

## 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 presumption of openness is being applied to all decisions involving the FOIA. This section should include a discussion of the range of steps taken by your agency to apply this presumption, from publicizing the President's FOIA Memorandum and Attorney General's FOIA Guidelines and providing training on them, to implementing the presumption in response to FOIA requests and administrative appeals, with examples or statistics illustrating your agency's action in making discretionary releases of records or partial releases when full disclosure is not possible.**

In addition to publicizing the President's FOIA Memorandum and Attorney General's FOIA Guidelines, the Department of Education has taken many steps to ensure a presumption of openness is applied to all decisions involving the FOIA by:

- A. Increasing Awareness through Training: The Department of Education is developing a FOIA Training Curriculum with modules focused on the various groups of employees and their specific responsibility for administering the FOIA, i.e. Program Office FOIA Coordinators, FOIA Public Liaisons, new employees, and managers.
  - 1) The "FOIA Overview Module," the first module in the series, will provide basic information about the FOIA such as the FOIA's purpose, guidelines, exemptions, searches, and internal processes. The goal is for the module to be disseminated to new employees upon entry, and to all Department employees, electronically, on an annual basis.
  - 2) The development of the modules is in progress and the "FOIA Overview" is expected to rollout before the end of the fiscal year.
- B. Developing Processes for Proactive and Discretionary Releases of Records: The Department of Education has developed processes for proactive and discretionary releases of records. The Department has defined "proactive release" as the release of information in advance of a FOIA request; and defined "discretionary release" as the release of information which legally can be withheld but which the Department has decided, within its discretion, to release.

- 1) The Department is identifying types of documents that have been requested in previous years and now proactively releases responsive documents into the public domain via the FOIA e-Reading Room, in advance of receiving a FOIA request. Annually, the Department receives more than 700 requests for contracts, grant applications, and information about federally funded programs to include ARRA related documents. The FOIA Service Center is working in concert with several program offices, such as the Office of Postsecondary Education (OPE)<sup>1</sup> and the Office of English Language Acquisition (OELA),<sup>2</sup> to get these types of documents published in the FOIA e-Reading Room. For specific examples, see OPE grant applications located at: <http://www2.ed.gov/policy/gen/leg/foia/operoom.html> and OELA grant applications located at: [http://www2.ed.gov/policy/gen/leg/foia/oela\\_readingroom.html](http://www2.ed.gov/policy/gen/leg/foia/oela_readingroom.html)
  - 2) In response to the Attorney General's FOIA Guidelines, the Department, thru its two-level review process, works to ensure that a foreseeable harm is linked to any information falling within the scope of a discretionary exemption and if no harm is found—or the Department determines that the information may otherwise be released—the information is discretionarily released.
- C. Implementing a two-level quality review of documents not fully-released: The Department conducts at least a two-level review of documents deemed NOT fully releasable. During this second review, special attention is focused on ensuring a foreseeable harm has been established and segregable information is released. The two-level review is believed to significantly decrease the number of administrative appeals.
- D. Populating the FOIA e-Reading Room in a manner to ensure rapid distribution of information: The Department populates the FOIA e-Reading Room with frequently requested documents, proactively released documents, and discretionarily released documents. Additionally, the Department is providing access to these types of documents and others, using hyperlinks, located in the e-Reading Room, to lead requesters directly to program offices' websites making it easier for the public to locate information.

**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.**

The Department of Education shows a 12% increase in the number of requests where records have been released in full when compared with the previous year's Annual Report. In 2009, 720 records were released in full compared to 644 in 2008; 32% of requests received were released in full. However, in 2009, 859 records were released in part compared to 1029 in 2008 which indicates a 17% decrease in the number of requests partially released.

## **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. This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support.**

The Department of Education's FOIA Service Center has taken steps to ensure that the system it uses for responding to request is effective and efficient. The FOIA Service Center has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professional by:

- A. Reviewing FOIA Policy: After a review, the Department determined its FOIA regulation and agency directive both need updating. The update will promulgate streamlined processes to eliminate unnecessary bureaucratic hurdles. The regulation is in the final stages of approval and the FOIA Directive is expected to be issued for Departmental clearance before the end of the fiscal year.
- B. Evaluating the Agency's case management workflow system used for FOIA: The Department currently uses a Commercial off the Shelf (COTS) case management and workflow system with many features and benefits. In an effort to ensure that the system for responding to requests is effective and efficient, the Department evaluated its use of various features. The Department found that the use of features, such as the redaction tool and electronic document file cabinet, has transformed the work of FOIA processing from paper, manual labor and needlessly repetitive tasks, to automated processes commanded by menus and icons. The Department system electronically stores, retrieves, redacts, and prints documents for

delivery to FOIA requesters. It also keeps track of FOIA processing statistics and fees, and generates reports on the number, type, and disposition of FOIA requests processed.

- C. Identifying a FOIA IT contact within the FOIA Service Center: In an effort to ensure FOIA professionals have sufficient IT support for the FOIA case management system, a FOIA Public Liaison has been designated as the IT administrator for the case management workflow system. Instead of calling the Department's "Help Desk," for IT support, FOIA Coordinators are able to resolve most electronic FOIA issues through a single point of contact by calling the FOIA Service Center's Hotline number.

### **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, including providing examples of proactive disclosures that have been made since issuance of the new FOIA Guidelines.**

The Department of Education has developed processes for proactive and discretionary releases of records. The Department has defined "proactive release" as the release of information in advance of a FOIA request; and defined "discretionary release" as the release of information which legally can be withheld but which the Department has decided, within its discretion, to release.

- A. The Department is identifying types of documents that have been requested in previous years and now proactively releases responsive documents into the public domain via the FOIA e-Reading Room, in advance of receiving a FOIA request. Annually, the Department receives more than 700 requests for contracts, grant applications, and information about federally funded programs to include ARRA related documents. The FOIA Service Center is currently working in concert with the Office of Elementary and Secondary Education (OESE) and the Office of General Counsel to proactively release more than 33,000 pages submitted by Race to the Top applicants. The location of the Race to the Top documents is: <http://www2.ed.gov/programs/racetothetop/phase1-applications/index.html>. The FOIA Service Center plans to work with many other program offices to get these types of documents published in the FOIA e-Reading Room.

- B. The Department populates the FOIA e-Reading Room with frequently requested documents, proactively released documents, and discretionarily released documents. Additionally, the Department is providing access to these types of documents and others, using hyperlinks, located in the e-Reading Room, to lead requesters directly to program offices' websites making it easier for the public to locate information. The Department's FOIA e-Reading Room can be viewed at [http://www2.ed.gov/policy/gen/leg/foia/readingroom\\_2.html](http://www2.ed.gov/policy/gen/leg/foia/readingroom_2.html)

#### **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. For this section of the Chief FOIA Officer Report, please answer the following questions:**

- 1.) Does your agency currently receive requests electronically?** Yes. The Department of Education uses FOIAXpress to receive requests electronically.
- 2.) If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically?** N/A
- 3.) Does your agency track requests electronically?** Yes. The Department of Education uses FOIAXpress to track requests electronically.
- 4.) If not, what are the current impediments to your agency utilizing a system to track requests electronically?** N/A
- 5.) Does your agency use technology to process requests.** Yes. The Department of Education uses FOIAXpress to process requests.
- 6.) If not, what are the current impediments to your agency utilizing technology to process requests?** N/A
- 7.) Does your agency utilize technology to prepare your agency Annual FOIA Report.** Yes. The Department of Education uses FOIAXpress to prepare the agency's Annual FOIA Report.
- 8.) If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report?** N/A

**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 are an ongoing agency effort. Both the President and the Attorney General emphasized the importance of improving timeliness in responding to requests. Section XII of your Annual FOIA Report includes figures that show your agency's backlog of pending requests and administrative appeals for the previous fiscal year and for this current fiscal year. Your Chief FOIA Officer Report should address the following elements.

**1. If you have a backlog, report here whether your backlog is decreasing. That reduction should be measured both in terms of the numbers of backlogged requests and administrative appeals that remain pending at the end of the fiscal year, and in terms of the age of those requests and appeals.**

The Department has a backlog. However, there is a reduction in the total number of backlog cases since the end of FY 2009. Below is a chart which measures the backlog requests and administrative appeals that remain pending at the end of the fiscal year and what is held currently in terms of age:

FY	FOIA Requests (overdue)	Age-FOIA Request (average days)	FOIA Appeals (overdue)	Age-Appeal (average days)
2008	344	74 Oldest Dated: 1/26/2005	37 Oldest Dated: 7/14/2008	188
2009	419	58 Oldest Dated: 12/4/2008	28 Oldest Dated: 2/5/2009	85

**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.**

The primary cause for the 22% increase in backlog between FY 2008 and FY 2009 is a static workforce and a 20% increase in new requests. The production level of the FY 2008 workforce (33 full and part-time staff) and the FY 2009 workforce (31 full and part-time staff) was a difference of 4 requests.

The Department implemented the following steps to reduce the backlog:

- A. At the start of the 2010 fiscal year, the FOIA Service Center established an initiative to eliminate the FY2009 backlog of cases, while continuing to process the FY2010 incoming new cases. Since the start of FY2010, the FOIA Service Center has closed 732 requests. Of the requests closed, 211 were part of the 419 pending cases at the end of FY2009, a 50% reduction. The remaining 208 cases are all FY2009 cases because all prior years cases have now been closed as well.
- B. The FOIA Service Center staff actively encouraged programs receiving repetitive requests for the same type of documents to consider making a proactive FOIA-prepared release and posting it to the web-based FOIA Reading Room or on their own web-page (that the ED Reading Room would link to). This advocacy role is gaining momentum. As an example, in FY2009 between October 2008 and March 2009, there were approximately 101 requests for grants. For the same timeframe for FY2010, there were approximately 141 requests for grants and approximately 25% were closed by referring the requester to the website.

An example of such a website is:

[http://www2.ed.gov/policy/gen/leg/foia/readingroom\\_2.html](http://www2.ed.gov/policy/gen/leg/foia/readingroom_2.html)

- C. Expanded access to our department-wide electronic FOIA processing system (FOIAXpress) to decrease the bottleneck for final processing and release. The Department has purchased and deployed department-wide, more than 200 licenses. This expanded the number of collateral duty FOIA processors and support staff by 30%.

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

The Department of Education is taking at least three steps to improve timeliness in responding to requests and to administrative appeals by:

- A. Improving FOIA Intake procedures: The Department's FOIA Service Center has created standard operating procedures to ensure, at Intake, that only perfected requests are sent to a program office for search and processing; requests are assigned and electronically sent to the correct program office; and a target date is issued for when the case should be completed. Determinations regarding requests for fee waivers and expedited processing are made and communicated to the requesters by the Intake Team and issues are resolved before the case is assigned to a program office.
- B. Creating access to documents in advance of receiving FOIA requests: The Department's FOIA Service Center assists program offices with populating the FOIA e-Reading Room with frequently requested documents, proactively released documents, and discretionarily released documents. The Department is providing access to these types of documents using hyperlinks, located in the e-Reading Room, to lead requesters directly to program offices' websites making it easier for the public to locate information.
- C. Increase awareness of Department's response to FOIA: Monthly, the Department's FOIA Service Center disseminates a Department-wide monthly report of overdue cases. Since many program offices use their own tracking mechanisms, the dissemination of this report provides an opportunity to ensure the integrity of the data within the case management workflow system. The report highlights the Department's total number of overdue cases, overdue by program office, number of days, average age and median age.

Additionally, the FOIA Service Center conducts bi-weekly appeals meetings to ensure new appeals are acknowledged, tracked, and requirements for documentation are forwarded to the Office of General Counsel for review, i.e. documentation of search, justification for withholding, etc.