

National Science Foundation

Chief FOIA Officer Report for 2009

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 that presumption 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.

The National Science Foundation (NSF) policy is to make the fullest possible disclosure of information, subject to restrictions imposed by the Freedom of Information Act (FOIA) and Privacy Act, to any person who requests information, without unnecessary expense or delay. Those records which may contain withholdable information are reviewed by the NSF FOIA Officer. The NSF General Counsel makes the determination on all administrative appeals. These reviews assure that the presumption of openness is routinely and consistently applied to the review of NSF records under the FOIA.

The majority of Foundation requests are for copies of funded grant proposals. Most funded grant proposals would be released in full, but for the fact that every proposal contains some personal information that is protected under FOIA Exemption 6. Primarily for this reason, NSF reports a significant number of withholdings under Exemption 6 protecting personal privacy – 272 of the 395 requests made in 2009 and seven of the seven administrative appeals. An agency may not waive Exemption 6. In addition, Exemption 4 protecting confidential, proprietary business information was applied 96 times to requests. An agency may not waive Exemption 4.

As noted in Department of Justice Guidance on implementation of the President's FOIA Memorandum and the Attorney General's FOIA Guidelines, records protected by Exemption 5 hold the greatest potential for increased discretionary

release. The Foundation has carefully applied the exemption and discretionary release guidance as evidenced by the fact that, while the number of requests increased in 2009 by 42, rising from 353 in 2008 to 395 in 2009, the application of Exemption 5 in NSF determinations remained flat – 14 in 2008 to only 16 in 2009.

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 number of agency requests where records have been released in full increased from 36 in 2008 to 87 in 2009. The number where records have been released in part was 255 in 2008 and 217 in 2009.

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 most significant change during the 2009 reporting period is the internal development and implementation of an NSF electronic FOIA tracking system that logs, tracks and reports NSF’s FOIA program. Extensive IT support was provided for this effort. This is reflected in the significant increase in FOIA costs for this reporting period due to the development and implementation of this new electronic FOIA system.

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.

NSF routinely reviews and updates its FOIA web page. Exhibit 300 reporting and the GSA SmartPay Program Credit Card holders list are proactively published on this page due to the active interest of our requester community.

NSF has added its Open Government web page at www.nsf.gov/open which contains access to NSF data sources, records, and reports of interest to the public.

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, requests can be sent electronically to foia@nsf.gov. NSF receives the majority of all FOIA requests electronically. NSF electronically acknowledges receipt of FOIA requests.

2.) If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically.

Not applicable.

3.) Does your agency track requests electronically.

Yes, NSF's electronic FOIA tracking system logs and tracks all FOIA requests.

4.) If not, what are the current impediments to your agency utilizing a system to track requests electronically.

Not applicable.

5.) Does your agency use technology to process requests.

NSF receives and replies to the majority of all FOIA requests electronically. Where requests are submitted electronically, NSF sends an acknowledgement letter to the requester, and also corresponds by email with any requests for

additional information or clarification. NSF also provides responsive records electronically.

6.) If not, what are the current impediments to your agency utilizing technology to process requests.

Not applicable.

7.) Does your agency utilize technology to prepare your agency Annual FOIA Report.

Yes, NSF's electronic FOIA tracking system compiles figures used to prepare NSF's Annual FOIA Report.

8.) If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report.

Not applicable.

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 is 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.**

NSF had no backlog of either requests or administrative appeals for FY 2009 compared with one backlogged request and no backlog of appeals for FY 2008. Pending requests for FY 2009 were due to receipt/perfected dates that fell toward the end of the 2009 reporting period, when the 20 working day response becomes due during the 2010 reporting period.

- 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.

Not applicable.

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

NSF has developed and implemented a new electronic logging and tracking system that will permit better monitoring of request status. The Foundation continues to maximize the use of electronic communication with requesters, and with submitters for purposes of submitter notices and responses required for Exemption 4 determinations, in order to improve the efficiency and timeliness of these communications. The FOIA Officer has worked with the contracts office to improve search time for responsive contracts records and to assure timely input on Exemption 4 determinations.

NSF has met the 20 working day requirement for determinations in all of its administrative appeals.