



National Endowment for the Arts Freedom of Information Act Annual Report¹ for FY 2009

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I. BASIC INFORMATION REGARDING REPORT

1. Name, title, address, and telephone number of person to be contacted with questions about the Report

Monica Ashar, FOIA Officer
National Endowment for the Arts
1100 Pennsylvania Avenue, NW, Suite 608
Washington, DC 20506
Phone: (202) 682-5418

2. How to access to the Report on the agency Web site
<http://www.nea.gov/about/FOIA/FOIARreport09.pdf>

3. How to obtain a copy of the Report in paper form

Paper copies of the report can be obtained from Monica Ashar, whose contact information is provided above.

¹ Resubmitted July 29, 2010.

II. MAKING A FOIA REQUEST

1. Where to submit FOIA requests

Mail: FOIA Officer
National Endowment for the Arts
1100 Pennsylvania Avenue, NW, Suite 608
Washington, DC 20506-0001

Fax: (202) 682-5572

Email: foia@arts.gov

2. Why some requests were not granted

The majority of the denials involved withholding small, segregable portions of the requested records. Twenty-six denials (31% of the total requests processed) were made pursuant to exemption (b)(6), which protects against “a clearly unwarranted invasion of personal privacy.” The NEA made full denials in twenty-five instances, twenty-one of which were made because there were no responsive records.

III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

1. Agency-specific acronyms or terms used in this Report

a. **NEA:** National Endowment for the Arts

2. Definitions of terms used in this Report

a. **Administrative Appeal:** a request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.

b. **Average Number:** the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.

c. **Backlog:** the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.

d. **Component:** for agencies that process requests on a decentralized basis, a “component” is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in their Annual FOIA Report data for both the agency overall and for each principal component of the agency.

- e. **Consultation:** the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.
- f. **Exemption 3 Statute:** a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.
- g. **FOIA Request:** a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a “third-party” request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., “first-party” requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act “systems of records” or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require the agency to utilize the FOIA in responding to the requester are included in this Report.

Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this Report.)

- h. **Full Grant:** an agency decision to disclose all records in full in response to a FOIA request.
- i. **Full Denial:** an agency decision not to release any records in response to a FOIA request because the records are exempt in their entireties under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.
- j. **Median Number:** the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
- k. **Multi-Track Processing:** a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.
 - i. **Expedited Processing:** an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.

- ii. **Simple Request:** a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.
 - iii. **Complex Request:** a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.
- l. **Partial Grant/Partial Denial:** in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.
 - m. **Pending Request or Pending Administrative Appeal:** a request or administrative appeal for which an agency has not taken final action in all respects.
 - n. **Perfected Request:** a request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.
 - o. **Processed Request or Processed Administrative Appeal:** a request or administrative appeal for which an agency has taken final action in all respects.
 - p. **Range in Number of Days:** the lowest and highest number of days to process requests or administrative appeals.
 - q. **Time Limits:** the time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).
3. Descriptions of the FOIA exemptions
- a. **Exemption 1:** classified national defense and foreign relations information
 - b. **Exemption 2:** internal agency rules and practices
 - c. **Exemption 3:** information that is prohibited from disclosure by another federal law
 - d. **Exemption 4:** trade secrets and other confidential business information
 - e. **Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges
 - f. **Exemption 6:** information involving matters of personal privacy
 - g. **Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute

an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual

- h. **Exemption 8:** information relating to the supervision of financial institutions
- i. **Exemption 9:** geological information on wells

IV. EXEMPTION 3 STATUTES

Statute	Type of Information Withheld	Case Citation	Total Number of Times Relied Upon by Agency
20 U.S.C. 959(c)(4)(B)	Verbatim comments made by panelists during the grant review process	N/A	4

V. FOIA REQUESTS

A. Received, Processed and Pending FOIA Requests

	Column 1	Column 2	Column 3	Column 4
	Number of Requests Pending as of Start of Fiscal Year	Number of Requests Received in Fiscal Year	Number of Requests Processed in Fiscal Year	Number of Requests Pending as of End of Fiscal Year
AGENCY OVERALL	3	94	83	14

B. (1) Disposition of FOIA Requests – All Processed Requests

	Number of Full Grants	Number of Partial Grants/ Partial Denials	Number of Full Denials Based on Exemptions	Number of Full Denials Based on Reasons Other Than Exemptions									TOTAL
				No Records	All Records Referred to Another Agency	Request Withdrawn	Fee-Related Reason	Records Not Reasonably Described	Improper FOIA Request for Other Reason	Not Agency Record	Duplicate Request	Other Explain in Chart Below	
AGENCY OVERALL	25	33	1	21	0	0	0	3	0	0	0	0	83

B. (2) Disposition of FOIA Requests – “Other” Reasons for Full Denials Based on Reasons Other than Exemptions from Section V.B(1) Chart – not applicable

B. (3) Disposition of FOIA Requests – Number of Times Exemptions Applied

	Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
AGENCY OVERALL	0	0	4	1	3	26	0	0	0	0	0	0	0	0

VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS

A. Received, Processed and Pending Administrative Appeals

	Column 1	Column 2	Column 3	Column 4
	Number of Appeals Pending as of Start of Fiscal Year	Number of Appeals Received in Fiscal Year	Number of Appeals Processed in Fiscal Year	Number of Appeals Pending as of End of Fiscal Year
AGENCY OVERALL	0	1	1	0

B. Disposition of Administrative Appeals – All Processed Appeals

Number Affirmed on Appeal	Number Partially Affirmed & Partially Reversed/ Remanded on Appeal	Number Completely Reversed/ Remanded on Appeal	Number of Appeals Closed for Other Reasons	TOTAL
1	0	0	0	1

C. (1) Reasons for Denial on Appeal – Number of Times Exemptions Applied

Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
0	0	0	0	0	0	0	0	0	0	0	0	0	0

C. (2) Reasons for Denial on Appeal – Reasons Other than Exemptions

No Records	Records Referred at Initial Request Level	Request Withdrawn	Fee-Related Reason	Records Not Reasonably Described	Improper Request for Other Reasons	Not Agency Record	Duplicate Request or Appeal	Request in Litigation	Appeal Based Solely on Denial of Request for Expedited Processing	Other Explain in Chart Below
1	0	0	0	0	0	0	0	0	0	0

C. (3) Reasons for Denial on Appeal – “Other” Reasons from Section VI.C (2) Chart – not applicable

C. (4) Response Time for Administrative Appeals

Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
3	3	3	3

C. (5) Ten Oldest Pending Administrative Appeals

	10 th Oldest Appeal	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Appeal
Date of receipt of 10 oldest appeals	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Number of Days Pending	0	0	0	0	0	0	0	0	0	0

VII. FOIA REQUESTS: RESPONSE TIME FOR PROCESSED AND PENDING REQUESTS

A. Processed Requests – Response Time for All Processed Perfected Requests

	SINGLE TRACK				EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
AGENCY OVERALL	3	7.1	< 1	56	N/A	N/A	N/A	N/A

B. Processed Requests – Response Time for Perfected Requests in Which Information Was Granted

	SINGLE TRACK				EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
AGENCY OVERALL	4	8.3	< 1	56	N/A	N/A	N/A	N/A

C. Processed Requests – Response Time in Day Increments

Single Track

	0-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
AGENCY OVERALL	78	3	2	0	0	0	0	0	0	0	0	0	0	83

Requests Granted Expedited Processing

	0-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
AGENCY OVERALL	0	0	0	0	0	0	0	0	0	0	0	0	0	0

D. Pending Requests – All Pending Perfected Requests

	SIMPLE			COMPLEX			EXPEDITED PROCESSING		
	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days
AGENCY OVERALL	7	78	151.0	7	17	11.9	0	N/A	N/A

E. Pending Requests – 10 Oldest Pending Perfected Requests²

AGENCY OVERALL	10 th Oldest Request and Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Request and Number of Days Pending
		9/4/09 17	9/3/09 18	9/2/09 19	9/2/09 19	8/10/09 36	7/16/09 53	6/10/09 78	2/26/09 151	8/19/08 278

² The fourth through tenth oldest requests were answered during the first month of fiscal year 2010.

VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER

A. Requests for Expedited Processing³

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within 10 Calendar Days
AGENCY OVERALL	1	12	Unknown	Unknown	Unknown

B. Requests for Fee Waiver⁴

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
AGENCY OVERALL	0	26	Unknown	Unknown

³ The NEA receives a relatively small number of FOIA requests per year, and it is able to begin processing virtually all of them immediately upon arrival. Because of this, the agency had not been collecting data on the adjudication of requests for expedited processing. However, it will do so in future reports.

⁴ The overwhelming majority of the FOIA requests processed by the NEA do not incur fees. Because of this, the agency had not been collecting data on the adjudication of requests for fee waivers. However, it will do so in future reports.

IX. FOIA PERSONNEL AND COSTS

	PERSONNEL			COSTS		
	Number of “Full-Time FOIA Employees”	Number of “Equivalent FOIA Full- Time Employees”	Total Number of Full-Time FOIA Staff (The sum of columns 1 and 2)	Processing Costs (At initial request and appeal levels)	Litigation- Related Costs	Total Costs
AGENCY OVERALL	0	.7	.7	\$50,000	0	\$50,000

X. FEES COLLECTED FOR PROCESSING REQUESTS

	Total Amount of Fees Collected	Percentage of Total Costs
AGENCY OVERALL	0	0%

XI. FOIA REGULATIONS

The NEA’s regulations and fee schedule appear at 45 C.F.R. § 1100. These can be accessed electronically at <http://www.nea.gov/about/FOIA/FOIAReg.html>.

XII. BACKLOGS, CONSULTATIONS, AND COMPARISONS

A. Backlogs of FOIA Requests and Administrative Appeals

	Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
AGENCY OVERALL	6	0

B. Consultations on FOIA Requests – Received, Processed, and Pending Consultations

	Column 1	Column 2	Column 3	Column 4
	Number of Consultations Received from Other Agencies that Were <u>Pending</u> at Your Agency as of <u>Start</u> of the Fiscal Year	Number of Consultations <u>Received</u> from Other Agencies During the Fiscal Year	Number of Consultations Received from Other Agencies that Were <u>Processed</u> by Your Agency During the Fiscal Year	Number of Consultations Received from Other Agencies that Were <u>Pending</u> at Your Agency as of <u>End</u> of the Fiscal Year
AGENCY OVERALL	0	0	0	0

C. Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency

AGENCY OVERALL	10th Oldest Consultation and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Consultation and Number of Days Pending
	Date	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Number of Days	0	0	0	0	0	0	0	0	0	0

D. Comparison of Numbers of Requests from Previous and Current Annual Report – Requests Received, Processed, and Backlogged

	Column 1	Column 2	Column 3	Column 4
	NUMBER OF REQUESTS <u>RECEIVED</u>		NUMBER OF REQUESTS <u>PROCESSED</u>	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
AGENCY OVERALL	54	94	51	83

Number of backlogged requests as of the end of the fiscal year from the previous Annual Report and the number of backlogged requests as of the end of the fiscal year from the current Annual Report.

	Column 1	Column 2
	Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report
AGENCY OVERALL	2	6

E. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report – Appeals Received, Processed, and Backlogged

	Column 1	Column 2	Column 3	Column 4
	NUMBER OF APPEALS RECEIVED		NUMBER OF APPEALS PROCESSED	
	Number Received During Fiscal Year from Last Year’s Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year’s Annual Report	Number Processed During Fiscal Year from Current Annual Report
AGENCY OVERALL	0	1	0	1

Number of backlogged administrative appeals as of the end of the fiscal year from the previous Annual Report and the number of backlogged administrative appeals as of the end of the fiscal year from the current Annual Report.

	Column 1	Column 2
	Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report
AGENCY OVERALL	0	0

F. Discussion of Other FOIA Activities

In FY 2009 and in previous fiscal years, the NEA used a single track system of processing. The requests were relatively few and simple, and virtually all of them could be processed quickly. As a practical matter, there was no need to treat some requests as “expedited.”

During FY 2009, the agency began to see a dramatic increase in the volume of requests from previous years. In FY 2007, the NEA received 57 requests, and in FY 2008, it received 54. During FY 2009, however, the number jumped to 94 requests, and during FY 2010, the agency received 35 in the first quarter alone. Because of the increase in the number of requests received, as well as their complexity, the agency has begun to implement a multi-track processing system. Evidence of this can be seen by comparing charts VII.A-C, which use a single track, with chart VII.D, which uses multiple tracks.