



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 12 2017

OFFICE OF
ENVIRONMENTAL INFORMATION

The Honorable Michael F. Bennet
United States Senate
Washington, D.C. 20510

Dear Senator Bennet:

Thank you for your letter addressed to Kevin Minoli, Acting General Counsel, dated March 15, 2017, regarding the EPA's implementation of the Freedom of Information Act (FOIA), and the new requirements resulting from the FOIA Improvement Act of 2016 (Act). As my office is responsible for EPA's FOIA program, I have been asked to respond on behalf of the Agency.

EPA receives an average of 10,500 FOIA requests from the public each year. The Agency has experienced an increase in the number and complexity of FOIA requests received so far in FY 2017. Based on the current rate of incoming FOIA requests in FY 2017, as compared to FY 2016, EPA is on track to receive approximately 10 percent more requests.

The Agency has taken a number of steps over the last few years to ensure the efficient management of FOIA responses. In 2012, the EPA played a key role in the development of FOIAonline, which is a shared-service FOIA processing and management tool used by multiple agencies, including the EPA, to manage FOIA responses. The EPA uses the system to track the processing of requests, to communicate with requesters regarding their requests, and to publicly post all documents appropriate for release to the public for anyone to access. Through its use of FOIAonline, the EPA has met the Act's codification of the "Rule of Three," which requires that documents that have been requested three or more times be available for public inspection. Since deployment of FOIAonline on October 1, 2012, the Agency has made approximately 831,405 records publicly available. In late 2014, the EPA established the FOIA Expert Assistance Team Office to assist Agency program and regional offices in responding to some of the largest and most complex FOIA requests received by the Agency. The Agency released hundreds of thousands of records to the public pursuant to FOIA in FY 2016.

At the EPA, FOIA is every employee's responsibility. The National FOIA Program located in EPA Headquarters supports FOIA staff in both headquarters and in each of the EPA's ten regional offices. The EPA has also created National FOIA Procedures for processing requests at the Agency, and each EPA program and regional office has created conforming procedures. Annual FOIA training is provided to all Agency employees, enabling all staff to play a critical role in processing FOIA requests. Through annual FOIA training, staff have been, and continue to be, instructed to apply the "foreseeable harm" standard now codified by the Act. The Agency has also been making strides in reducing its backlogs and successfully closed nine of the ten oldest FOIA requests and all ten of the Agency's ten-oldest appeals in FY 2016.

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After the Act was passed, the EPA took steps to implement the new requirements of the Act. The EPA includes language in all final FOIA responses that reflects the requirement that requesters now have 90 days to file an administrative appeal, as opposed to 30 days, and that requesters can obtain assistance from the FOIA Public Liaison and the Office of Government Information Services. The EPA also has discussed the requirements of the Act at monthly meetings of FOIA professionals across the Agency. The Agency's FY 2017 FOIA training, which is mandatory for all employees, includes a section that discusses the key components of the Act.

Finally, members of my staff are working with the EPA's Office of General Counsel to develop proposed revisions to the EPA's FOIA regulations. We also plan to update the Agency's National FOIA Procedures to reflect the final regulations which will address, among other things, the requirements of the 2016 amendments to FOIA. The National FOIA Office and the Office of General Counsel are also planning a national FOIA training conference for EPA FOIA staff and attorneys in September 2017.

Detailed information regarding the number of incoming requests, backlog, and estimated costs relating to FOIA can be found in EPA's FOIA Annual Reports submitted annually to the Department of Justice. Reports dating back to 2007 are available at <https://www.epa.gov/foia/foia-reports#annual>. Since the FY 2018 budget has not yet been passed, it is premature to comment on FY 2018 funding or staffing at this time.

Again, thank you for your letter. If you have any additional questions, please contact me or your staff may contact Kyle Aarons in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3638 or Aarons.Kyle@epa.gov.

Sincerely,



Steven Fine, Ph.D.
Acting Assistant Administrator
and Acting Chief Information Officer