

**U.S. Nuclear Regulatory Commission
Chief Freedom of Information Act Officer Report**

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 U.S. Nuclear Regulatory Commission (NRC) views nuclear regulation as the public's business and, as such, believes it should be transacted as openly and candidly as possible to maintain and enhance the public's confidence. Ensuring appropriate openness explicitly recognizes that the public must be informed about, and have a reasonable opportunity to participate meaningfully in, the NRC's regulatory processes. To achieve its strategic goal of openness, the NRC had a proactive program to make releases of information available to the public in the absence of a Freedom of Information Act (FOIA) request prior to the President's FOIA Memorandum. The NRC also had a robust, centralized FOIA program that already operated with the presumption of openness as part of achieving the agency's strategic goal of openness.

On January 29, 2009, the NRC General Counsel provided a memorandum to the NRC Chairman and the Commissioners entitled, "Presidential Memoranda on Government Transparency and the Freedom of Information Act." This seven-page memorandum provided details and an analysis of the President's FOIA Memorandum.

As a result of the President's FOIA Memorandum and the Attorney General's (AG's) FOIA Guidelines, on March 25, 2009, the NRC published an article in its weekly online publication the *NRC Reporter* entitled, "AG Holder Issues FOIA Reminder." The article provided a discussion of the AG's memorandum and a link to it.

On May 19, 2009, the NRC's Chief FOIA Officer acting for the Executive Director for Operations issued an agencywide announcement through the NRC intranet identifying the AG's new FOIA Guidelines and the President's FOIA Memorandum. The announcement was titled "New Freedom of Information Act Procedures" and advised all agency staff and contractors of the President's commitment to accountability, transparency, and increased Governmental openness. It called for the commitment of all agency personnel to help achieve the President's new era of open Government. It discussed the President's call for agencies to adopt a presumption in favor of disclosure in FOIA decisions. The announcement also provided links to both the President's FOIA Memorandum and the AG's FOIA Guidelines. The announcement issued guidance to the Office of General Counsel (OGC), office FOIA coordinators, and senior FOIA officials regarding the presumption of openness and the need to provide "foreseeable

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harm” statements when denying information under FOIA Exemptions High 2 and 5 (Deliberative Process only). An explanation of the need to withhold information under Exemptions 6, 7(A), and 7(C) are provided when it is not obvious why the agency is citing those exemptions. The announcement also encouraged the discretionary release of certain types of information. Since the implementation of new FOIA procedures, there has been an increase in the amount of deliberative process information discretionarily released under Exemption 5. In fiscal year (FY) 2009, the percentage of times that Exemption 5 was invoked by the NRC decreased by 5.2 percent compared with FY 2008.

Staff updated the agency FOIA training class to include training about the following: (1) the intent of the President’s Memorandum and the AG’s Guidance and (2) how to implement the procedures at NRC, including the need for “foreseeable harm” statements. The FOIA/Privacy Section (FPS) also provided training to two regional offices. Staff also updated the agency online FOIA training course to include this information. The FOIA staff written guidance was also updated.

The agency FOIA/Privacy Act Officer held meetings with her staff and staff from NRC offices and regions to ensure their understanding of the new policies and procedures.

Staff is currently revising the NRC’s management directive on FOIA to include the intent of the President’s Memorandum, the intent of the AG’s Guidance, and how to implement the procedures at NRC, including the need for “foreseeable harm” statements.

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.

In its FY 2009 Annual FOIA Report, the NRC did not see a noteworthy change in the percentage of requests where records were released in full or where records were released in part when compared to those percentages in the previous year’s Annual FOIA Report. The percentage of requests in FY 2009 that were released in full compared to the total of requests involving a release/denial decision that year was 51 percent compared to 56.8 percent in FY 2008. The percentage of requests released in part in FY 2009 was 39.3 percent compared to 37.0 percent in FY 2008. The percentage of requests denied in full in FY 2009 was 9.6 percent compared to 6.0 percent in FY 2008. To gain a historical perspective, the averages for each category were calculated for the 5-year period beginning in FY 2004 and ending in FY 2008. They were 54.8 percent released in full, 39.4 percent released in part, and 5.6 percent denied in full.

As previously mentioned, the NRC has a proactive program to release information to the public in the absence of a FOIA request. We believe that this has reduced the number of FOIA requests we would have received in the absence of such a proactive program. However, this also means that a higher percentage of the FOIA requests received are for information that would not normally be released to the public because it is exempt. Examples are requests for information related to allegations, investigations, retired material licenses, and records that contain proprietary information. A specific example of how this impacts the above discussion is the use of Exemption 7(A). In FY 2009, the agency had 19 requests denied in full. Of those, it invoked Exemption 7(A) 14 times. There is considerable potential for “foreseeable harm” related to the release of an ongoing investigation; therefore, these denials would not be subject to the President’s or AG’s intention of openness. The protection of an individual’s personal

privacy is another specific example of the type of information that would not be made open to the public under the President's memorandum or the AG's guidance. In FY 2009, the NRC invoked Exemption 7(C) 31 times, and on 24 occasions invoked Exemption 6. Proprietary information was exempted on 19 occasions. In summary, because the NRC already had a FOIA program that stressed openness prior to the President's FOIA Memorandum, we do not expect to see significant changes in the percentages of requests that are released in full, released in part, or denied in full because the types of exemptions that are being invoked are not discretionary for the most part. The exception to this has been with regard to Exemption 5, as previously noted.

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 NRC has an effective system for responding to FOIA requests, as is evident by the progress it has made in reducing its FOIA backlog and in improving the timeliness of responses to FOIA requesters within the statutory deadlines.

The NRC has a centralized FPS responsible for tracking and processing all FOIA requests received by the NRC. The FPS is managed by the NRC's FOIA/Privacy Officer who also serves as one of the two agency FOIA Public Liaisons. The FPS is in the Information Services Branch (ISB), which is in the Information and Records Services Division (IRSD) of the Office of Information Services (OIS). The Director, OIS, who is a member of the Senior Executive Service (SES), reports directly to the Deputy Executive Director for Corporate Management (DEDCM) in the Office of the Executive Director for Operations. The DEDCM is the agency's Chief FOIA Officer. The DEDCM provides guidance and oversight to the NRC FOIA program. The Director, OIS supervises the Director, IRSD who is also a member of the SES. The Director, IRSD, supervises the ISB Branch Chief who is a GG-15. The ISB Branch Chief, who also serves as the other FOIA Public Liaison, supervises the FOIA/Privacy Officer, who is also a GG-15. The FOIA/Privacy Officer manages the day-to-day implementation of the FOIA program. This organizational structure provides senior-grade management attention and expertise which contributes to the effectiveness of the NRC's FOIA program by ensuring adequate resources including Information Technology support, policy guidance, and oversight are provided to the FOIA program.

Additionally, all NRC Office Directors and Regional Administrators (ODs/RAs) are responsible for ensuring compliance with the FOIA program in their office or region. These SES managers have a performance element and standard in their annual performance plan and appraisal which requires that they ensure their office or region provides release/denial recommendations to the FPS 90 percent of the time in 10 days or less. Each OD/RA appoints a Senior Management FOIA Official, normally a SES or GG-15, as his or her representative to manage

the FOIA program in their office or region. Offices and regions also have a FOIA coordinator responsible for processing requests received in that office or region. In most cases, the FOIA coordinator in each office or region is in the chain of command of the Senior Management FOIA Official. The FPS trains the FOIA coordinators in the FOIA exemptions, administrative aspects of the FOIA, and the NRC FOIA processes. FOIA coordinators assist the staff in their office or region.

The OGC also supports the FOIA program by providing legal reviews of FOIA denials and appeals. In addition, OGC provides legal advice on FOIA policy and novel questions of law, as well as FOIA litigation support. The OGC is adequately staffed to review cases in a manner so as to not impede timeliness.

The centralized FPS is responsible for managing and tracking all FOIA requests and appeals received by the NRC. It is comprised of both Federal employees and contractors. The NRC accepts FOIA requests through e-mail, postal mail, courier, and facsimile. Offices and regions know to forward any requests they receive to the FPS within 1 work day. Received requests are administratively opened and assigned to a FOIA specialist. A preliminary determination is made in the FPS regarding where the requested information may reside; the request is either hand carried, sent through overnight mail, or transmitted electronically to the FOIA coordinator in the appropriate office(s) or region(s). The FOIA coordinator provides an estimate of the search, review, and duplication effort.

Once the FPS has determined that a request has been "perfected" (i.e., fee issues have been resolved and the scope of the request clarified), the FPS electronically notifies the appropriate FOIA coordinators to begin the search for records.

Once the request is perfected, the offices and regions must search for, retrieve records, and provide them to a subject matter expert within the office or region who makes recommendations on release or denial of the information. They bracket information that is proposed for denial. They make appendices with lists of documents that are already publicly available and provide the records to the FPS within 10 work days. The FOIA packet is then provided to the FOIA specialist who reviews the release and denial recommendations. Disagreements between the FOIA specialist and the FOIA coordinator and subject matter experts are resolved. After reviews are completed and differences of opinions are reconciled, the documents are scanned and redactions are made using FOIAXpress software. The packet is prepared for release to the requester via postal mail. Most requests are still provided in paper because that is what the requesters want. When requested, the NRC also sends results as an attachment to an e-mail or on a computer disc.

In complex requests that involve a voluminous amount of documents or documents from multiple offices or regions, partial releases are frequently made to requesters. This helps keep requesters satisfied and allows the processing pipeline to continue moving rather than waiting until the entire request is processed and sending all records at the same time.

In FY 2008, the NRC closed 74 percent of its simple FOIA requests in 20 days or less. In FY 2009, the percentage of simple requests processed in 20 days or less increased to 82 percent.

The NRC's FOIA professionals have sufficient IT support available in order to post required documents to the FOIA Web site, make documents publicly available, and assist with the loading of FOIAXpress software and updates as required. The agency provides sufficient

funding for the continuation of the FOIAXpress maintenance contract which also provides adequate licenses to perform redaction operations. The FPS receives direct IT support from the Infrastructure and Computer Operations Division (ICOD) which is also part of the OIS. The ICOD provides state-of-the-art personal desktop computers to the FPS and ensures timely help desk support to quickly address problems when they arise. This support ensures continuity of the FPS IT operations.

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.

As stated earlier, the NRC has a long-standing proactive practice of conducting its regulatory responsibilities in an open and transparent manner by keeping the public informed of the agency's regulatory, licensing, and oversight activities in the absence of a FOIA request.

The NRC was the first Federal agency to provide the public with electronic access to all of its public documents through the groundbreaking Agencywide Documents Access and Management System (ADAMS). Since the institution of ADAMS in 1999, it has been the NRC policy to make nonsensitive documents publicly available through ADAMS unless there is a specific reason not to do so. Consequently, since the inception of ADAMS in 1999, the agency has made public more than 600,000 full-text documents and is currently publishing an average of almost 300 documents daily.

The NRC public Web site broadens the public's understanding of the NRC's mission, goals, and performance; increases openness by providing information that enhances the ability of stakeholders to participate effectively in the regulatory process; and makes doing business with the NRC easier by enhancing access to agency information and making tools available for conducting business electronically. The public Web site provides links to the following Web page titles: Electronic Reading Room, ADAMS, Document Collections, Basic References, Photo and Video Gallery, Index to Frequently Asked Question Pages, Public Document Room, FOIA Requests, How to Obtain Paper Copies, Records Management, Facility Information Finder, Subscribe to E-mail Notices, Operating Reactor Correspondence, and the Congressional Affairs and Public Affairs home pages. In addition, the public Web site also provides links to news releases and speeches.

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, the NRC currently receives requests electronically through e-mail and facsimile. The NRC FOIA request e-mail address, FOIA.resource@nrc.gov, is located on the NRC Web site. The NRC FOIA request e-mail address is also published in the "Citizen's Guide to U.S. Nuclear Regulatory Commission Information" (NUREG/BR-0010, Revision 4), which can be found on the NRC's Web site at www.nrc.gov/reading-rm/foia/foia-privacy.html. The facsimile number is also available on the NRC Web site.

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

Not Applicable (N/A)

3. Does your agency track requests electronically?

Yes, the NRC uses FOIAXpress software to track requests electronically. Requests are logged in and assigned a case number. The status of each request is updated (e.g., when it is tolled, when it is perfected, when it is closed). Data is captured in order to produce the Annual FOIA Report and other ad hoc reports.

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

N/A

5. Does your agency use technology to process requests?

Yes. Besides the operations described elsewhere in this section, the NRC has been using commercial software since April 2007 to electronically redact information from documents. Staff scan documents to create a Portable Document Format document. The NRC is currently using the redactions software provided as part of the FOIAXpress software product.

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

N/A

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

Yes. The NRC uses FOIAXpress software to prepare its Annual FOIA Report.

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

N/A

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 are 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.

The number of NRC backlogged cases decreased from 6 at the end of FY 2008 to 5 at the end of FY 2009. The oldest backlogged case at the end of FY 2008 was 115 days old. The oldest backlogged case at the end of FY 2009 was 89 days old. There were no backlogged appeals in FY 2008. Even though the NRC received an inordinately high number of appeals in FY 2009, there were only 3 backlogged appeals at the end of FY 2009. The oldest backlogged appeal at the end of FY 2009 was 83 days old.

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.

N/A

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

In addition to steps mentioned previously in this report, the NRC has reduced the review time given to outside external submitters when it is necessary to coordinate requests containing proprietary information. Submitters now have 10 calendar days instead of 30 to provide a response to NRC. In addition, NRC now uses FedEx to "fast track" consultations with submitters.