United States
Environmental Protection
Agency

Report of the Chief FOIA Officer to the U.S. Department of Justice

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U.S. Environmental Protection Agency

Chief Freedom of Information Act Officer's Report

To the Attorney General

I. Steps Taken to Apply the Presumption of Openness

a. Describe how the President's FOIA Memorandum and the Attorney General's FOIA Guidelines were publicized throughout EPA.

EPA Administrator Lisa P. Jackson issued a memorandum on April 23, 2009, to all employees to reinforce the President's FOIA Memorandum and the Attorney General's FOIA Guidelines. The memorandum states that management should support staff in meeting FOIA's transparency requirement in a timely and efficient manner. In addition, FOIA Officers in each of EPA's ten regions who administer day-to-day FOIA activities and their Headquarters' counterparts (e.g., FOIA Coordinators) disseminated Administrator Jackson's memorandum to all staff with FOIA responsibilities in their organizations. The memoranda are posted on EPA's FOIA website (http://www.epa.gov/foia/reference.html).

b. What training has been attended and/or conducted on the new FOIA Guidelines?

EPA's National FOIA Program conducts monthly meetings with regional FOIA Officers and FOIA Coordinators at which the new FOIA Guidelines are discussed. The new FOIA Guidelines are posted on EPA's *Processing FOIA Requests* webpage (http://www.epa.gov/foia/Processing_FOIA_Requests.html). Regional FOIA Officers and Headquarter FOIA Coordinators also provide training to their FOIA staffs. EPA staff attended DOJ's training for FOIA Attorneys and Professionals in 2010. National FOIA Program staff or the Chief FOIA Officer attended all of the Chief FOIA Officers meetings hosted by the Department of Justice.

c. How has EPA created or modified internal guidance to reflect the presumption of openness?

Administrator Jackson directed staff to review documents with a presumption of release. EPA's national FOIA Requestor Service Center and the Office of General Counsel provide guidance to staff about processing requests with an eye toward a presumption of openness.

d. To what extent has EPA made discretionary releases of otherwise exempt information?

EPA has not tracked discretionary releases of otherwise exempt information. The Agency reviews all exempt information with an eye toward discretionary release as directed by Administrator Jackson in her April 23, 2009 memorandum. EPA processed 10,071 FOIA requests in FY10. Of these requests, only 707 requests had records withheld in full or part -- approximately 7%.

e. What exemptions would have covered the information that was released as a matter of discretion?

Exemptions 2, 5, 7, and 9 would have covered the information that was released as a matter of discretion.

f. How does EPA review records to determine whether discretionary releases are possible?

EPA reviews all responsive records with an eye toward discretionary releases. Individuals with questions receive assistance from the National FOIA Program, Regional FOIA Officers and the Office of General Counsel. Efforts are underway to develop written guidance to ensure consistency in making discretionary releases across the Agency.

g. Describe any other initiatives undertaken by EPA to ensure that the presumption of openness is applied.

In matters under appeal, records or portions of records that were previously withheld are being reviewed, applying the new policy and presumption of disclosure. The National FOIA Officer includes a discussion of applying the presumption of openness at monthly meetings with regional FOIA Officers and FOIA Coordinators.

II. Steps Taken to Ensure that EPA has an Effective System in Place for Responding to Requests

a. Do FOIA professionals within EPA have sufficient IT support?

Yes, EPA's FOIA professionals have sufficient IT support through access to a national electronic tracking system and redaction software. The Deputy Administrator's FOIA Workgroup identified additional tools and technologies to ensure that employees continue to have what they need to efficiently respond to FOIA requests.

b. Describe how EPA's FOIA professionals interact with EPA's Open Government Team.

EPA's National FOIA Program Office and the Open Government Directive Project Management Office are located in the same organization and report to the same senior leader. The National FOIA Officer and FOIA staff is members of the Open Government Directive Workgroup. The FOIA Officer provides FOIA updates to EPA's quarterly Open Government Directive report.

c. Describe steps EPA has taken to assess whether adequate staffing is being devoted to responding to FOIA requests.

EPA's Deputy Administrator established an Agency-wide FOIA Workgroup in July 2010 to review all aspects of the Agency's FOIA program, including staffing levels. The FOIA Workgroup is completing its review and will provide recommendations to the Deputy Administrator in Q2, FY2011.

d. Describe any other steps EPA has undertaken to ensure that the Agency's FOIA system operates efficiently and effectively.

The Agency is conducting a comprehensive review of its FOIA system as directed by the Deputy Administrator. The review includes reviewing EPA's regulations, policies, procedures and technology to determine if changes are needed to facilitate and support transparency, proactive disclosures and accountability. In addition to the monthly meetings held with regional FOIA Officers and FOIA Coordinators by the National FOIA Officer, the Agency funds a help desk for its electronic FOIA tracking system. The help desk provides system training and technical support. By providing this support, new staff can receive timely training on the FOIA system and responses to technical issues or questions can be quickly resolved.

III. Steps Taken to Increase Proactive Disclosures

a. Has EPA added new material to the Agency's website since last year?

EPA continuously posts new records to epa.gov.

b. What types of records have been posted?

Records relating to the BP oil spill, mountaintop mining decisions and new air and water protection regulations are examples of significant postings of interest to the public for which a FOIA requests is no longer necessary.

c. Give examples of the types of records EPA now posts that used to be available only by making a FOIA request for them.

The following types of records are now posted that previously were only available by making a FOIA request: property records; lists of granted fee waivers; request status; and monthly progress reports providing data on number of requests, overdues and appeals broken down by Headquarters and regions. See response to Item III b.
Of particular interest are materials relating to the Open Government Directive; FOIA Dashboard; statistics on fee waivers granted; and a request status report.

d. What system do you have in place to routinely identify records that are appropriate for posting?

Regional FOIA Officers and Coordinators are asked at the monthly conference calls hosted by the National FOIA Officer to identify records that are appropriate for posting. The records may be chosen due to the number of FOIA requests for them or selected by a group within their organization to be of public interest.

e. How do you utilize social media in disseminating information?

EPA's Administrator leads the Agency's effort to utilize social media to disseminate information through her Facebook and Twitter accounts . EPA is using social media tools in the firm belief that by sharing and experimenting with information, the potential for better understanding about environmental conditions and solutions is increased. Collaboration among individual or groups to solve problems is particularly exciting when people bring "different parts of the puzzle" to help find solutions. In addition to Facebook and Twitter, EPA has a presence on YouTube, Flickr Challenge.gov and hosts a blog called Greenversations (http://blog.epa.gov/blog/).

f. Describe any other steps taken to create proactive disclosures at EPA.

The National FOIA Program hosted to a booth to demonstrate *MyPropertyInfo* at the Agency's national environmental information symposium in 2010, which was attended by over 500 Agency employees, supporting contractors and vendors. (See **VI. Spotlight on Success.)**

IV. Steps Taken to Greater Unitize Technology

1a. What proportion of the components within EPA which receive FOIA requests have the capability to receive such requests electronically?

One hundred (100) percent of EPA's components receive FOIA requests electronically.

1b. To what extent has EPA increased the number of components doing so since the filing of the last Chief FOIA Officer Report?

Not applicable.

1c. What methods do EPA use to receive requests electronically?

EPA uses the following methods to receive requests electronically: webform, email and fax. The fax transmittals are digitized and received as a message in the National FOIA Program e-mail in-box.

2a. What proportion of components within EPA which receive FOIA requests have the capability to track such requests electronically?

One hundred (100) percent of EPA's components track FOIA requests electronically.

2b. To what extent have you increased the number of components doing so since the filing of the last Chief FOIA Officer Report?

Not applicable.

2c. What methods do EPA use to track requests electronically?

EPA uses commercial off-the-shelf software to track requests electronically.

3a. What proportion of components at EPA which receive FOIA requests have the capability to process such requests electronically?

One hundred (100) percent of EPA's components process FOIA requests electronically.

3b. To what extent has EPA increased the number of components doing so since the filing of the last Chief FOIA Officer Report?

Not applicable.

3c. What methods do EPA use to process requests electronically?

EPA uses commercial off-the-shelf software to track and process requests electronically. The Agency also has developed collection databases which are used to manage search and review activities for large numbers of electronic documents covering a common topic.

4a. Why type of technology does EPA use to prepare the Annual FOIA Report?

EPA uses commercial off-the-shelf software to prepare the Annual FOIA Report.

4b. If EPA is not satisfied with the existing system to prepare the Annual FOIA Report, describe the steps taken to increase the use of technology for next year.

The existing system to prepare the Annual FOIA Report is currently meeting Agency's needs.

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

1. **Report whether the backlog is decreasing by measuring in two ways. First, report whether the number of backlogged requests and backlogged administrative appeals that remain pending at the end of the fiscal year decreased or increased, and by how many, when compared with last fiscal year. Second, report whether EPA closed in FY 2010 the ten oldest of those pending requests and appeals from FY 2009, and if not, report how many of them EPA did close.**

EPA's backlog at the end of fiscal year 2010 decreased by three. EPA's administrative appeals decreased by two.

EPA closed fourteen of its twenty oldest pending requests and appeals from FY 2009.

2a. Is the backlog increase a result of an increase in the number of incoming requests or appeals?

Not applicable.

2b. Is the backlog increase caused by loss of staff?

Not applicable.

2c. Is the backlog increase caused by an increase in the complexity of the requests received?

Not applicable.

2d. What other causes, if any, contributed to in the increase in the backlog?

Not applicable.

3a. Does EPA routinely set goals and monitor the progress of the FOIA caseload?

Yes. EPA monitors the progress through the monthly dashboard which is available on the FOIA website.

3b. Has EPA increased its FOIA staffing?

EPA has added one FTE to the National FOIA Program.

3c. Has EPA made IT improvements to increase timeliness?

Yes. The *MyPropertyInfo tool* (http://www.epa.gov/myproperty/) allows the public to obtain information immediately that was previously only available in response to a FOIA request. See *Spotlight on Success* section, below.

3d. Has EPA's Chief FOIA Officer been involved in overseeing EPA's capacity to process requests?

The Chief FOIA Officer participates in the Chief FOIA Officer meetings hosted by the Department of Justice and has requested several briefings on FOIA activities.

VI. Spotlight on Success

EPA's FOIA Office developed a tool that allows the public direct access to site-specific information contained in multiple Agency environmental databases. The tool, *MyPropertyInfo*, combines multiple EPA database searches into a single printable report. The searches, now performed by the public online, were previously conducted by EPA staff in response to a FOIA request. Inquiries may be as specific as an address on a street or broad as the name of the street within a city or zip code. *MyPropertyInfo* was made available on the Agency's FOIA homepage on June 25, 2010 (http://www.epa.gov/mproperty).

A review of FOIA requests revealed that the most frequently requested information from the public is for records on specific locations to determine potential environmental hazards prior to real estate transactions. Further research revealed that most of EPA's "no record responses" were in response to these requests. The public can now obtain responses immediately and the number of no record responses has noticeably dropped since the deployment of *MyPropertyInfo*. The tool's primary customers are real estate agents, mortgage bankers and engineering and environmental consulting firms who are required to provide documentation for property transactions. The secondary audience is individual homebuyers.

Over the past three fiscal years, the number of incoming requests has remained approximately 10,500. However, in FY08 EPA sent 4,554 no record response letters; 5,181 in FY09; and 3,808 in FY10 – a decrease of 27% in the last quarter of the FY in which *MyPropertyInfo* was released.