

**NATIONAL ENDOWMENT FOR THE HUMANITIES FOIA PLAN
UNDER EXECUTIVE ORDER 13,392**

A. NATURE OF NEH'S FOIA OPERATIONS

Freedom of Information Act/Privacy Act (FOIA/PA) requests submitted to the National Endowment for the Humanities (NEH) are processed by the NEH Office of the General Counsel. The NEH Deputy Chairman serves as the Chief FOIA Officer for NEH and signs off on all FOIA/PA responses from the agency. The Office of General Counsel intakes and processes FOIA/PA requests for records maintained by the agency. The FOIA/PA program staff in the NEH Office of General Counsel consist of the Acting General Counsel, Attorney-Advisor, and Paralegal Specialist. The Office of General Counsel serves as the NEH FOIA Requester Service Center. The Chief FOIA Officer has designated the Acting General Counsel to serve as NEH's FOIA Public Liaison. In Fiscal Year 2005, NEH received 44 requests and completed the processing of 51 requests.

B. AREAS SELECTED FOR REVIEW

NEH identified and reviewed the following potential areas of improvement for its' FOIA/PA program:

- Affirmative and Proactive Disclosure
- Web Site Improvement/Electronic Reading Room
- Agency FOIA Reference Guide
- Electronic FOIA
- Use of Information Technology New Equipment
- Processing Methods
- Backlog reduction
- Customer Relations/Communication
- Additional Training

C. NARRATIVE STATEMENT SUMMARIZING RESULTS OF REVIEW

After a thorough and careful review of NEH's FOIA/PA program, the agency determined that the existing program for processing FOIA requests generally works well. However, during the review NEH identified areas of the FOIA/PA program that could benefit from focused attention and improvement. The first two areas assessed were NEH's efforts to proactively and affirmatively disclose information to the general public. While the agency determined that NEH currently publishes and makes available to the general public a wide variety of information and agency records on the NEH website and also in hardcopy, the agency also determined that it should increase electronic disclosure of information and agency records. Further, after reviewing NEH's use of the agency website for the FOIA/PA program, NEH determined that many current FOIA requests could be satisfied in a more efficient manner by increasing the number and types of information and agency records available on the website and by improving

the FOIA section on the website. Although a wide variety of agency records are available on the NEH website and the website has a link to “Frequently Requested Documents,” there is no designated electronic reading room with records available for review by the general public on the website. NEH plans to establish such an electronic reading room in the FOIA section of the website and will conduct a review to determine what information and agency records should be added to the electronic reading room. Additionally, NEH will add links to *Your Right to Federal Records* and *A Citizens Guide to the FOIA* to the FOIA section of the NEH website. This will provide additional electronic reference materials for NEH FOIA requestors on their rights to access Federal information and records. A review of the NEH website established that the website currently offers the FOIA requestors only the ability to conduct broad searches of the entire content available on the website, but does not offer the ability to conduct searches confined only to specific topic areas such as press releases. NEH will explore whether offering a limited search function would be feasible for the NEH website, as well as helpful to FOIA customers by providing greater ease of access to information and agency records available online.

NEH is aware that it has an ongoing obligation to review new information and agency records and to make determinations whether they need to be made available to the general public. After examining the agency’s current efforts to review and make new information and agency records available, NEH plans to implement a procedure whereby the FOIA/PA program will conduct a quarterly review of new information and agency records to determine whether any should be made available to the general public. Further, after a review of the current *The Freedom of Information Act: A Guide to Requesting NEH Records* (hereinafter *NEH FOIA Reference Guide*) available online, the agency determined that when the FOIA/PA program conducts the quarterly review of new information and agency records to ensure affirmative and proactive disclosure of materials to the general public, the program will also review the *NEH FOIA Reference Guide* to determine whether any sections need to be updated in order to comply with federal requirements and/or internal NEH procedures. This review will ensure that the *NEH FOIA Reference Guide* is updated on a timely basis with new and accurate information.

Next, the agency reviewed how NEH has used new information technology equipment in its FOIA/PA program. As a result of this review, NEH determined that it will assess whether employing technologies such as software available for the electronic redaction of agency records in response to FOIA requests would assist the FOIA/PA program. Similarly, the agency will review whether the ability to scan and electronically transmit responsive documents would result in more efficient and timely responses to FOIA requests. If the agency determines that new information technology resources would improve the FOIA/PA program, then NEH will determine if, and when, these tools can be integrated into the FOIA/PA program.

Our review also covered the processing methods currently utilized by the NEH FOIA/PA program. NEH is a small agency and generally only receives a limited number of FOIA requests each year. As a result, NEH is able to complete many simple FOIA requests by searching and locating records in-house. However, the search and review of requested agency records can often require the involvement of multiple internal divisions and offices, as well as the recall of records from off-site storage facilities. Nevertheless, NEH determined that due to the relatively small size of the agency and the limited number of FOIA requests received each year, the agency

does not have the need to employ a complex tracking and processing system such as those used by other federal agencies. The tracking and processing system currently used by the NEH FOIA/PA program assigns a tracking number to each FOIA request and tracks the requester's name, records requested, date of request, due dates, type of records released, and date of release. The FOIA/PA program also records the NEH division or office responsible for supplying the requested records. As a result of the review, the FOIA/PA program will also begin tracking the dates on which records were requested from NEH divisions and/or offices, as well as the date records are provided by the divisions and/or offices. This information will be used by the FOIA/PA program to determine whether delays in processing requests are a result of the records requested, or whether there is an internal agency element responsible for the delay. The FOIA/PA program will then be able to more quickly identify any potential problem areas for improvement. NEH will also assess whether the development of an electronic FOIA/PA database would allow FOIA/PA program staff to more efficiently input and track data related to FOIA/PA requests. Finally, NEH will review and amend the internal processing cover sheet for FOIA requests sent to NEH divisions and/or offices. The revised processing cover sheet will request that NEH staff provide more detailed information related to the mandatory disclosure and exemptions for the requested agency records, as well as more detailed information on any potential processing expenses.

In the area of customer relations with FOIA requestors, our review of the FOIA/PA program revealed that the agency has a generally good track record of fulfilling requests in a timely manner with only limited exceptions on certain complex requests. In addition to receiving requests via mail and fax, the NEH provides a FOIA request form on the agency website for the electronic submission of FOIA requests. Nevertheless, the NEH has determined that it can and will seek to fulfill FOIA requests in more timely manner. Due to the relatively small number of agency staff, NEH does not have the capability to assign one individual to work exclusively on FOIA/PA requests. However, the recent addition of a full-time attorney to the Office of the General Counsel will enable the agency to commit an additional staff member to assisting with the processing of FOIA requests. Additionally, the agency anticipates that an improvement in response time will be accomplished, in part, by increasing the number of agency records available on the NEH website and in the electronic reading room as discussed above.

Additionally, our review noted that NEH's current regulations do not address a FOIA requestor's right to receive information in an electronic form. Although requests are accepted electronically, NEH usually responds to and fulfills FOIA requests in hardcopy. NEH is aware that the 1996 amendments to FOIA require agencies to "provide the record in any form or format requested . . .". 5 U.S.C. §552(a)(3)(B). Accordingly, NEH plans to amend the agency's existing joint FOIA regulations, to ensure that the FOIA regulations comply with the 1996 amendments to FOIA. Once the FOIA regulations are revised, noticed, published, and implemented, the agency will amend the *NEH FOIA Reference Guide* to reflect that FOIA requestors have the right to select the method in which their request will be fulfilled. The ability to respond to FOIA requests electronically will further enable NEH to fulfill FOIA requests in a more timely manner.

As a result of NEH's review of how the processing of FOIA requests under the current NEH FOIA/PA program impacts FOIA customer relations and communications, the agency plans to formalize all procedures for responding to FOIA requests. Due to the relatively small

size of the agency and the limited number of FOIA requests received annually, NEH has not found it necessary to consistently employ formal procedures for its FOIA/PA program. Although the existing FOIA/PA program procedures have worked reasonably well in recent years, NEH determined that more formal procedures will most likely lead to further improvement in the FOIA/PA program. NEH also plans to add additional steps to the FOIA/PA program procedures. The agency does not, as a matter of course, acknowledge all FOIA requests within twenty (20) working days. NEH recognizes that acknowledgement letters are an important tool for making FOIA requesters aware of the status of their pending requests. Because the agency feels that this is a simple action that would improve NEH's FOIA customer relations and communications, NEH plans to amend its procedures to include this additional important communication with FOIA requestors. In the acknowledgement letter, NEH will also provide the FOIA requestor with the contact information for a staff member in NEH's FOIA Requester Service Center.

After reviewing the current FOIA backlog, NEH plans to also implement a quarterly review by the FOIA/PA program of all open FOIA requests and appeals. This will enable the program to regularly review the FOIA backlog to determine what further action is necessary to respond to pending FOIA requests and/or appeals. Additionally, this quarterly review will allow the NEH staff to analyze on a more regular and frequent basis the response time for FOIA requests and provide the opportunity to identify existing or future impediments to the prompt processing of FOIA requests. NEH hopes that this review, along with the other improvements planned as a result of the review of the NEH FOIA/PA program, will over time incrementally and consistently improve the agency's response time for FOIA requests.

In recognizing that FOIA requests can impact all divisions and offices of the agency, NEH determined that its employees and its FOIA program would benefit from training on the principles of FOIA and the new requirements for improving agency disclosures of information. To accomplish this goal, the NEH plans to conduct FOIA/PA training for agency staff. By providing training to agency staff on NEH FOIA procedures and statutory rules and exemptions, NEH seeks to ensure that all staff possess the requisite level of knowledge to ensure timely and correct compliance with the FOIA requirements.

D. AREAS CHOSEN AS IMPROVEMENT AREAS FOR FOIA PLAN

- Web Site Improvement/Electronic Reading Room
- Processing Methods
- Use of Information Technology
- Customer Relations/Communication
- Additional Training

E. IMPROVEMENT AREA PLANS

1. Web Site Improvement

Goal: To improve the content and accessibility of information and agency records on the NEH website. **Target Completion: 12-01-06 (and continuing thereafter).**

Steps:

- Review FOIA-related information currently on the NEH website. **To be completed by 8-1-06.**
- Add links to *Your Right to Federal Records* and *A Citizens Guide to the FOIA* to the FOIA section of the NEH website. **To be completed by 8-1-06.**
- Review websites of other similarly sized and situated agencies to identify types of documents and information regularly available in electronic reading rooms. **To be completed by 9-1-06.**
- Review the *NEH FOIA Reference Guide* and make any necessary updates in order to ensure compliance with federal requirements. **To be completed by 9-1-06. Thereafter, review reference guide for necessary updating every 3 months: 12-1-06; 3-1-07; 6-1-07; 9-1-07; 12-1-07; 3-1-08; etc.**
- Review FOIA requests from 2004-2006 to determine frequently requested information and agency records. **To be completed by 10-1-06.**
- Examine ways to refine the NEH's website search capabilities for FOIA requestors, including the possibility of a limited search engine to enable users to search by keyword and by type of document (press releases, grant guidelines, etc.). **To be completed by 12-1-06.**
- Refine and update process for locating and posting on NEH website documents required by 5 U.S.C. 552(a)(2). **To be completed by 9-1-06. Thereafter, review need for new subsection (a)(2) documents every 3 months: 12-1-06; 3-1-07; 6-1-07; 9-1-07; 12-1-07; 3-1-08; etc.**
- Create and launch NEH electronic reading room, including the uploading of all relevant identified information and agency records on to FOIA/PA section of NEH website. **To be completed by 11-1-06. Thereafter, upload all new subsection (a)(2) documents every three months, to be completed one (1) month after documents are identified by agency personnel: 12-1-06; 3-1-07; 6-1-07; 9-1-07; 12-1-07, 3-1-08, etc.**

2. FOIA Request Processing Methods

Goal: To increase timely processing of FOIA requests. **To be completed by 3-1-07 (and continuing thereafter).**

Steps:

- Begin tracking the dates on which records for each FOIA request are requested from NEH divisions and/or offices, as well as date upon which records are returned from NEH divisions and/or offices. **To be completed by 7-1-06.**
- Amend internal FOIA processing cover sheet to require more information from NEH staff on disclosure and exemptions related to requested records, as well as any potential processing expenses. **To be completed 8-1-06.**
- Review and formalize FOIA/PA program processing procedure to ensure consistent processing and communication on FOIA requests. **To be completed by 12-1-06.**
- Increase availability of information on agency website, as noted above in Step #1. **To be completed by 12-1-06.**
- Investigate possibility of developing an electronic FOIA database to use in tracking FOIA requests and generating reports. **To be completed by 1-1-07.**
- Implement quarterly review of status of new and pending FOIA requests and appeals. Review will consist of analyzing: (1) average time spent for processing each request; (2) time spent by agency divisions in responding to OGC request for information and documents; and (3) reasons for backlog, if any such backlog exists. **To be completed 9-1-06; 12-1-06; 3-1-07; 6-1-07; 9-1-07; 12-1-07; 3-1-08; etc.**

Goal: To amend NEH regulations to allow FOIA requestors to choose the format by which requested records are provided. **To be completed: 8-1-07**

Steps:

- Review current NEH FOIA regulations at 45 CFR 1100 to determine necessary changes required by the 1996 amendments to FOIA. **To be completed by 9-1-06.**
- Complete draft of new regulations. **To be completed by 12-1-06.**
- Submit draft of new rules for review to ensure compliance with 1996 amendments to FOIA. **To be completed by 1-1-07.**
- Publish Proposed Notice of Rule in Federal Register: **To be completed by 3-1-07.**
- Publish Final Rule in Federal Register and make new guidelines available on NEH website. **To be completed by 8-1-07.**

- Make appropriate changes to *NEH FOIA Reference Guide* to conform to amended regulations. **To be completed by 8-1-07.**

3. Use of Information Technology

Goal: To increase efficiency in the redaction and production of final FOIA responses by determining whether new information technology would improve quality and timeliness of responses to FOIA requests. **To be completed by 12-1-06.**

Steps:

- Review types of records requested and method of requesting records (electronic requests versus mailed requests). Determine whether scanning and e-mailing records would result in more timely and less costly responses to FOIA requests. **To be completed by 12-1-06.**
- Review methods for redacting documents; determine whether information technology such as Adobe Acrobat would be useful to the FOIA/PA program for electronically redacting information from records. **To be completed by 12-1-06.**
- Consult with appropriate NEH staff regarding feasibility of application and potential acquisition of new technology for FOIA/PA program. **To be completed 2-1-07.**
- Acquire new technology for use in FOIA/PA program, if necessary and reasonable to improve efficient of FOIA/PA program. **To be completed 6-1-07.**
- Train FOIA/PA staff in new technology and begin providing responses generated with new technology. **To be completed 8-1-07.**

4. Customer Relations/Communications

Goal: To improve communications with FOIA requesters. **To be completed by 12-1-06.**

Steps:

- Train FOIA/PA program staff in NEH FOIA Requestor Service Center on importance of communications and interactions with FOIA requestors, and review rights of FOIA requestors. **To be completed by 8-1-06.**
- Implement system for acknowledging receipt of FOIA requests. **To be completed by 9-1-06.**

- Review website to determine whether agency FOIA contact information is correct and sufficiently user-friendly. **To be completed by 9-1-06.**
- Review and formalize FOIA/PA program processing procedure to ensure consistent processing and communication on FOIA requests. **To be completed by 12-1-06.**

5. FOIA Training

Goal: To provide review and training to NEH staff on the FOIA, its exemptions, and new developments in FOIA. **To be completed by 12-1-06 (and continuing thereafter on a biannual training schedule).**

Steps:

- Ensure that all agency personnel are familiar with the agency's duty to respond to FOIA requests in a timely manner. **To be completed by 10-1-06.**
- Identify to all NEH staff those agency individuals primarily responsible for handling FOIA requests. **To be completed by 10-1-06.**
- Provide information to all agency staff on recent developments in FOIA, including subsection (a)(2) requirement to continuously make available documents on agency website. **To be completed by 10-1-06.**
- Inform all agency staff of new steps in agency FOIA procedures, including new steps to determine whether internal delays exist when requesting information from particular agency divisions. **To be completed by 10-1-06.**
- Provide review to all agency staff on the types of information exempted under FOIA. **To be completed by 10-1-06.**
- Review all training provided through 11-1-06; determine whether any further training is required. **To be completed by 11-1-06.**