

CHIEF FOIA OFFICER REPORT FOR THE COPYRIGHT OFFICE (CO) FY2010

I. STEPS TAKEN TO APPLY PRESUMPTION OF OPENNESS

1. STEPS TO ENSURE PRESUMPTION APPLIED TO ALL FOIA DECISIONS

Staff responsible for directing FOIA operations and for processing requests have reviewed and considered President Obama's and Attorney General Holder's memoranda, particularly the presumption of openness. On March 26, 2009, key staff, including the Deputy to the Chief FOIA Officer and the FOIA Public Liaison, attended the government-wide training conference hosted by the Justice Department's Office of Information Policy (OIP) to discuss President Obama's and Attorney General Holder's memoranda. As a result, the presumption has been incorporated into FOIA practices at the CO and is now an established part of CO guidelines. It is part of CO analysis, along with the statute and regulations, regarding the availability of records and the use of exemptions. However, due to the limited number of FOIA requests received each year (see discussion below in item I.2.), few staff are involved with processing FOIA requests, either routinely or on an occasional basis, which precludes the necessity for establishing training sessions for staff or for developing training materials regarding the presumption. Also, due in part to the few FOIA requests received, the CO did not make any discretionary disclosures in FY2009. (See item I.2., below.)

2. CHANGES IN NUMBER OF FOIA REQUESTS

Since the CO had no occasion to consider whether to invoke exemptions for any requests it processed in FY2009 there has not been an opportunity to make discretionary disclosures after President Obama's memorandum was issued in January of 2008. All refusals to release records for any of the 32 FOIA requests processed that year were based on administrative considerations, for example, some requests were not for agency records or requesters refused to pay required fees. Likewise, for all requests for which processing has been completed at this time for FY2010. Of the 46 FOIA requests processed in FY2008, a single exemption was invoked for one request. As documented by the annual reports at www.copyright.gov, for the last ten fiscal years, the CO received an average of approximately 43 requests each year which means that in a typical year there are few, if any, occasions to invoke FOIA exemptions.

For FY2008, there were 13 full grants and in FY2009 there were eight. For each of those fiscal years, there was one partial grant/denial. Both partial grants/denials were based on exemption five, which was invoked in fiscal years 2007 and 2008 prior to when the memoranda were issued. (The request for which an exemption was invoked in relation to a partial release of records in FY2007 was open for three years, in part because the case was suspended for a long period of time. As a result, it was not closed until FY2009 and is included with statistics for that fiscal year though the exemption was invoked in a previous fiscal year.)

II. STEPS TAKEN TO ENSURE THAT YOUR AGENCY HAS AN EFFECTIVE SYSTEM FOR RESPONDING TO REQUESTS

FOIA Amendments and E.O. 13,392. In the last few years, the CO improved FOIA operations by revising its practices and policies to implement the 2008 FOIA amendments. The CO also complied with the requirements of Executive Order 13,392. For a detailed discussion, see *Report Implementing Presidential Executive Order 13392: Improving Agency Disclosure of Information* at <http://www.copyright.gov/foia/>. As part of those efforts, the CO reviewed its FOIA procedures to identify improvements which included taking advantage of Internet and communications technology. The entire CO website is designated the FOIA electronic website and email communications are utilized to receive and process FOIA requests. A pending improvement is the development of written standard operating procedures to be incorporated into a training manual for staff.

CO Reengineering. In 2007, the CO began implementing an agency-wide reengineering program to revise, modernize and reorganize its business functions, commonly known as eCO (electronic Copyright Office). The overarching goal is to improve the quality and timeliness of the Offices services to the public. It encompasses a complete reengineering of business processes; the design, development and implementation of an office-wide information technology system that supports electronic registrations; and a substantial staff reorganization that aligns work units and divisions with the newly streamlined and automated processes and systems. An important goal is the establishment of a centralized automated system for all agency operations. A benefit of this agency-wide reengineering program for FOIA is that it will enhance the CO's ability to process requests more quickly and efficiently. Although there are still implementation issues to be resolved, the online registration system became available to the public in July of 2008 and the structural reorganization has been completed.

While a FOIA request is not needed to obtain registration records since they are publicly available, every year there are several FOIA requests for such records. For all such requests, eCO provides immediate access to electronic deposits which is an improvement over manual processing to obtain archived hard copies which are often stored off-site. eCO also provides faster processing times to acquire electronic copies of any other type of registration records.

FOIA Regulations. Finally, the CO is amending its FOIA regulations to improve procedures and public access to records. Among the revisions, first, there are extensive changes to clarify or add procedures for processing FOIA requests. Some of these improvements are based on recent experience but others implement recommendations that are part of the CO's plan for complying with Executive Order 13,392, *Improving Agency Disclosure of Information* (hereafter, EO13,392) (70 FR 75373, December 19, 2005) and the OPEN Government Act of 2007 which codified aspects of EO 13,392. Second, the revision updates the fee requirements and rates for FOIA services, namely fees assessed for research, copying and reviewing that requesters must pay as a condition of receiving agency records, and it clarifies when copyright fee provisions are applicable to requests for certain kinds of documents instead of FOIA fees. Third, consistent with the policy goals of EO 13,392, the revision places greater emphasis on

communicating how the public can access records that are available without a FOIA request. Fourth, the revision updates the regulations to accurately reflect the recent reorganization of CO structure and operations, discussed in the preceding paragraph.

III. STEPS TAKEN TO INCREASE PROACTIVE DISCLOSURES

Because the CO is an office of public record, which has been a requirement of copyright law for many decades, it already has a tradition of proactively making its records and documents routinely available to the general public. The CO also has a tradition of adapting to use new technology to further that goal, as Congress directed in legislative reports. Consequently, CO practices are consistent with and predate President Obama's and Attorney General Holder's memoranda which emphasize that technology and websites should be used to the maximum extent possible to make agency information and records available.

The CO first made its catalog of registration records available online in 1978, which were accessed through terminals located within the Copyright Office. The first remote access to an online database of registrations was established on April 30, 1993 for telnet connection. In July of 1993, online access through the Internet began, using a MARVEL Gopher server. In early 1994, the Copyright Office changed to a web-based system for Internet access to the electronic database of registrations. The online database of copyright registration records is available on the CO website which includes all records since 1978. The CO is currently planning, designing and developing a project to digitize older records and make them available in a database.

All forms are available on the CO website. So are CO publications to educate and inform the public about copyright and the CO. The website provides links to relevant statutes, all regulations and *Federal Register* notices, pending legislation and information about legal and policy developments, such as congressional testimony, along with related documents or reports. It also includes historical information about the CO and archival materials such as all its annual reports dating back to the 19th century. The entire CO website has been designated as its FOIA electronic reading room

For other examples of using technology to improve access, the CO provides a subscriber email notification service to alert subscribers about any new or recent developments or activities, called NewsNet. Mobile alerts and RSS Feeds are also available. RSS is an easy way to keep updated automatically on changes to websites. Instead of having to go to a website to see if there is something new, RSS, which stands for Really Simple Syndication, sends a notification alert to the computer where it is installed whenever something new is posted.

The CO recently implemented an agency-wide reorganization to establish eCO (discussed in item II, above) which is a central, automated copyright registration system that permits electronic registrations. eCO facilitates access to copyright registration records.

IV. STEPS TAKEN TO GREATER UTILIZE TECHNOLOGY

1.) Does the CO currently receive requests electronically? Yes.

2.) If not, what are the current impediments to establishing a mechanism to receive requests electronically? Not applicable.

3.) Does the CO track requests electronically? The CO manually maintains the FOIA docket as an Excel spreadsheet.

4.) If not, what are the current impediments to utilizing a system to track requests electronically? Not applicable.

5.) Does the CO use technology to process requests? The CO uses email to communicate about FOIA requests and share documents among staff. It is also used to transmit responses and records to requesters. Word processing is used to draft FOIA responses.

6.) If not, what are the current impediments to utilizing technology to process requests? Not applicable.

7.) Does the CO utilize technology to prepare the Annual FOIA Report? The CO uses (1) Wordperfect to draft and prepare documents and for compiling and recording preliminary data; (2) Excel to calculate statistics and (3) email to communicate with each other and share drafts and related support documents and to transmit reports to DOJ.

8.) If not, what are the current impediments to utilizing technology in preparing the Annual FOIA Report? Not applicable.

V. STEPS TAKEN TO REDUCE BACKLOGS AND IMPROVE TIMELINESS IN RESPONDING TO REQUESTS

1. If the CO has a backlog, report here whether your backlog is decreasing. For fiscal years 2008 and 2009, the number of backlogged requests was reduced from ten to two, respectively. There were no backlogs for appeals in either year. There were ten pending requests for FY2008 and the oldest was received on March 19, 2007. FY 2009, there were nine pending and the oldest was received on July 1, 2009.

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. Not applicable. (The CO rarely has a backlog but, if so, there are usually only a few requests involved. These limited backlogs are isolated instances based on the unique circumstances of particular requests. For the first time in many years, there was a backlog of ten cases in 2007 that was due to changes in operating procedures. Since the requesters had not been specifically notified that their cases were being closed, the cases were held open pending their receipt of that notification and lapse of a suitable time period for response. That situation should not reoccur. In FY 2009, there was a backlog of two requests which were the result of referrals to or consultations with another service unit within the Library of Congress which, unlike the CO, is not subject to FOIA.)

3. Describe the steps your agency is taking to improve timeliness in responding to requests and to administrative appeals. Currently there is no evidence of routine delays for responding to requests. However, the CO continuously reviews its procedures and practices to safeguard against any developing, to comply with legal requirements and to further improve response times and the quality of its responses.

For FY2009, of the six requests for which the CO exceeded the twenty working-days requirement without an agreement with the requester to extend the time period, one was the result of administrative oversight. For three of them, the delay was due to the unusual nature of the requests. Additional time was required to ascertain where the records were located and to determine whether or not they could be released. All three requests were full grants.

For the remaining two, as stated on page 17 of the FY2009 Annual FOIA Report, processing for them is pending action by Library of Congress administrative staff. The CO is a service unit within the Library which provides administrative services to all its subunits. For some requests relating to CO administrative records, it is necessary to refer them to those central administrative offices for processing because those offices maintain the requested records. Unlike the Copyright Office, the Library of Congress is not subject to FOIA although the Library has its own FOIA-like procedures.