



## National Endowment for the Arts Freedom of Information Act 2010 Chief FOIA Officer Report

### 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.*

*1. Describe below the steps your agency has taken to ensure that that presumption is being applied to all decisions involving the FOIA.*

The National Endowment for the Arts (NEA) is a small agency with approximately 170 staff members. The agency's FOIA operations are proportionately small: there is one FOIA Officer, who is supervised by the NEA's Acting General Counsel. Because the FOIA Officer was hired in June 2009 and had not previously worked with the Freedom of Information Act, all of her training incorporated the principles of the President's FOIA Memorandum and the Attorney General's FOIA Guidelines.

In FY 2009, the NEA processed 84 FOIA requests. Among this group of requests, there were no opportunities to make a full or partial release when the information otherwise would have been withheld. Most of the redactions in FY 2009 were made under exemption (b)(6), which is not one of the exemptions that permits discretionary disclosure. In FY 2009, the NEA applied exemption (b)(5) only twice, and it did not apply exemption (b)(2) at all. That year, there was only one "full denial based on exemptions," while in FY 2008, there were zero. Moreover, the majority of records released by the National Endowment for the Arts have minimal amounts of material redacted.

*2. Report whether your agency shows an increase in the number of requests where records have been released in full or where records have been released in part when compared with those numbers in the previous year's Annual FOIA Report.*

Because the number of FOIA requests received by the NEA is relatively small from year to year, it is difficult to make a meaningful comparison regarding the records that have been released in full. In FY 2009, there were 26 full grants out of 84 processed requests (31%), and there were 32 partial grants (38%). In FY 2008, the NEA made 18 full grants out of 51 requests processed (35%), and it made 27 partial grants (53%).

## **II. STEPS TAKEN TO ENSURE THAT YOUR AGENCY HAS AN EFFECTIVE SYSTEM 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.” Describe here the steps your agency has taken to ensure that your system for responding to requests is effective and efficient.*

The FOIA Officer works closely with other staff members to promptly respond to FOIA requests. The largest category of requests comprises grant applications that received funding from the NEA; therefore, the FOIA Officer interacts mostly with the program staff to obtain the requested application materials. The FOIA Officer also works closely with the Information and Technology Management (IT) staff on requests with responsive electronic records. For example, when a recent FOIA request asked for certain email correspondence, the IT staff created a file with more than 1,400 responsive emails.

## **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 to increase the amount of material that is available on your agency website.*

The National Endowment for the Arts regularly adds new information and documents to its website. These include grants awarded by the agency (FY 2002-present), application guidelines, and press releases. In addition, all of the NEA’s current publications, including its research reports, are available free-of-charge as PDF files. Certain historical materials are also available: all of the agency’s annual reports dating back to its establishment in 1965 can be found on the NEA website.

During the past year, the NEA increased the amount of information available on its website. The agency added a section specific to the grants it awarded under the American Recovery and Reinvestment Act (ARRA), which includes guidelines, reports, and grants awarded, as well as a “Manage Your Award” feature for grantees. The NEA also expanded the audio and video features available online. For example, it added 35 new audio segments on the NEA Jazz Masters, 20 videos of the NEA Opera Honors awardees, and a 58-minute radio broadcast of the 2009 Opera Honors ceremony. Furthermore, the agency revamped the sections on its website for the Office of the Inspector General and the Freedom of Information Act.

#### **IV. STEPS TAKEN TO GREATER UTILIZE TECHNOLOGY**

*A key component of the President's 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.*

1. *Does your agency currently receive requests electronically? Yes.*
2. *If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically? Not applicable.*
3. *Does your agency track requests electronically? Yes.*
4. *If not, what are the current impediments to your agency utilizing a system to track requests electronically? Not applicable.*
5. *Does your agency use technology to process requests? Yes.*
6. *If not, what are the current impediments to your agency utilizing technology to process requests? Not applicable.*
7. *Does your agency utilize technology to prepare you agency Annual FOIA Report? Yes.*
8. *If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report? Not applicable.*

#### **V. STEPS TAKEN TO REDUCE BACKLOGS AND IMPROVE TIMELINESS IN RESPONDING TO REQUESTS**

*Improvements to timeliness in responding to pending FOIA requests and reductions in backlogs is an ongoing agency effort. Both the President and the Attorney General emphasized the importance of improving timeliness in responding to requests.*

1. *If you have a backlog, report here whether your backlog is decreasing.*

The NEA typically does not experience backlogs, and it did not have one in FY 2008. However, it reported two backlogged requests in the FY 2009 annual report, the older of which was received on July 16, 2009. Both of these requests were processed shortly after the start of the current fiscal year. There were no backlogged administrative appeals in either FY 2008 or FY 2009.

2. *If there has not been a reduction in the backlog describe why that has occurred and what steps your agency is taking to bring about a reduction.*

n/a

*3. Describe the steps your agency is taking to improve timeliness in responding to requests and to administrative appeals.*

As mentioned above, the NEA receives relatively few requests under the Freedom of Information Act. Because of this, the agency is able to respond promptly to requests and appeals. In FY 2009, the median response time for requests was 3.0 days. Moreover, in one third of the requests processed, the response time was one day or less. The agency received only one administrative appeal in FY 2009, which it processed in three days.

Although the National Endowment for the Arts uses computer technology in all stages of the FOIA process, the agency recognizes that there is more sophisticated technology available. Because of the consistently small number of FOIA requests, the limited amount of technology used by the agency has been sufficient. There is no backlog, and requests are processed in a timely manner. However, as a result of an increase in FOIA requests over the past year, the NEA is exploring ways to use technology to improve the efficiency of the tracking and reporting processes. The complexity of this technology will be balanced against the needs of the agency's FOIA program.