THE NATIONAL SCIENCE FOUNDATION

2021 CHIEF FOIA OFFICER REPORT

Chief FOIA Officer: Peggy Hoyle, General Counsel, Office of the General Counsel

Section I: Steps Taken to Apply the Presumption of Openness

A. FOIA Leadership

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. *See* 5 U.S.C. § (j)(1) (2018). Is your agency's Chief FOIA Officer at or above this level?

Yes. NSF has designated the NSF General Counsel as the Chief FOIA Officer.

2. Please provide the name and title of your agency's Chief FOIA Officer.

Peggy Hoyle, General Counsel.

B. FOIA Training

3. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. *See* 5 U.S.C.§ 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

The FOIA Public Liaison makes a presentation about FOIA at bi-weekly New Employee Orientation Training sessions. The NSF Assistant General Counsel with FOIA responsibilities, FOIA Officer, and FOIA Public Liaison provide guidance and advice regarding FOIA obligations on an ad-hoc basis at the request of Divisions and individuals within NSF.

4. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend substantive FOIA training during the reporting period such as that provided by the Department of Justice?

Yes.

5. If yes, please provide a brief description of the type of training attended and the topics covered.

All NSF FOIA staff attended the ASAP FOIA Court Case Update virtual training session.

6. Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

100%

7. OIP has directed agencies to "take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year." If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

N/A

C. Outreach

8. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

No.

D. Other Initiatives

9. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff.

As also described above in response to question 3, the FOIA Public Liaison makes a presentation about FOIA at bi-weekly New Employee Orientation Training sessions. The NSF Assistant General Counsel with FOIA responsibilities, FOIA Officer, and FOIA Public Liaison provide guidance and advice regarding FOIA obligations on an ad-hoc basis at the request of Divisions and individuals within NSF. These presentations are typically done using Power Point slides.

10. Optional - If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

NSF has internal working groups, such as the Data Accountability Group and the Enterprise Data Governance and Education group that work on data governance and proactive data disclosure issues.

Section II: Steps Taken Ensure that Your Agency Has an Effective System in Place for Responding to Requests

1. For Fiscal Year 2020, what was the average number of days your agency reported for adjudicating requests for expedited processing?

7

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

N/A

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report data, using active workflows and track management, reviewing and updating processing procedures, etc.

The NSF FOIA team frequently meets to look over the FOIA log and discuss strategies to improve its FOIA program, reduce the FOIA backlog, and speed up the processing of requests.

4. Standard Operating Procedures (SOPs): Having SOPs can improve the consistency and quality of an agency's FOIA process. In addition, describing an agency's standard practices for handling FOIA requests on agency FOIA websites can help requesters better understand how their request will be handled.

> a) Does you agency have SOPs that outline general processes for handling FOIA requests and appeals?
>
> *NSF does not have FOIA SOPs.*
>
> b) If not, does your agency have plans to create FOIA SOPs?
>
> *Yes, the creation of FOIA SOPs has been discussed and is a current goal of the NSF FOIA team.*
>
> c) If yes, how often are they reviewed/updated to account for changes in law, best practices, and technology?
>
> *N/A*
>
> d) In addition to having SOPs, does your agency post or otherwise describe your standard processes for handling requests on your website?
>
> *The FOIA page on the NSF website has information on its website regarding the steps that need to be taken to make a FOIA request.*

5. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an

estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2020 (please provide a total number or an estimate of the number).

Requesters did not seek the assistance of the NSF FOIA Public Liaison during Fiscal Year 2020.

6. Does your agency frequently receive common categories of first-party requests? If so, please describe the types of requests and if your agency has explored establishing alternative means of access to these records outside the FOIA process?

NSF does not frequently receive common categories of first-party requests.

7. The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within 180 days. Has your agency updated its FOIA regulations in accordance with the FOIA Improvement Act of 2016? If not, what is your agency's plan to update your regulations?

NSF is actively drafting updates to its FOIA regulations and intends to publish these updates in the coming year.

8. Please explain how your agency worked to mitigate the impact of the COVID-19 pandemic on FOIA processing. Examples could include, but are not limited to: altering workflows, implementing new technology, providing notices and instructions or otherwise communicated directly with requesters.

Two major hurdles for the NSF FOIA team caused by the COVID-19 pandemic were the lack of IT equipment in home offices and the inability to access paper requests in the mailroom at NSF headquarters. The FOIA team has now been able to obtain needed IT equipment for home offices, such as dual monitors, and has been periodically going into NSF headquarters to check the paper mail. These actions have helped mitigate the initial challenges.

9. Optional - Please describe:

- Best practices used to ensure that your FOIA system operates efficiently and effectively.
- Any challenges your agency faces in this area.

N/A

Section III: Steps Taken to Increase Proactive Disclosures

1. Provide examples of material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more

times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

NSF continually updates its public database of awards with abstracts of awarded proposals, resulting publications, and final reports on research results: http://www.nsf.gov/awardsearch/. In addition, NSF publicizes agency data sets on the agency's Open Government https://www.nsf.gov/open/, Digital Strategy https://www.nsf.gov/digitalstrategy/, Open Data http://www.nsf.gov/data and Developer http://www.nsf.gov/developer/ web pages, as well as through the agency's social media sites. Data from the National Center for Science and Engineering Statistics can be found here: https://www.nsf.gov/statistics/data.cfm.

NSF did not have any records that were requested and released three or more times in FY 2020.

2. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website?

Yes.

3. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

NSF recognizes that individuals who regularly accesses the NSF website primarily come from the scientific community. NSF strives to make data of particular interest to this community available in a variety of ways. For example, NSF currently has 70 data sets available on data.gov. NSF also currently has 3,352 records available in the NSF document library found here: https://www.nsf.gov/publications/. These documents can be searched by document type, organization type, publication date, and document title. An additional 5,241 records are available in the archived document library.

NSF also provides an annual report to the National Science Board, the NSF Merit Review Report, that is publicly posted and includes data on proposals and awards and other pertinent information that is of great interest to the scientific community (https://www.nsf.gov/nsb/publications/pubmeritreview.jsp).

On the agency website, NSF publicizes information about National Science Board meeting announcements and minutes; NSF solicitations; NSF funding trends data; NSF budget information; NSF-related statistical information; lists of publications available for download; award and funding information; minutes from the various directorate, office and NSF-wide advisory committees; committee of visitor reports for the various directorates and offices; an events calendar; texts of speeches given by the NSF Director and Deputy Director; a list of NSF-related congressional hearings; news releases and

media advisories; factsheets about NSF programs and priorities; feature articles; audio podcasts and videos about NSF-supported research results; and the NSF Multimedia Gallery which provides images and other visual media for educational and informational use.

4. Optional – Please describe:

- Best practices used to improve proactive disclosures
- Any challenges your agency faces in this area.

NSF periodically inventories data assets not yet publicly available, by following the processes and goals outlined in the Open Data Policy inventory schedule (http://www.nsf.gov/data/). In addition, NSF encourages public use of released datasets to promote public knowledge of the agency's activities and outcomes, and to foster innovation related to science and engineering.

Section IV: Steps Taken to Greater Utilize Technology

1. Please briefly describe the types of technology your agency uses to support your FOIA program. In addition, please highlight if your agency is leveraging or exploring any new technology that you have not previously reported. If so, please describe the type of technology.

The NSF FOIA team routinely works with the NSF Division of Information Services (DIS) to conduct electronic searches for records and maintain its FOIA log. NSF is not currently exploring new technology for its FOIA program.

2. OIP issued guidance in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

Yes.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2020?

No. NSF currently has all of its 2020 quarterly reports posted on the NSF website here: https://www.nsf.gov/policies/quarterly_foia_reports.jsp. NSF has Q1 and Q3 2020 data posted on FOIA.gov.

4. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal year 2021.

The NSF FOIA team was focused on closing FOIA backlogged FOIA requests and as a result, did not get all of the reports posted to FOIA.gov. NSF anticipates that the Q2 and Q4 reports will be posted shortly.

5. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2019 Annual FOIA Report and, if available, for your agency's Fiscal Year 2020 Annual FOIA Report.

https://www.nsf.gov/policies/NSF_FOIA_Raw_Data_FY2019.pdf

6. Optional – please describe:

- Best practices used in greater utilizing technology
- Any challenges your agency faces in this area

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs

A. Simple Track

1. Does your agency utilize a separate track for simple requests?

Yes.

2. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2020?

No. The average number of days to process simple track requests was 56.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2020 that were placed in your simple track.

27%

4. If your agency does not track simple requests separately was the average number of days to process all non-expedited requests twenty working days or fewer?

N/A

B. Backlogs

BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2020, according to Annual FOIA Report Section XII.A, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

No.

6. If not, according to Annual FOIA Report Section V.A, did your agency process more requests during Fiscal Year 2020 than it did during Fiscal Year 2019?

No.

7. If your agency's request backlog increased during Fiscal Year 2020, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:
- An increase in the number of incoming requests.
- A loss of staff.
- An increase in the complexity of the requests received. If possible please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

Unlike some past years, NSF was not able to obtain assistance from students or contractors to assist with FOIA processing. With a small FOIA processing staff of two, tackling backlogged FOIA requests, which are often complex and voluminous, while also processing new simple track requests is challenging. Approximately 75% of the FOIA requests NSF receives are "complex" and thus take more time and effort to close. The change in work environment and processes caused by the COVID-19 pandemic also had an impact on the FOIA team this year.

8. If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2020.

132%

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2020, according to Section XII.A of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

NSF did not have a backlog of appeals during Fiscal Year 2020.

10. If not, according to section VI.A of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2020 than it did during Fiscal Year 2019?

N/A

11. If your agency's appeal backlog increased during Fiscal Year 2020, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:
- An increase in the number of incoming appeals.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

N/A

12. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2020. If your agency did not receive any appeals in Fiscal Year 2020 and/or has no appeal backlog, please answer with "N/A."

N/A

C. Backlog Reduction Plans

13. In the 2020 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2019 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2020?

NSF does not have a backlog of over 1000 requests and did not implement a specific backlog reduction plan.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2020, please explain your agency's plan to reduce this backlog during Fiscal Year 2021.

N/A

D. Status of Oldest Requests, Appeals, and Consultations

OLDEST REQUESTS

15. In Fiscal Year 2020, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E of your Fiscal Year 2019 Annual FOIA Report?

No.

16. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2019 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

One.

17. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

NSF has focused on balancing the closure of old requests, almost all of which are complex, with the closure of new simple track requests. NSF only has two FOIA staff members who process requests and receives hundreds of new requests each year, so achieving this balance is challenging.

TEN OLDEST APPEALS

18. In Fiscal Year 2020, did your agency close the ten oldest appeals that were reported pending in Section VII.C.5 of your Fiscal Year 2019 Annual FOIA Report?

N/A. NSF did not have any pending appeals in the Fiscal Year 2019 Annual FOIA Report.

19. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.5 of your Fiscal Year 2019 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A

20. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

N/A

TEN OLDEST CONSULTATIONS

21. In Fiscal Year 2019, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2019 Annual FOIA Report?

NSF did not have any pending consultations in its Fiscal Year 2019 Annual FOIA Report.

22. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2019 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

N/A

E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans.

23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2019.

NSF has been able to ensure that there is no backlog of appeals and consultations. However, balancing the workload of responding to new FOIA requests and working on the ten oldest requests, which are complex and involve reviewing voluminous records, is a challenge for NSF's small FOIA staff.

24. If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

N/A

25. If your agency did not close its ten oldest pending requests, appeals or consultations, please provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2021.

NSF plans to focus on the ten oldest pending FOIA requests and ensure that it processes as many as possible in the coming fiscal year.

F. Success Stories

Out of all the activities undertaken by your agency since March 2020 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas, but should not be something that you have reported in a prior year. As noted above, OIP will highlight these agency success stories during Sunshine Week.. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

An intern in the NSF Office of the General Counsel created a work-flow log for the FOIA team so that the two individuals on the NSF FOIA team processing FOIA requests could see the status of pending requests (i.e. had an acknowledgment letter been sent, had submitter notice been completed, etc..). This helped the FOIA team coordinate responses

to frequent requestors, who had several requests pending at the same time, and identify requests that needed further follow up with individuals to keep the requests moving and get them closed.