

## ***Freedom of Information Act (FOIA) Administration***

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 increasing awareness through training, proactive and discretionary release of records and increasing efficiency.

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 roll out before the end of the fiscal year.

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.

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. For example, the Department recently proactively released over 33,000 pages of records related to its Race to the Top application program, including state applications, peer reviewer comments, score sheets and video presentations. These records may be viewed at <http://www2.ed.gov/programs/racetothetop/phase1-applications/index.html>. The Department's FOIA Service Center consults with senior agency personnel, including the Office of Legislation and Congressional Affairs, Office of Communication & Outreach, Contracts & Acquisitions Management, Office of General Counsel and relevant subject matter experts to identify material for proactive release and works in concert with the Office of the Chief Information Officer to publish such documents in the FOIA e-Reading Room.

In response to the Attorney General's FOIA Guidelines, the Department, through 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.

Implementing a two-level quality review of documents not fully-released: The Department conducts at least a two-level review of documents that are deemed NOT fully releasable. During this second review, special attention is focused on ensuring a foreseeable harm has been established and segregated information is released. Since 2008, the Department has decreased its use of discretionary exemptions—specifically, Exemptions 2 and 5—by over 60%. Additionally, the two-level review is believed to significantly decrease the number of administrative appeals.

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' web sites making it easier for the public to locate information.

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

- Reviewing FOIA Policy: After a review of internal and external policies, procedures, and workload, the Department determined its FOIA regulation and agency directive both need updating. The update will promulgate streamlined processes to eliminate unnecessary bureaucratic hurdles, provide mandatory requirements for program allocation of resource levels to fulfill the FOIA workload, and establish mandatory participation in training/meetings for FOIA professionals. Additionally, the Department's new FOIA regulation will provide the public with greater detail and specificity regarding Departmental FOIA policies—such as the manner in which the Department processes FOIA requests and the factors the Department considers to determine whether a fee waiver or reduction of fees is warranted—as well as the procedure by which FOIA requests are made. The final regulations also explain how to gain access to publicly available Department records. The FOIA 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.
- Evaluating the Agency's FOIA case management workflow system/procedures: 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. The Department has augmented technology and contractor support to achieve improvements at the processing level.

- 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.

The Department's key FOIA processing metrics, the 2009 FOIA Annual Report, is posted on the Department's FOIA Homepage along with various other FOIA resources at: <http://www.ed.gov/policy/gen/leg/foia/foiatoc.html>. The 2009 Annual Report is posted in machine-readable format as required by the Open Government Directive. Additionally, in concert with the Office of the Chief Information Officer, the Department ensures its FOIA web site is updated with many other user-friendly documents as well as links to each program offices' FOIA e-Reading Rooms.

The Department has been working diligently to address its FOIA request backlog. As a result, there is a reduction in the total number of backlog cases since the end of FY 2009. Below is a chart that shows 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:

<b>FY</b>	<b>FOIA Requests (overdue)</b>	<b>Age-FOIA Request (average days)</b>	<b>FOIA Appeals (overdue)</b>	<b>Age-Appeal (average days)</b>
2009	419	58	28	85
2010*	404*	23*	24*	63*

*\*As of March 31, 2010*

The Department of Education shows a 12 percent 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 percent of requests received were released in full. However, in 2009, 859 records were released in part compared to 1,029 in 2008, which indicates a 17 percent decrease in the number of requests partially released.

The Department of Education is taking a number of steps to improve timeliness in responding to requests and to administrative appeals. These steps include:

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.

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' web sites, making it easier for the public to locate information.

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 FOIA 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 necessary supporting documentation is forwarded to the Office of General Counsel for review.

The Department of Education is committed to assisting with the new Office of Government Information Services' FOIA mediation efforts.