

Time frame for 2014 Chief FOIA Officer Reports

Unless otherwise noted, your 2014 Chief FOIA Officer Report should address agency activities that have occurred since the filing of last year's Report, which was March 11, 2013, up until the filing of the 2014 Report, which will be March 10, 2014. Thus, the general reporting period for the Chief FOIA Officer Reports is March 2013 to March 2014.

Content of 2014 Chief FOIA Officer Reports

Name of agency: National Capital Planning Commission

Name and Title of agency Chief FOIA Officer: Anne R. Schuyler, General Counsel

Section 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.

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.

FOIA Training:

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

Answer: No

2. If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.

Answer: N/A

3. Did your FOIA professionals attend any FOIA training during the reporting period such as that provided by the Department of Justice?

Answer: The Chief FOIA officer attended the Department of Justice's two day course on FOIA for Attorneys and Access Professionals in July 2013. But Note: NCPC has no full time "FOIA professionals". FOIA duties are undertaken by NCPC staff in addition to other duties required by their positions.

4. Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period.

Answer: 33.3%. But Note: NCPC has no full time "FOIA professionals". FOIA duties are undertaken by NCPC staff in addition to other duties required by their positions.

5. OIP has issued guidance that [every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year](#). Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year.

Answer: There are only three NCPC staff members assigned to the agency's FOIA program. Their FOIA duties are in addition to other duties associated with their primary positions. The General Counsel serves as the Chief FOIA Officer, the Director of Administration/Commission Secretary serves as the FOIA Liaison Officer, and an Administrative Assistant serves as a FOIA Resource Specialist. Only the Chief FOIA Officer engages in substantive FOIA program matters such that training of the other two individuals is not necessary. To meet the training requirement, the Chief FOIA Officer will take the Advanced Freedom of Information Act Seminar in 2015.

Outreach:

6. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement.

Answer: The NCPC staff meets occasionally with stakeholder groups and members of the media to discuss possible improvements to dissemination of information.

Discretionary Disclosures:

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

7. Does your agency have a formal process in place to review records for discretionary release? If so, please briefly describe this process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases.

Answer: The bulk of NCPC information eligible for discretionary release relates to applications submitted by Federal and District of Columbia government agencies to the Commission for review and action. At least 4 times a month, the Agency updates its website to provide the latest information regarding projects undergoing Commission review. Project staff follows established guidelines for identifying application materials suitable for posting.

8. During the reporting period did your agency make any discretionary releases of otherwise exempt information?

Answer: No. There were no FOIA requests during the reporting period that implicated exemptions.

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

Answer: N/A

10. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.

Answer: N/A

11. If your agency was not able to make any discretionary releases of information, please explain why.

Answer: N/A

Other Initiatives:

12. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014.

Answer: Due to other simultaneous pressing priorities (litigation and response to a short-fused congressional request for an in-depth analysis and report regarding agency authority, the FY 3rd and 4th quarter reports were not prepared. Discussions are underway within the agency to add a new member to the FOIA team to assist in administrative matters like quarterly reports.

13. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please provide links in your description.

Answer: The content of NCPC's website (www.ncpc.gov) is an example of the agency's dedication to the presumption of openness. The website includes current, up-to-date information on such topics as the Southwest Ecodistrict, the Comprehensive Plan, Urban Design, Commemoration, and the Height Master Plan, and other on-going, major initiatives. As soon as new information regarding any of these topics becomes available, it is uploaded to the appropriate location on the website. Commission application materials, Memoranda of Action and Transcripts are also uploaded on a monthly basis. FCIP data is also added after the President submits his annual budget to Congress.

Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place 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." It is essential that agencies effectively manage their FOIA program.

Describe here the steps your agency has taken to ensure that your management of your FOIA program is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

Personnel:

During Sunshine Week 2012 OPM announced the creation of a new job series entitled the Government Information Series, to address the work performed by FOIA and Privacy Act

professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

1. Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series?

Answer: -NCPC does not have any full time FOIA professionals. There are three NCPC staff members assigned to the agency's FOIA program. Their FOIA duties are in addition to other duties associated with their respective positions. The General Counsel serves as the Chief FOIA officer, the Director of Administration/Commission Secretary serves as the FOIA Liaison Officer, and an Administrative Assistant serves as a FOIA Resource Specialist. Only the Chief FOIA Officer engages in substantive FOIA program matters. The paramount knowledge requirements for the primary positions of the Agency's FOIA staff, the reasons for these full time positions, the mission and function of the Agency, and the recruitment sources for the best qualified individuals to fill the full time positions of the staff performing Agency FOIA functions does not warrant classification of these individual as Government Information Specialists.

2. If not, what proportion of personnel has been converted to the new job series?

Answer: None

3. If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted?

Answer: There is no intention to convert the staff operating the Agency FOIA program to full time FOIA professionals. See response to question 1 above.

Processing Procedures:

4. For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Answer: NCPC did not have any expedited requests requiring adjudication.

5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.

Answer: No. NCPC rarely receives FOIA requests requiring consultations and referrals. There were no requests during the reporting period requiring consultations or referrals. However, NCPC's draft revised regulations (anticipated to be published in final form in the Federal register within 60 days) address the process for referrals and consultations. NCPC's current regulations are silent on this issue.

Requester Services:

6. Do you use e-mail or other electronic means to communicate with requesters when feasible?

Answer: Yes. During FY 2013, all nine of NCPC's requests were transmitted and a response sent by electronic mail.

7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?

Answer: The agency currently does not provide notice of OGIS services, but in new FOIA regulations, effective 3/31/14, this will become required content in Agency response letters.

8. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc.

Answer: NCPC has drafted revised FOIA regulations that are responsive to new requirements since its existing regulations were adopted in 1982. By addressing issues previously not addressed, NCPC expects to improve the efficiency of its system. The draft regulations were published in the Federal Register on August 18, 2013. NCPC expects to publish final regulations within 60 days.

Section 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 both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2013 to March 2014). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

Posting Material:

1. Do your FOIA professionals have a system in place to identify records for proactive disclosures?

Answer: Yes.

2. If so, describe the system that is in place.

Answer: Key data relative to applications for Commission review, Commission meeting agendas, Memoranda of Action, Commission meeting transcripts, items regarding agency activities, and other pertinent, timely information are regularly published on the agency website.

3. Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.

Answer: See above and visit www.ncpc.gov.

Making Posted Material More Useful:

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, such as soliciting feedback on the content and presentation of posted material, improving search capabilities on the site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.?

Answer: Yes.

5. If so, provide examples of such improvements.

Answer: During FY 2013 and the first quarter of FY 2014, NCPC conducted an in-depth study on the height of buildings in Washington D.C. to determine if current height restrictions should remain or be lifted to permit and facilitate growth. A micro-site was created on NCPC's website, and it was devoted solely to the issue. All relevant materials were posted on the microsite including a blog for public comment.

6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized?

Answer: Yes, NCPC uses Facebook and Twitter on a regular basis.

7. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.

Answer: No.

8. Describe any other steps taken to increase proactive disclosures at your agency.

Answer: NCPC continues to proactively disclose information on a regular basis.

Section IV: Steps Taken to Greater Utilize Technology

A key component of the President's FOIA 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. Over the past several years agencies have reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2014, as we have done over the past years, the questions have been further refined and now also address different, more innovative aspects of technology use.

Online tracking of FOIA requests:

1. Can a FOIA requester track the status of his/her request electronically?

Answer: No. This is not necessary since all FOIA requests are answered in a short time frame. For FY 2103, the average response time was 3.67 days and the median response time was two days.

2. If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?

Answer: N/A

3. Describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.

Answer: N/A

4. In particular, does your agency tracking system provide the requester with an estimated date of completion for his/her request?

Answer: N/A

5. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability? If not, please explain why.

Answer: No. As noted above, all requests are answered in a very short timeframe such that there is little to no need for requesters to track the status of their request. The Agency does not contemplate development of a tracking system because it would not be cost effective.

Use of technology to facilitate processing of requests:

6. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

Answer: No.

7. If so, describe the technological improvements being made.

Answer: N/A

8. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program?

Answer: No. The agency is already operating an extremely efficient FOIA program.

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

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations. *For the figures required in this Section, please use those contained in the specified sections of your agency's 2013 Annual FOIA Report and, when applicable, your agency's 2012 Annual FOIA Report.*

Simple Track Requests:

1. Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

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

Answer: Yes

- b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?

Answer: Yes. NCPC responded to simple requests on average within 3.67 days.

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

Answer: All of NCPC's FOIA requests during the reporting period were in the simple request category.

Backlogs and "Ten Oldest" Requests, Appeals and Consultations:

2. Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.

Backlogs

- a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012?

Answer: NCPC did not have a backlog of requests at the close of FY 2012 or FY 2013.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?

Answer: NCPC did not have a backlog of administrative appeals at the close of FY 2012 or FY 2013.

Ten Oldest Requests

- c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?

Answer: NCPC did not have any backlog of requests from 2012 that carried over to FY 2013.

- d. 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 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed two of them, you should note that you closed two out of seven "oldest" requests.

Answer: N/A

Ten Oldest Appeals

- e. In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?

Answer: NCPC did not have any backlog of administrative appeals from 2012 that carried over to FY 2013.

- f. If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C.(5) of your Fiscal Year 2012 Annual FOIA Report.

Answer: N/A

Ten Oldest Consultations

- g. In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012?

Answer: NCPC did not have any backlog of consultations from FY 2012 that carried over to FY 2013.

- h. If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report.

Answer: N/A

Reasons for Any Backlogs:

3. If you answered "no" to any of the questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:

Request and/or Appeal Backlog

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals?

Answer: N/A

- b. Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff?

Answer: N/A

- c. Was the lack of a reduction in the request and/or appeal backlog caused by an increase in the complexity of the requests received?

Answer: N/A

- d. What other causes, if any, contributed to the lack of a decrease in the request and/or appeal backlog?

Answer: N/A

"Ten oldest" Not Closed

- e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012.

Answer: N/A

- f. If your agency was unable to close any of its ten oldest requests or appeals 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.

Answer: N/A

Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:

Given the importance of these milestones, it is critical that Chief FOIA Officers assess the causes for not achieving success and create plans to address them.

4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2014.

Answer: N/A

5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency's plan for achieving backlog reduction in the year ahead.

Answer: N/A

Interim Responses:

OIP has issued **guidance** encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information.

6. Does your agency have a system in place to provide interim responses to requesters when appropriate?

Answer: No. Such a system is not needed given the agency's short timeframe for providing a final response.

7. If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

Answer: N/A

Use of FOIA's Law Enforcement "Exclusions"

In order to increase transparency regarding the use of the FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to "treat the records as not subject to the requirements of [the FOIA]," 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. Did your agency invoke a statutory exclusion during Fiscal Year 2013?

Answer: No.

2. If so, what was the total number of times exclusions were invoked?

Answer: N/A

Spotlight on Success

Out of all the activities undertaken by your agency since March 2013 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. As noted above, these agency **success stories** will be highlighted during Sunshine Week by OIP. 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 a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

Answer: NCPC continues to maintain an efficient and effective FOIA program through attention to requests immediately upon their submission and prompt response within, and in fact well less than, the required 20 business days. To continue this success, the Chief FOIA officer drafted revised FOIA regulations which were published in a notice of proposed and final rulemaking during the reporting period. The new regulations are scheduled to become effective on March 31, 2014 and will immediately be published on the agency website.