

## Department of Energy

### Chief Freedom of Information Act (FOIA) Officer Report for FY2009

#### I. Steps Taken to Apply the Presumption of Openness

##### 1. Description

The Secretary of Energy issued a message to all DOE federal and contractor employees institutionalizing the Department's commitment to openness and promptness in responding to FOIA requests. In addition, the Chief FOIA Officer notified the Heads of all Departmental elements of their responsibilities regarding the President's and Attorney General's memorandums on FOIA. The Department also instituted training for all DOE federal and contractor employees with FOIA responsibilities. The training covered the direction set forth in the memorandums including the proper application of exemptions and FOIA procedures. Language has also been included in our response letters referencing the Attorney General's memorandum, our commitment to openness and our responsibility to segregate releasable information and provide as much as possible to the requester when full disclosure is not possible.

With the issuance of these memorandums, draft and pre-decisional material is being more closely reviewed and, in many cases, more information is being released. For example, as stated in the Annual Report for FY2008, Exemption 5, used to withhold pre-decisional and draft documents, was used 73 times to deny requests in whole or in part. In FY2009, Exemption 5 was used only 60 times, a 17% decrease from the year before, despite a significant increase in the number of FOIA requests.

An example of the Department's increased commitment to openness involves a request for documentation on a cooperative agreement between the DOE Savannah River Ecology Laboratory and the University of Georgia. In that case, responsive documents were initially reviewed under the previous guidelines and were determined to be protected under Exemption 5. When the President's and Attorney General's direction for FOIA was issued, the responsive documents were re-reviewed and it was determined that there was no foreseeable harm in releasing all of the material.

##### 2. Disclosure Comparisons

The Department reported 724 full releases and 295 partial releases in the Annual FOIA Report for FY2008. In the Annual FOIA Report for FY2009, the Department reported 684 full releases and 289 partial releases. There was a 3% decrease in full, and 1% decrease in partial releases from the previous year. The decreases in both full and partial releases

resulted from cases being closed by alternative means, including transferring requests to other agencies; determinations of no responsive records; requests being withdrawn by the requesters; duplicate requests from the same requesters; or requests which did not reasonably describe the documents sought. Moreover, full and partial releases still account for the majority of cases processed in FY2009, or 55% of the total processed. Full releases accounted for 39%, and partial releases 16%, of the total processed.

In addition, there was a 1% decrease in full denials, which accounted for only 2% of total processed in FY2009. Seen another way, fewer cases were closed in 2009 as a result of a full denial; 44 cases were closed in FY2008 versus 27 cases in FY2009. The remaining 43% of requests processed in FY2009 were resolved through alternative means.

## **II. Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests**

One step the Department took to ensure its system for responding to requests is effective and efficient was to conduct a training conference for all DOE federal and contractor employees with FOIA responsibilities. At the conference, the key roles various agency personnel (e.g., Office of General Counsel/Chief Counsel, Classification, Office of Hearings and Appeals, records holders/Information Technology [IT]) play with regard to processing a request were discussed in detail. The training also emphasized the importance of maintaining communications with requesters to clarify requests, update the status of requests, and by providing interim responses to show progress in responding to the request.

Another step the Department took involved the creation of an IT support group within the Office of Management to provide technical support for the FOIA tracking system. In addition, the Department initiated monthly conference calls between Departmental FOIA Officers, during which individual requests, as well the overall process, are discussed. Finally, a desk reference guide has been provided to employees with FOIA responsibilities to ensure that they are knowledgeable about procedures for processing FOIA requests.

## **III. Steps Taken to Increase Proactive Disclosures**

The Secretary of Energy's memorandum to all DOE employees on FOIA and openness reaffirmed the Department's steadfast commitment to proactive disclosures. This direction was also reiterated at the FOIA training conference. As a result, the Department began posting on the Department's website a number of new datasets including: copies of all documents provided to the Presidential Transition team for the Department of Energy; copies of FOIA requests received in calendar year 2009 and

responses to those requests; sanitized incident and accident reports from 1943 to the present; lists of site buildings by number and their hazardous materials known to be present since 1942; rosters of names of former employees dating back to 1942; lists of contractors and subcontractors at various sites since 1942; photos and information related to cleanup activities at sites under the Richland Office; and the Office of Environmental Management's Consolidated Business Center contracts along with amendments and modifications.

**IV. Steps Taken to Greater Utilize Technology**

1. Does your agency currently receive requests electronically?

Yes, the Department established an online FOIA request form for requesters to submit FOIA requests electronically.

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

N/A

3. Does your agency track requests electronically?

Yes, the Department purchased and recently deployed the FOIAXpress software. The software allows the Department to track requests electronically.

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, the FOIAXpress software has a built-in redaction capability that allows for the electronic review and redaction of documents. It also facilitates the use of electronic template letters.

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. In recent years, the annual FOIA report has been created using Microsoft Excel to combine data provided by the various agency sites. Beginning in FY2010, DOE has implemented a FOIA tracking software package known as FOIAXpress. This new software has the capability to create an automated report and will be used once enhancements needed by the Department are completed.

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**

1. Backlog Status

The Department successfully closed many of its oldest FOIA requests in FY2009 which decreased the average age of backlogged requests. DOE also decreased the number of backlogged administrative appeals. However, the Department's FOIA backlog increased by 1%, or from 294 in FY2008 to 297 in FY2009. The increase was due primarily to more cases being received in FY2009 as compared to FY2008. For instance, the Department received 1605 cases in FY2008 versus 1809 in FY2009, a 12 percent increase. In addition, the Department reported its oldest case as being received on November 16, 1999 for the Annual FOIA Report for FY2008. That case was completed in FY2009, and our oldest case reported in the Annual FOIA Report for FY2009 was received on February 7, 2000. Moreover, during FY2009, the Department processed 69% of cases that were reported as backlogged and pending in the FY08 Annual FOIA report including 58% of cases that were five or more years old.

With regard to administrative appeals, there was a 33% reduction in the number of backlogged administrative appeals between FY2008 and FY2009. In FY2008, there were 6 backlogged administrative appeals versus 2 in FY2009. However, there was no reduction in the age of backlogged administrative appeals. In the Annual FOIA Report for FY2008, the Department reported its oldest administrative appeal as being received on June 20, 2007. This same case was reported as the oldest administrative appeal in the Annual FOIA Report for FY2009. This is due to the records being classified and requiring coordination with another agency. Thus, in FY2009 there was a reduction in the age of backlogged requests but not in administrative appeals.

## 2. Backlog Reduction Steps

The Department had a 12% increase in new FOIA requests in FY2009. As a result, an aggressive strategy for processing the increased number of requests is being implemented including advising all Under Secretaries, Assistant Secretaries and other Department heads of the pending cases assigned to their organizations. In addition, the FOIA Director and his staff conduct bi-weekly FOIA meetings/conference calls with every program office/record holder regarding the status, issues and progress made in processing the requests they have been assigned. The Department is currently focusing on all backlogged cases and administrative appeals from 2000-2008 in an effort to close out older cases. Finally, ongoing training will be provided to employees who process requests and specialized training will be provided to employees with newly delegated FOIA responsibilities.

The National Nuclear Security Administration (NNSA) Service center in Albuquerque, NM, which handles a significant number of the Department's FOIA cases, is also conducting bi-weekly conference calls with site offices' points-of-contacts and with NNSA Headquarters divisions to track the status of pending FOIA requests and to address issues with processing and closing cases under their jurisdiction. The NNSA also is providing a weekly report to their senior management detailing statistical information on the number of cases received, processed, and overdue cases by each NNSA division/organization.

## 3. Steps to Improve Timeliness

As described above, the Department has taken a number of actions which together will improve timeliness in responding to requests and administrative appeals by conducting regular meetings/conference calls with record holders; making senior staff aware of requests pending in their offices; continue making FOIA a Departmental priority; and improving training.