

**Agencies Receiving More than 50 Requests in FY19  
2021 Chief FOIA Officer Report  
Reporting Period March 2020- March 2021  
Agency Chief FOIA Officer India Pinkney, General Counsel**

## INTRODUCTION

The National Endowment for the Arts (Arts Endowment) is a small agency with approximately 160 staff members and no agency components. The agency's day-to-day Freedom of Information Act (FOIA) operations are proportionately small. One FOIA Officer processes all of the agency's FOIA requests. The FOIA Officer is supervised by General Counsel/Chief FOIA Officer, India Pinkney.

The Arts Endowment 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 agency to implement the Freedom of Information Act during the past year.

### **Section 1: Steps Taken to Apply the Presumption of Openness**

The guiding principle underlying DOJ's FOIA Guidelines is the presumption of openness. Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

#### **A. FOIA Leadership**

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at the Assistant Secretary or equivalent level. See 5 U.S.C. § 552(j)(1) (2018). Is your agency's Chief FOIA Officer at this level? **Yes**
2. Please provide the name and title of your agency's Chief FOIA Officer. **India Pinkney, General Counsel**

#### **B. FOIA Training**

3. 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 professionals Individual Development Plan.**

4. 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**

5. 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 Information Policy to include Report Refresher, Continuing Freedom of Information Act Webinar, and the Advanced Freedom of Information Seminar.**

6. 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. **90%**

7. 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. **Efforts are made to ensure all Office of General Counsel receive FOIA training regardless of responsibilities. FOIA Officer plans to attend the American Society of Access of Professional’s Conference which covers a wide variety of FOIA-related topics.**

## C. Outreach

8. Did your FOIA professionals engage in any outreach or dialogue 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. **The FOIA Officer has attended the open meetings by National Archives and Office of Government Information Services as well as reviewed previously recorded sessions and material when unable to attend on the day of the meeting.**

## D. Other Initiatives

9. 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. **A FOIA briefing has been included in the new-comer’s orientation. Senior Management will also begin to have an annual FOIA briefing.**

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

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. For Fiscal Year 2020, 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 2020 Annual FOIA Report. (**7 days**)
2. 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 2020 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*
3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report or raw data, using active workflows and track management, reviewing and updating processing procedures, etc. **Self-assessment is conducted annually as well as reviewing procedures for compliance. In an effort to improve performance and efficiency assessments may be conducted semi-annually.**

*Note: In September 2017, OIP released a FOIA Self-Assessment Toolkit as a resource for agencies conducting a self-assessment of their FOIA program. The Toolkit is available on OIP's website for all agencies to use.*

4. Standard Operating Procedures (SOPs): Having SOPs can improve the consistency and quality of an agency's FOIA process. In addition, describing an agency's standard practices for handling FOIA requests on agency FOIA websites can help requesters better understand how their request will be handled.

- a) Does your agency have SOPs that outline general processes for handling FOIA requests and appeals? **Yes**
- b) If not, does your agency have plans to create FOIA SOPs? *N/A*
- c) If yes, how often are they reviewed/updated to account for changes in law, best practices, and technology? **Reviewed annually and updated as needed.**

d) In addition to having SOPs, does your agency post or otherwise describe your standard processes for handling requests on your website? ***Yes, FOIA administration is posted on the website.***

5. 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 FY 2020 (please provide a total number or an estimate of the number). ***The FOIA Public Liaison was utilized once by the suggestion of the FOIA officer.***

6. Does your agency frequently receive common categories of first-party requests? If so, please describe the types of requests and if your agency has explored establishing alternative means of access to these records outside of the FOIA process? ***Sample grant application narratives have been placed on the website minimizing the need to request a sample grant application, which is a large portion of request for information.***

7. The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within 180 days. Has your agency updated its FOIA regulations in accordance with the FOIA Improvement Act of 2016? If not, what is your agency's plan to update your regulations? ***The FOIA regulations are in the process of being updated.***

8. Please explain how your agency worked to mitigate the impact of the COVID-19 pandemic on FOIA processing. ***A notice has been placed on the website indicating the limited access to mail. However, the majority of requests are submitted electronically so little to no impact has been felt.***

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

The Department of Justice has long focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

1. 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.

<https://www.arts.gov/about/foia/reading-room>  
<https://www.arts.gov/about/open-government>

<https://www.arts.gov/about/facts-and-figures>

<https://www.arts.gov/grants>

2. 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**

3. If yes, please provide examples of such improvements. ***The rebuild of the NEA website included upgrading from Drupal 7 to Drupal 8 for improved functionality, accessibility, and security; a new visual design and navigation architecture to improve usability; and upgraded hosting server capacity to improve site efficiency and technical and development potential.***

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

A key component of FOIA administration is using technology to make information more accessible. In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that that describes your agency's efforts in this area.

1. Please briefly describe the types of technology your agency uses to support your FOIA program. ***We are not leveraging or exploring any new technology at this time. However, we are searching for a FOIA software program that may assist with tracking and reporting.***

2. 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**

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2020? ***Yes, all were posted, however we did experience some technical challenges but were able to overcome them.***

4. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2021. ***N/A***

5. 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 2019 Annual FOIA Report and, if available, for your agency's Fiscal Year 2020 Annual FOIA Report.

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

The Department of Justice has emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report 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 the numbers contained in the specified sections of your agency's FY 2019 and 2020 Annual FOIA Reports.

### **A. Simple Track**

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.

1. Does your agency utilize a separate track for simple requests? **Yes**
2. 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 2020? **Yes**
3. Please provide the percentage of requests processed by your agency in Fiscal Year 2020 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.
4. 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? **Yes**

### **B. Backlogs**

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. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2019 and Fiscal Year 2020 when completing this section of your Chief FOIA Officer Report.

## ***BACKLOGGED REQUESTS***

5. If your agency had a backlog of requests at the close of Fiscal Year 2020, according to Annual FOIA Report Section XII.A, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?
6. If not, according to Annual FOIA Report Section V.A, did your agency process more requests during Fiscal Year 2020 than it did during Fiscal Year 2019?
7. If your agency's request backlog increased during Fiscal Year 2020, 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:
8. 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 2020. 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. If your agency has no request backlog, please answer with "N/A."

## ***BACKLOGGED APPEALS***

9. If your agency had a backlog of appeals at the close of Fiscal Year 2020, according to Section XII.A of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019? *N/A*
10. If not, according to section VI.A of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2020 than it did during Fiscal Year 2019? ***Yes, we received one appeal for FY 2020.***
11. If your agency's appeal backlog increased during Fiscal Year 2020, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. *N/A*
12. 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 2020. ***There were no appeals backlogged in FY 2019 and we received one appeal in FY 2020.***

## ***C. Backlog Reduction Plans***

13. In the 2020 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2019 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 2020? *N/A*

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2020, please explain your agency's plan to reduce this backlog during Fiscal Year 2021. *N/A*

## **D. Status of Oldest Requests, Appeals, and Consultations**

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 2019 and Fiscal Year 2020 when completing this section of your Chief FOIA Officer Report.

### ***OLDEST REQUESTS***

15. In Fiscal Year 2020, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2019 Annual FOIA Report? *Yes*

16. 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 2019 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that. ***It was only one request pending at the end of the fiscal year.***

17. 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 being taken at this time.***

### **TEN OLDEST APPEALS**

18. In Fiscal Year 2020, did your agency close the ten oldest appeals that were reported pending in Section VII.C.5. of your Fiscal Year 2019 Annual FOIA Report? *N/A*

19. 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 2019 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that. *N/A*

20. 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 being taken at this time.***



**TEN OLDEST CONSULTATIONS**

**21.** In Fiscal Year 2020, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2019 Annual FOIA Report? *N/A*

**22.** 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 2019 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that. *N/A*

**E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans**

**23.** Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2019. *No obstacles were faced.*

**24.** If your agency was unable to close any of its ten oldest requests 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. *N/A*

**25.** If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2021. *N/A*

The Arts Endowment has been able to decrease its FOIA request significantly due to the increased amount of information made available to the public on the agency website.