THE NATIONAL SCIENCE FOUNDATION

2022 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 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 FOIA Officer, FOIA Public Liaison and Assistant General Counsels with FOIA responsibilities provide guidance and advice regarding FOIA obligations on an ad-hoc basis at the request of NSF offices and individuals within NSF. In addition, one of the NSF Assistant General Counsels gave an hour long FOIA training session to staff in the NSF Office of the General Counsel.

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.

NSF FOIA staff attended the ASAP FOIA Significant FOIA Decisions Webinar virtual training session and/or an hour long FOIA training session given by one of the NSF

Assistant General Counsels. The hour-long NSF training covered FOIA exemptions 4, 5, and 6.

6. Please 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

8. Did the personnel at your agency who have FOIA responsibilities attend training in federal records management during this reporting period?

Yes. NSF staff are required to take federal records training annually.

C. Outreach

9. Did your FOIA professionals engage in any outreach or dialogue outside of the standard request process 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

10. 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; and
- if senior leaders at your agency received a briefing on your agency's FOIA resources, obligations and expectations during the FOIA process?

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 FOIA Officer, FOIA Public Liaison and Assistant General Counsels with FOIA responsibilities 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. For example, the NSF FOIA Officer and one of the Assistant General Counsels gave a presentation to the CISE Directorate regarding FOIA basics and how the FOIA process works at NSF. In addition, the NSF Chief FOIA Officer has had conversations with the NSF Office of the Director regarding additional resources for the NSF FOIA program. These conversations resulted in NSF hiring a second government information law attorney in October, 2021.

11. 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 2021, what was the average number of days your agency reported for adjudicating requests for expedited processing?

3.5 days.

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. The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within 180 days. In 2016, OIP issue Guidance for Agency FOIA Regulations and the accompanying Template for Agency FOIA Regulations to assist agencies in updating their regulations in accordance with the statute. 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 currently working on updating its FOIA regulations. Due to limited resources, this update has previously been difficult to accomplish. However, NSF recently hired a second government information law attorney in the Office of General Counsel to help address such issues.

4. Standard Operating Procedures (SOPs) generally document your agency's internal processes for administering the FOIA beyond your FOIA regulations and FOIA Reference GUIDE. As noted in OIP's guidance, having SOPs can improve the consistency and quality of an agency's FOIA process. SOPs can also serve as a

significant resource for incoming FOIA processionals and a way to preserve much of the agency's institutional knowledge on administering the FOIA from how to handle requests from start-to-finish, to identifying and making proactive disclosures, to maintaining a FOIA website. Does your agency have up-to-date internal SOPs for your FOIA administration?

No. Given the small size of the current NSF FOIA staff who process requests, which consists of only two full time people, the consistency and quality of how NSF's FOIA program is administered is not a significant challenge.

5. If no, please provide a timeline for when your agency plans to develop or update its SOPs.

NSF has started drafting FOIA SOPs and recognizes that having SOPs in place may help preserve institutional knowledge during periods of FOIA staff turnover and potential growth.

6. Has your agency established alternative means of access to first-party requested records outside of the FOIA process?

No.

7. If yes, please provide examples. If no, please explain if such opportunities exist at your agency and whether there are any challenges in establishing alternative means of access.

Most records at NSF consist of scientific research proposals and grant awards to academic or other types of institutions. These records do not contain they type of first-party information that would be appropriate to disclose outside of the FOIA process.

8. Did your agency conduct a self-assessment of its FOIA administration during the reporting period? If so, please describe the self-assessment methods used, such as analyzing Annual Report or raw data, using active workflows and track management, reviewing and updating processing procedures, etc. In addition, please specifically highlight any data analysis methods or technologies used to assess your agency's FOIA program.

The NSF FOIA team meets weekly, and those meetings often include looking over the FOIA log and discussing strategies to improve the NSF FOIA program, reduce the FOIA backlog, and speed up the processing of requests.

9. 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 2021 (please provide a total number or an estimate of the number).

One.

10. Has your agency reviewed its FOIA-related staffing capabilities to identify resources needed to respond to current and anticipated FOIA demands?

Yes. The Chief FOIA Officer has engaged in discussions with the NSF Office of the Director regarding the NSF FOIA program's staffing needs. This resulted in a second government information law attorney being hired in the Office of the General Counsel in October, 2021.

11. 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. Please describe what steps your agency takes to identify, track and post (a)(2) proactive disclosures.

The NSF e-Gov Content Inventory, https://www.nsf.gov/policies/egov_inventory.jsp, describes NSF's commitment to providing useful information to the public. This policy also provides information about the four-priority approach NSF uses to provide information content along with a table laying out the different types of information that are made available under each of the priorities.

2. Provide examples of any 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 Digital Strategy https://www.nsf.gov/digitalstrategy/, Open Government https://www.nsf.gov/open/, 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. Information about public access to the results of NSF funded research can be found here: https://www.nsf.gov/news/special_reports/public_access/index.jsp. In addition, NSF makes is Proposal and Award Policies and Procedures Guide available here: https://nsf.gov/publications/pub_summ.jsp?ods_key=pappg

NSF did not receive three or more requests for the same records in FY 2021.
3. Does your agency disseminate common types of material outside of FOIA, including in online databases where the public may access them. If yes, please provide examples and, if applicable, statutory authority.

NSF routinely posts information in data.gov and currently has 161,525 data sets available on that site. Posting this information is consistent with the requirements of the OPEN Government Data Act in Title II of the Foundations for Evidence Based Policymaking Act (Pub.L. 115-435).

4. 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.

5. 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.

NSF recognizes that individuals who regularly access 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 161,525 data sets available on data.gov. NSF also currently has 3,496 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 5,403 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 Chief Operating Officer; 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.

6. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office? If so, describe the interaction.

Yes. The NSF Office of Legislative and Public Affairs coordinates the majority of information that appears on NSF's website. In addition, components of NSF, including but not limited to, the NSF CIO, CDO, NCSES, and the NSB, all routinely produce reports, statistics, and other data that is of interest to the public.

7. Optional – Please describe:

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

N/A

Section IV: Steps Taken to Greater Utilize Technology

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands.

Yes. NSF is exploring different FOIA and eDiscovery solutions that could help improve the efficiency of how the NSF FOIA program operates.

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program.

NSF did not utilize any new technology in the past year but is exploring new technology options for the coming year.

3. 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.

4. Did all four of your agency's quarterly reports for Fiscal Year 2021 appear on your agency's website <u>and</u> on FOIA.gov?

Yes.

5. 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 2022.

All four quarterly reports were posted to FOIA.gov. The NSF FOIA team was focused on closing very large backlogged FOIA requests and ran into some technical difficulties. As a result, it did not get all the reports posted to the NSF website. NSF anticipates that the Q4 report will be posted shortly.

6. 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 2020 Annual FOIA Report and, if available, for your agency's Fiscal Year 2021 Annual FOIA Report.

FY 2020: https://www.nsf.gov/policies/NSF_FOIA_Raw_Data_FY2020.pdf

6. Optional – please describe:

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

N/A

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 2021?

No. The average number of days to process simple track requests was 92.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2021 that were placed in your simple track.

30%

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 2021, according to Annual FOIA Report Section XII.D.2, 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 XII.D.1, did your agency process more requests during Fiscal Year 2021 than it did during Fiscal Year 2020?

Yes.

7. If your agency's request backlog increased during Fiscal Year 2021, 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.
   • Impact of COVID-19 and workplace and safety precautions.
   • Any other reasons – please briefly describe or provide examples when possible.

The NSF FOIA team was able to process significantly more requests this year than last year, but the number of incoming requests also increased. In addition, NSF saw an increase in FOIA appeals and dealt with two FOIA lawsuits this year, which required administrative support from the FOIA team and took time away from processing requests. With a small FOIA processing staff of two full time staff, tackling backlogged FOIA requests, which are often complex and voluminous, while also processing new simple track requests is challenging. Approximately 70% of the FOIA requests NSF receives are "complex" and thus take more time and effort to close.

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 2021.

131%

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2021, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2020?

NSF did not have a backlog of appeals during Fiscal Year 2021.

10. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2021 than it did during Fiscal Year 2020?

N/A

11. If your agency's appeal backlog increased during Fiscal Year 2021, 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.
- Impact of COVID-19 and workplace safety precautions.
- 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 2021. If your agency did not receive any appeals in Fiscal Year 2021 and/or has no appeal backlog, please answer with "N/A."

N/A

C. Backlog Reduction Plans

13. In the 2021 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2020 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 2021?

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 2021, please explain your agency's plan to reduce this backlog during Fiscal Year 2022. In particular, please also detail how your agency developed and plans to execute your backlog reduction plans.

N/A

D. Status of Oldest Requests, Appeals, and Consultations

OLDEST REQUESTS

15. In Fiscal Year 2021, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E of your Fiscal Year 2020 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 2020 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

None.

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, most of which are complex, with the closure of new simple track requests. NSF only has two full-time staff members who process FOIA requests and receives hundreds of new requests each year, so achieving this balance is challenging.

TEN OLDEST APPEALS

18. In Fiscal Year 2021, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2020 Annual FOIA Report?

N/A. NSF did not have any pending appeals in the Fiscal Year 2020 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 VI.C.5 of your Fiscal Year 2020 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 2021, did your agency close the ten oldest consultations that were reported pending in Section XII.C of your Fiscal Year 2020 Annual FOIA Report?

Yes.

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 2020 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

NSF closed the one pending consultation from its Fiscal Year 2020 Annual FOIA Report.

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 2020.

NSF has been able to ensure that there is no backlog of appeals and resolve the single backlogged consultation from last year. 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. In addition, this year the NSF FOIA staff had the additional pressure of an increased number of FOIA requests, appeals, and FOIA-related litigation.

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 2022.

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. In addition, NSF is exploring FOIA/eDiscovery tools that will help the program operate more efficiently.

F. Success Stories

Out of all the activities undertaken by your agency since March 2021 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.

Through the efforts of various internal working groups at NSF, the agency was able to identify and significantly increase the amount of information available on data.gov, increasing the number of NSF related data sets from 70 in 2020 to 161,525 in 2021.