

**2023 Chief FOIA Officer Report Guidelines
Agencies Receiving More than 50 Requests in Fiscal Year 2022¹**

The National Endowment for the Arts (NEA) is a small agency with approximately 145 staff members and no agency components. The agency’s day-to-day FOIA operations are proportionately small. One FOIA Officer processes all of the NEA’s FOIA requests. The FOIA Officer is supervised by the NEA Acting General Counsel/Chief FOIA Officer, Sarah Weingast.

The NEA is committed to making its work more transparent and recognizes that FOIA is a fundamental element of Open Government. By applying a presumption of openness and maintaining effective FOIA operations, the agency seeks to expand the availability of its information to the public. The following report describes the steps taken by the NEA to implement the Freedom of Information Act during the past reporting period.

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? **Yes.**
2. Please provide the name and title of your agency’s Chief FOIA Officer. **Sarah Weingast, Acting 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? **While the agency has not specifically incorporated FOIA milestones into its Strategic Plan Fiscal Years 2022—2026, the NEA Office of Inspector General’s Strategic Plan 2020-2024 references FOIA. Complying with FOIA requirements is a top priority of the agency. For example, when the agency was suddenly and unexpectedly without a FOIA Officer, the agency immediately rearranged its limited resources to ensure the agency remains in compliance with all FOIA**

¹ While the agency received less than 50 requests in Fiscal Year 2022, this report uses the template for agencies with more than 50 requests for consistency with the agency’s prior reports.

responsibilities with minimal disruption. The Chief FOIA Officer will also discuss with the agency's senior leadership a recommendation to incorporate FOIA milestones into the agency's next strategic plan.

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? **No, it does not. The agency plans to update its response letter template in spring 2023, to ensure that such confirmation language is included in future response letters.**

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 interest protected by a FOIA exemption. This is commonly referred to as a *Glomar* response. With respect to these responses, please answer the below questions:

- a. In addition to tracking the asserted exemption, does your agency specifically track whether a request involved a *Glomar* response? **No.**
- b. If yes, please provide:
 - i. the number of times your agency issued a full or partial *Glomar* response (separate full and partial if possible); **N/A.**
 - ii. the number of times a *Glomar* response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times). **N/A.**
- 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. **The agency has not, to date, had the need to provide a *Glomar* response. Thus, there is no need for the agency to track such responses at this time. Should there be a need to provide a *Glomar* response, the agency will confer with the Department of Justice Office of Information Policy on best practices for tracking such responses.**

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. **The agency provides the presumption of openness and transparency by making grants, policy, and other information available on the agency website.**

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. **FOIA training is included in the FOIA professional’s Individual Development Plan. Please refer to our answer to Question 6 below, for informal trainings or education sessions offered. In 2023, the Chief FOIA Officer intends to prepare an agency-wide FOIA training for all staff, making it available online and coordinated through the agency’s training coordinator.**
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? **Yes.**
3. If yes, please provide a brief description of the type of training attended or conducted and the topics covered. **Information and Best Practices sessions hosted by the Department of Justice Office of Informational Policy, to include Report Refresher, and Virtual FOIA Summit for Agency FOIA Professionals. During 2022, the former FOIA Officer was also a member of the *American Society for Access Professionals (ASAP)*, which offers access to on-demand FOIA webinars.**
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. **100 %.**
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. 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? **The Chief FOIA Officer and the FOIA Public Liaison have conducted informal informational sessions with the Senior Management Staff about the agency's FOIA responsibilities and any FOIA-related questions they may have. The FOIA Officer works one-on-one with agency staff that assists with the FOIA administration. Additionally, non-FOIA professionals (i.e., attorneys) have attended the *Virtual FOIA Summit for Agency FOIA Professionals* in May 2022 and various virtual training courses offered by DOJ Office of Information Policy in January-February 2023.**

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. **Our understanding is that our former FOIA Officer attended open meetings by the National Archives and Office of Government Information Services. Since the refocus of our FOIA process, the new FOIA staff have been in close communications with the DOJ Office of Information Policy and are in the process of getting integrated into open government group meetings and the larger FOIA community for continued outreach and dialogue.**

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. **Yes, the FOIA Officer proactively contacts requesters. For example, early this year, the FOIA Officer was able to provide responsive agency records by more than three weeks early by clarifying with the requester 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). **The FOIA**

Officer works directly with the requestors, minimizing the need for intervention from the Public Liaison. Therefore, the Public Liaison was not contacted for assistance during Fiscal Year 2022.

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. **Yes, the Agency has evaluated and shifted the allocation of its personnel resources needed to respond to current and anticipated FOIA demands. With the sudden need at the end of 2022 to have a new FOIA officer and a new Chief FOIA Officer, agency personnel have been immediately shifted to fulfill the FOIA officials' roles. In addition, the agency has hired a government contractor to facilitate timely FOIA processing and is in the process of securing a non-NEA government employee on a detail, to further strengthen the agency's FOIA administration.**

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. **The agency uses various data/processing metrics and tracking systems, including Microsoft Excel and internal reports and trackers, to ensure efficient management of its FOIA workload.**

12. Optional -- If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here. **The agency is in the process of establishing a new tracking system to generate the agency's FOIA processing statistics and case management reports. The agency also proactively discloses grants, policy, and other information on the agency website that provides the presumption of openness and transparency.**

SECTION III: PROACTIVE DISCLOSURES

The Attorney General's [FOIA Guidelines](#) emphasize that "proactive disclosure of information is . . . fundamental to the faithful application of the FOIA." The Guidelines direct agencies to post "records online quickly and systematically in advance of any public request" and reiterate that agencies should post records "in the most useful, searchable, and open formats possible."

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures. **A few years ago, the agency posted a number of agency records for proactive disclosures. Since then, the FOIA Officer, the Public Affairs Office, and program offices**

continue to work together to identify, track, and post additional agency records for 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.

Sample Application Narrative – Design, available at

<https://www.arts.gov/sites/default/files/Design-FOIA-Reading-Room-2022-rev.pdf>.

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? **Yes.**

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. **The agency revised its homepage to have the main navigation sections automatically visible and added drop-down menus to each of those items, so that when the user clicks on one, links to the various items in the section appear without having to leave the homepage. This ensures the agency website is much more easily navigable for the public and enhances their user experience.**

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. **Yes, the FOIA Officer works with IT or data personnel to proactively disclose frequently sought materials on the agency website, along with various FOIA reports and other helpful information.**

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

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? **Yes.**

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program. **In Fiscal Year 2022, we began developing a legal management system that is intended to, among other things, improve FOIA tracking and administration. As of the date of this report, that system is in the beta-testing phase and is anticipated to be rolled out more fully during Fiscal Year 2023.**

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. **No.**

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? **Yes.**

5. Did all four of your agency's [quarterly reports](#) for Fiscal Year 2022 appear on FOIA.gov? **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. **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. [Agency FOIA Reports and Logs | NEA.](#)

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? **Yes.**

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

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? **Yes.**

2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know. **Sample grant application narratives for each arts discipline have been placed on the website, minimizing the need to request such documents, which have been subject to frequent requests.**

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. **N/A.**

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. **N/A.**

5. Does your agency utilize a separate track for simple requests? **Yes, a simple track is utilized.**

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

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

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. **Eighty-five percent of requests were placed in the simple track.**

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? **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? **No backlogs were reported at the end of either Fiscal Year 2021 or Fiscal Year 2022.**

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? **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. **N/A.** 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.

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." **N/A.**

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? **No backlog of appeals was reported at the end of either Fiscal Years 2021 or 2022.**

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? **N/A.**

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. **N/A.** 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.

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." 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? 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. 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? **There were no ten oldest pending perfected requests reported in our Fiscal Year 2021 Annual FOIA Report.**

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. N/A.

22. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests. **No additional steps are necessary to be taken at this time.**

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? **No appeals were reported.**

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. **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. **No additional steps are necessary to be taken at this time.**

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? **N/A.**

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. **N/A.**

ADDITIONAL INFORMATION ON 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. **N/A.**

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. **No request was the subject of FOIA litigation during the reporting period.**

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). **Six requests during Fiscal Year 2022 involved unusual circumstances as defined by the FOIA.**