



Chief FOIA Officer's Report

U.S. Department of Education
March 2011



I. Steps Taken to Apply the Presumption of Openness

The President's FOIA Memorandum and Attorney General's FOIA Guidelines were posted to the Department of Education's FOIA web page as well as emailed to all FOIA Coordinators. Both memos are often referred back to during FOIA training to encourage staff to "adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government".

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) Provide POC FOIA training: The FOIA Service Center (FSC) will continue to advise POCs, through bi-monthly meetings with the Chiefs of Staff (and other opportunities as they arise), that FSC and OGC are available to provide FOIA training adapted to the needs of each POC. These sessions can be focused to target the specific types of FOIA issues faced by particular POCs, and can be tailored to the duties of employees from non-supervisory to senior management levels.
 - 2) Annual FOIA training: The FOIA Service Center staff contracted with the USDA graduate school to create a 1-day FOIA training seminar for Department program FOIA Coordinators and their supervisors. The training seminar was conducted on September 7, 2010, for more than 55 employees in attendance and broadcast out (through the Department's MediaSite system) to the FOIA staff at 12 regional offices across the country. The topics included elements of a request, fees, response times, appeals, and each of the exemptions. The training seminar has been archived for future viewing on ED's MediaSite broadcast system.
 - 3) 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.

- 4) Monthly FOIA sessions: FOIA coordinators from each POC will be required to attend monthly hour-long FOIA sessions held jointly by FSC and OGC focusing on a particular FOIA processing issue where the Department requires improvement.
- 5) New FOIA Coordinators orientation: The FSC will develop orientation training for new FOIA Coordinators to introduce them to the substantive requirements of FOIA and to the Department's FOIA procedures. FSC and OGC have recently developed a Desk Reference pamphlet for FOIA Coordinators.

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 that legally can be withheld but if there is no foreseeable harm, the information is instead released.

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 documents. The FOIA Service Center is working in concert with the program offices to get these types of documents published in the FOIA e-Reading Room.

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 withheld and if no harm is found, the information is discretionarily released. We have seen a reduction in the use of the two exemptions primarily used to discretionarily withhold information. This fiscal year there has been a 40% decrease in the amount of times Exemption 2 was cited and 38% decrease in the amount of times Exemption 5 was cited.

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 and this method also avoids duplication of posting to the web and all links will be to the up-to-date version of the documents.

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 3% decrease in the number of requests where records have been released in full when compared with the previous year's Annual Report. In 2010, 700 records were released in full compared to 720 in 2009; 33% of requests received were released in full. However, in 2010, 740 records were released in part compared to 859 in 2009 which indicates a 14% decrease in the number of requests partially released.

II. Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests

The Department of Education's FOIA Service Center has taken steps to ensure that the system it uses for responding to a 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 professionals by:

- A. 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 a FOIA Coordinator's need for assistance being incorporated within the Department's IT support workload by calling the Department's "IT Help Desk," FOIA Coordinators are able to resolve most electronic FOIA issues through a single point of contact by calling the FOIA Service Center Hotline number.
- B. The FOIA Service Center staff worked in collaboration with the Department's Open Government Team to produce the Open Government Plan. The plan outlines how ED has taken many steps to ensure a presumption of openness is applied to all decisions involving the FOIA by increasing awareness through

- training, proactive and discretionary release of records, and increasing efficiency. The FSC continues to work with the Open Government team to ensure progress is being made.
- C. The Chief FOIA Officer has examined the number of existing FTE and contractor support staff to determine if adequate staffing is devoted to responding to FOIA requests. Through Chiefs of Staff meetings, Principal Offices have been encouraged to ensure adequate resources are available to process requests and achieve meaningful backlog reduction.
- D. The Department finalized and published in the Federal Register new regulations for implementing and carrying out the FOIA program. In addition to reflecting changes required by the FOIA Amendments of 1987, the Electronic FOIA Act of 1996, and the OPEN Government Act of 2007; the new regulations also incorporated the President's January 21, 2009, Memorandum of FOIA and the Attorney General's FOIA Guidance memorandum of March 19, 2009. The new regulations became effective on July 14, 2010.
- E. 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. Having the entire Department using the same system from a shared server allows for efficient transfer of workload when necessary, senior level oversight of cases as well as regional or program caseload, and comprehensive access to data to identify trends to manage the overall FOIA workflow.

III. Steps Taken To Increase Proactive Disclosures

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 that can legally be withheld but if there is no foreseeable harm, the information is instead released.

- 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 working in concert with the program offices to get these types of documents published in the FOIA e-Reading Room.
- B. Social Media: Department of Education notifies the public of important events and information updates via its website and other social media tools. Below is a description of the tools currently in use.
 1. *Electronic newsletters*: The Department has multiple periodic electronic newsletters that inform parents, teachers, education stakeholders, and other members of the public. These electronic newsletters are open to the public via the Department's opt-in policy, in which subscribers may stop delivery at any time. EDInfo, ED Review, Education Innovator, IESNews, Research e-News, Touching Base, PreventionED, and OVAE Connection are the currently available newsletters, and the Department will continue to create newsletters as new special topics are indentified. For more information on the Department's electronic newsletters, please visit: <http://www.ed.gov/news/newsletters/>
 2. *ED.gov Blog*: The ED.gov blog is a primary tool for the Department of Education to publish and promote up-to-date information on agency and the Secretary's events and news headlines. In addition to publishing information, the blog also allows for inclusion of videos, opportunities for public commenting, and electronic subscription via Really Simple Syndication (RSS) features found in third-party blog reading software. The Department plans on extending its blog tools to other offices within the Department. The main Ed.gov blog can be found at: <http://www.ed.gov/blog>
 3. *Media releases*: Frequently throughout the day, the Department of Education releases newsworthy items via its electronic press room. This section of ed.gov features press releases, speeches, media advisories, and the Secretary's weekly schedule. The Department's press room is located at: <http://www.ed.gov/news/landing.jhtml>

4. *Twitter*: Twitter is an online social network tool that sends status updates to subscribers. The Department uses Twitter daily to send important updates of Department activities. The main Department Twitter feed is available at <http://twitter.com/usedgov> and others are listed at <http://www.ed.gov/about/overview/focus/social->
 5. *Facebook*: Facebook is another online social network tool that the Department uses to send updates to subscribers. Facebook is used daily to send important updates about the Department and the Secretary. The main Department Facebook page is <http://www.facebook.com/ED.gov> and at <http://www.ed.gov/about/overview/focus/social-media.html>
 6. *YouTube*: YouTube is a video-sharing service that the Department uses to distribute audio and video clips. The Department's YouTube channel features taped stakeholder meetings, messages from senior officials, and other special topic features. The YouTube channel for the Department can be found at <http://www.youtube.com/usedgov>
- C. 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.

IV. Steps Taken To Greater Utilize Technology

1.) *Does your agency currently receive requests electronically?* Yes, the Department established an online FOIA request form for requesters to submit FOIA requests electronically which can be found at:

http://www2.ed.gov/policy/gen/leg/foia/request_foia.html

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 currently uses a commercial off-the-shelf (COTS) which tracks requests.

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 currently uses a commercial off-the-shelf (COTS) case management and workflow

system with many features and benefits. 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.

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 currently uses a commercial off-the-shelf (COTS).

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

There has been a 15% increase in the Department's FOIA backlog and a 29% decrease in FOIA appeals backlog. Below is a chart which measures the backlog requests and administrative appeals that remain pending at the end of the fiscal years.

FY	FOIA Requests (overdue)	FOIA Appeals
2009	298	28
2010	341	20

The Department successfully closed seven of the ten oldest FOIA requests and five of the ten oldest Administrative Appeals from Fiscal Year 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.

The increase in the Departments backlog is a result of reduction in staffing within the FOIA Service Center as well as an increase in the complexity of the requests received.

The Department is in the process of hiring to bring the staff back to full strength.

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 the following steps to improve timeliness in responding to requests and to administrative appeals by:

1. Improving FOIA Intake procedures: The Department's FOIA Service Center has created standard operating procedures to ensure, at Intake, requests are sent to the correct program office. Additionally, the FOIA Service Center electronically assigns cases and issues target dates when the case is assigned. Additionally, the intake process completes the perfecting of cases before they are assigned to a program office for search and processing. Determinations regarding requests for fee waivers and expedited processing are made and communicated to requesters by the intake team and issues resolved before the case is assigned to a program office.
2. 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.
3. Increase awareness of Department's response to FOIA: Monthly, the Department's FOIA Service Center disseminates a Department-wide monthly report of open 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. To raise awareness and visibility of each POC's pending FOIA assignments, the report is circulated to the Assistant Secretary and Chief of Staff of each POC.
4. Staffing increase: Encouraging each Principal Office to ensure that adequate resources are available to achieve meaningful backlog reduction.

Success

The Regulatory Information Management Services (RIMS) Office has recently brought on board the new Director of the FOIA Service Center. With this hire, the Department has inherited a wealth of FOIA knowledge and experience and is anxious to begin implementing innovative FOIA processes. With the new leadership, we hope to effectively carry out our responsibilities and better serve our customers.

The U.S. Department of Education has established monthly internal meetings to include the Department's FOIA Service Center, Chiefs of Staff within its Principal Offices, and other key personnel to bridge the gap between expectations and implementation of the Department's efforts to improve FOIA Processing.

The U.S. Department of Education Federal Student Aid (FSA) hired experienced FOIA personnel to assist with that Principal Office's FOIA processing responsibilities and increased training sessions for FSA personnel involved with FOIA processing activities.

The U.S. Department of Education is committed to the following Organizational Assessment measures: closure of the 10 oldest FOIA requests by September 30, 2011; reduction of agency FOIA Static Backlog by 12% at the start of fiscal year 2011, and increase proactive release of documents to the FOIA reading room by 25% during fiscal year 2011.