple requests.**

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

**Answer: Not Applicable.**

*Backlogs and "Ten Oldest" Requests, Appeals and Consultations:*

2. Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.

Backlogs

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

**Answer: NEH had no backlogged requests at the close of Fiscal Year 2012 and one backlogged request at the end of Fiscal Year 2013.**

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

**Answer: NEH had no backlogged administrative appeals in Fiscal Year 2012 or in Fiscal Year 2013. We received no administrative appeals in Fiscal Year 2013.**

Ten Oldest Requests

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

**Answer: Not Applicable. NEH had no outstanding requests at the end of Fiscal Year 2012.**

- d. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed two of them, you should note that you closed two out of seven "oldest" requests.

**Answer: Not Applicable.**

Ten Oldest Appeals

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

**Answer: NEH had no pending appeals at the end of Fiscal Year 2012.**

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

**Answer: Not Applicable.**

Ten Oldest Consultations

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

**Answer: NEH had no pending consultations as of the end Fiscal Year 2012.**

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

**Answer: Not Applicable.**

*Reasons for Any Backlogs:*

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

Request and/or Appeal Backlog

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

**Answer: Not Applicable.**

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

**Answer: Not Applicable.**

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

**Answer: Not Applicable.**

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

**Answer: Not Applicable.**

“Ten oldest” Not Closed

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

**Answer: Not Applicable.**

- f. If your agency was unable to close any of its ten oldest requests or appeals because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

**Answer: Not Applicable.**

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

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

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

**Answer: NEH had no pending requests, appeals, or consultations at the end of Fiscal Year 2012 and only one pending request at the end of Fiscal Year 2013.**

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

**Answer: Not Applicable.**

*Interim Responses:*

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

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

**Answer: Yes.**

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

**Answer: The one FOIA request pending at the end of Fiscal Year 2013 required substantial off-site document retrieval and an extreme number of documents requiring review. NEH gave an interim response and maintained open communication with the requester in FY 2013; however, no documents were yet available at the close of FY2013 to provide a substantive interim response.**

## **Use of FOIA's Law Enforcement "Exclusions"**

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

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

**Answer: No.**

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

**Answer: Not Applicable.**

## **Spotlight on Success**

Out of all the activities undertaken by your agency since March 2013 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas. As noted above, these agency **success stories** will be highlighted during Sunshine Week by OIP. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

**Answer:**

**Our processing times in 2013 were reduced by 19% for simple requests (the bulk of our requests) and 11% for complex requests.**

**Our updated FOIA regulations will be published within this reporting period.**

**NEH maintained a zero backlog for almost the entire reporting period.**

**In Fiscal Year 2013, the NEH maintained a robust website and we were able to refer a number of FOIA requesters to our website for the information they sought.**