

AUDIT REPORT

Audit of NRC's Freedom of Information Act Process

OIG-14-A-17 June 16, 2014



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**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

**OFFICE OF THE
INSPECTOR GENERAL**

June 16, 2014

MEMORANDUM TO: Mark A. Satorius
Executive Director for Operations

FROM: Stephen D. Dingbaum /RA/
Assistant Inspector General for Audits

SUBJECT: AUDIT OF NRC'S FREEDOM OF INFORMATION ACT
PROCESS (OIG-14-A-17)

Attached is the Office of the Inspector General's (OIG) audit report titled *Audit of NRC's Freedom of Information Act Process*.

The report presents the results of the subject audit. Following the June 11, 2014, exit conference, agency staff indicated that they had no formal comments for inclusion in this report.

Please provide information on actions taken or planned on each of the recommendations within 30 days of the date of this memorandum. Actions taken or planned are subject to OIG followup as stated in Management Directive 6.1.

We appreciate the cooperation extended to us by members of your staff during the audit. If you have any questions or comments about our report, please contact me at 415-5915 or Beth Serepca, Team Leader, at 415-5911.

Attachment: As stated

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EXECUTIVE SUMMARY

BACKGROUND

The Freedom of Information Act (FOIA) is a Federal law that provides any person the right to submit a written request for access to records or information maintained by the Federal Government. The Nuclear Regulatory Commission's (NRC) FOIA program is managed by the FOIA, Privacy, and Information Collections Branch (referred to in this report as the FOIA office) within the Office of Information Services, Customer Service Division.

The FOIA process begins when the agency (1) receives – via mail, facsimile, or Internet – an incoming FOIA request, (2) assigns it a number, and (3) determines which NRC offices need to review their records to identify whether they have information pertinent to the request and sends a request to those offices. FOIA coordinators in responsive offices provide an estimate of the search, review, and duplication effort required to produce any documents identified as within the scope of the request.

The FOIA office then estimates the associated processing fees (for which the requester may be responsible), advises the requester as to the amount due, and assigns the request to the appropriate offices to identify and provide to the FOIA office all relevant documents from their office within an assigned timeframe. To facilitate appropriate disclosure of records, the FOIA coordinators consult as needed with agency staff in the responding offices and/or the Office of the General Counsel to prepare a response. The response is reviewed and signed by the FOIA officer, and sent to the requester.

OBJECTIVE

The audit objective was to determine whether the FOIA process is efficient and complies with the current laws.

RESULTS IN BRIEF

NRC generally responds to FOIA requests in accordance with Federal requirements. The agency meets the timeliness requirements for simple FOIA requests and adheres to the vast majority of FOIA regulations; however, opportunities exist to improve program efficiency and increase

Federal compliance by (A) fully using technology and enhancing training requirements and (B) adhering to review and approval regulations.

Operational Efficiency Could Be Improved

The efficiency of NRC's FOIA program can be improved by fully using available technology and enhancing agency training. Federal agencies should have the necessary tools and training to respond promptly and efficiently to FOIA requests. However, NRC management has not implemented effective internal controls. As a result, FOIA processing costs are high and the timeliness requirements are not consistently met.

Management Level Reviews Are Inconsistent

NRC is not in compliance with FOIA regulations as initial disclosure reviews of FOIA records are done at inconsistent management levels. Federal regulations state that, during the initial disclosure review, the head of the responsible office must review agency records to determine whether the agency records are exempt from disclosure; however, there is no enforcement of this policy and there is no method to track these reviews. Additionally, NRC's internal guidance differs from the Code of Federal Regulations. This may result in (A) a reduced number of discretionary releases or (B) the inadvertent release of sensitive information.

RECOMMENDATIONS

This report makes nine recommendations to improve the efficiency of NRC's FOIA process.

AGENCY COMMENTS

An exit conference was held with the agency on June 11, 2014. Prior to this meeting, after reviewing a discussion draft, agency management provided supplemental information that has been incorporated into this report, as appropriate. As a result, agency management stated their general agreement with the findings and recommendations in this report and opted not to provide formal comments for inclusion in this report.

ABBREVIATIONS AND ACRONYMS

ADAMS	Agencywide Documents Access and Management System
CFR	Code of Federal Regulations
DOJ	The Department of Justice's Office of Information Policy
FOIA	The Freedom of Information Act
NRC	Nuclear Regulatory Commission
OIG	Office of the Inspector General
OIS	Office of Information Services
TABS	Transforming Assets into Business Solutions

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I. BACKGROUND

The Freedom of Information Act (FOIA)¹ is a Federal law that provides any person the right to submit a written request for access to records or information maintained by the Federal Government. In response to such written requests, Federal agencies must disclose the requested records, unless they are protected from release under one of the nine FOIA statutory exemptions.² FOIA mandates that all agencies shall readily promulgate information, agency rules, opinions, orders, records, and proceedings to the public.

Executive Memoranda

In 2009, President Barack Obama and Attorney General Eric Holder issued memoranda on the FOIA. These statements of FOIA policy emphasized that the FOIA "should be administered with a clear presumption: in the face of doubt, openness prevails." The President also directed agencies to "take affirmative steps to make information public" and not to "wait for specific requests from the public." The Attorney General's FOIA Guidelines stressed the need for agencies to:

- Have efficient and effective systems in place for responding to requests.
- Increase proactive disclosures.
- Improve the use of technology.
- Reduce backlogs of pending FOIA requests and appeals.
- Improve timeliness in responding to requests.

Federal FOIA Oversight

The Department of Justice's Office of Information Policy (hereinafter referred to as DOJ) oversees agencies' FOIA implementation. Additionally, DOJ also issues FOIA policy guidance, conducts FOIA-related training programs to Government staff, and is responsible for encouraging compliance.

¹ [5 U.S.C. § 552, As Amended](#)

² See Appendix B for a listing of the nine statutory exemptions.

NRC Guidance

The Nuclear Regulatory Commission's (NRC) FOIA requirements are conveyed in the Code of Federal Regulations (CFR) under Title 10, Part 9, Subpart A, "Freedom of Information Act Regulations." NRC Management Directive and Handbook 3.1, "Freedom of Information Act," provides guidance on NRC's FOIA policy and implementation of the FOIA process.³ NRC also maintains an internal and public Web site with FOIA information available to staff.

FOIA Process

NRC's FOIA program is managed by the FOIA, Privacy, and Information Collections Branch (referred to in this report as the FOIA office⁴) within the Office of Information Services (OIS), Customer Service Division. The FOIA process begins when the agency (1) receives – via mail, facsimile, or Internet – an incoming FOIA request, (2) assigns it a number, and (3) determines which NRC offices need to review their records to identify whether they have information pertinent to the request and sends a request to those offices. FOIA coordinators⁵ in responsive offices provide an estimate of the search, review, and duplication effort required to produce any documents identified as within the scope of the request.

The FOIA office then estimates the associated processing fees (for which the requester may be responsible), advises the requester as to the amount due, and assigns the request to the appropriate offices to identify and provide to the FOIA office all relevant documents from their office within an assigned timeframe. To facilitate appropriate disclosure of records, the FOIA coordinators consult as needed with agency staff in the responding offices and/or the Office of the General Counsel to prepare a response. The response is reviewed and signed by the FOIA officer, and

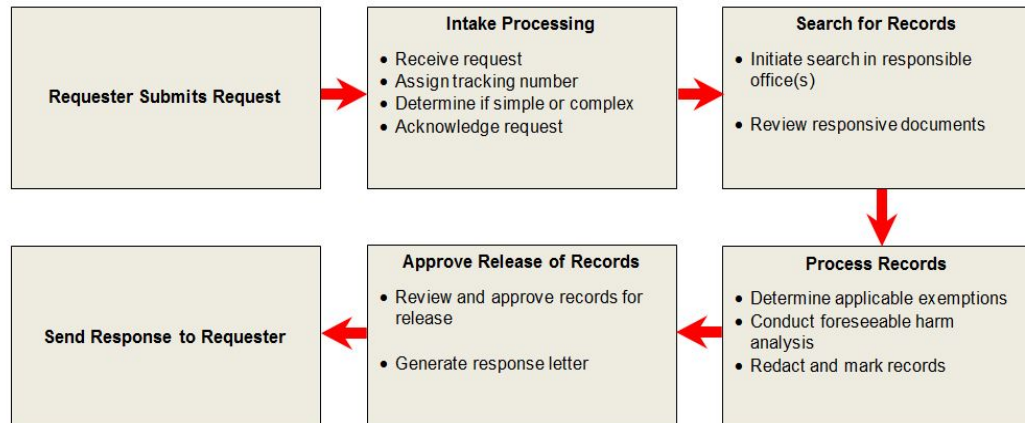
³ Management Directive 3.1 was last revised on June 8, 2011.

⁴ The FOIA office consists of a branch chief, FOIA officer, administrative assistant, and Government information specialists (also known as FOIA specialists). FOIA specialists consist of NRC employees and contractors.

⁵ Each NRC office has a FOIA coordinator who acts as a central point of contact for his/her respective office. The coordinator serves as a liaison between the FOIA office and the subject matter experts who are responsible for collecting and redacting, as appropriate, the FOIA records within the program offices.

sent to the requester. See Figure 1 for a simplified FOIA process flowchart.

Figure 1: FOIA Process Flowchart



Source: Office of the Inspector General (OIG)

Agencies have a statutory responsibility to make a determination on FOIA requests within 20 working days. This type of FOIA request is known as a “simple” request. The FOIA also gives agencies the right to extend that time by 10 working days when a given request requires additional search time or consideration. These types of requests are called “complex” requests. This may apply when (1) NRC needs to assemble responsive records from its regional offices; (2) the request involves a “voluminous” amount of records that must be located, compiled, and reviewed; or (3) NRC must consult with another NRC office or Federal agency that may have originated the information or have a substantial interest in the information.

Japan FOIA Team

Also working on FOIA responses since June of 2011 is a temporary “Japan team.” The Japan team was created by the Office of Nuclear Security and Incident Response and OIS for the sole purpose of responding to the numerous requests for agency records related to the

March 2011 Fukushima Daiichi nuclear disaster.⁶ Established shortly after the Fukushima incident, the Japan team has posted almost 260,000 pages of responsive records to the agency's Web site, and has completed its review of the last responsive documents. The team anticipates closing out all the requests by the end of June 2014. Once the responses are completed, the members of the team will either be reassigned or released. For these reasons, the Japan team was excluded from the scope of this audit.

FOIA Centralization

As part of the NRC Transforming Assets into Business Solutions (TABS)⁷ initiative, NRC intends to streamline the FOIA process by eliminating the current FOIA coordinator positions within the program offices.⁸

Centralization will move most program office FOIA-related administrative functions to the FOIA branch within OIS. Currently, the majority of program offices have a FOIA coordinator who is an employee of that office and fulfills the coordinator responsibilities as a collateral duty.

Centralization will transfer these responsibilities to the FOIA office, which will add four additional staff to enable it to handle the added workload.

Centralization is expected to be completed in FY 2015.

⁶ On March 11, 2011, a 9.0-magnitude earthquake and an estimated 45-foot-high tsunami struck Japan off the Honshu Island coast at the Fukushima Daiichi nuclear power plant, causing a hydrogen explosion and release of radioactive material. Radioactive contamination spread over a large area of Japan, requiring the relocation of tens of thousands of people.

⁷ TABS is an agencywide initiative to reduce the duplication of efforts in corporate support and office support areas such as human resources, information technology, financial management, and contract management. The goal of TABS is to reduce agency overhead by finding solutions for the most effective and efficient delivery of business support services.

⁸ The Office of Enforcement, Office of the Secretary, Office of Investigations, regional offices, and OIG are currently excluded from centralization because of functional and logistical impediments.

II. OBJECTIVE

The audit objective was to determine whether the FOIA process is efficient and complies with the current laws. Report Appendix A contains information on the audit scope and methodology.

III. FINDINGS

NRC generally responds to FOIA requests in accordance with Federal requirements. The agency meets the timeliness requirements for simple FOIA requests and adheres to the vast majority of FOIA regulations; however, opportunities exist to improve program efficiency and increase federal compliance by (A) fully using technology and enhancing training requirements and (B) adhering to review and approval regulations.

A. Operational Efficiency Could Be Improved

The efficiency of NRC's FOIA program can be improved by fully using available technology and enhancing agency training. Federal agencies should have the necessary tools and training to respond promptly and efficiently to FOIA requests. However, NRC management has not implemented effective internal controls. As a result, FOIA processing costs are high and the timeliness requirements are not consistently met.

Processes Should Be Efficient

Federal agencies, to include NRC, should have the necessary tools and training to respond promptly and efficiently to FOIA requests. FOIA professionals deserve the full support of the agency's Chief FOIA Officer to ensure that they have the tools they need to respond promptly and efficiently to FOIA requests. Additionally, all agencies should use modern technology to inform citizens about what is known and done by their Government. DOJ guidance and best practices suggest that agencies should actively explore using technology to process FOIA requests.

The Open Government National Action Plan for the United States of America⁹ recommends that all agency employees, not just FOIA personnel, have FOIA training in order to efficiently and effectively respond to FOIA requests. DOJ guidance and best practices maintains that each agency should require that its personnel, both FOIA and non-FOIA, attend training to understand FOIA guidelines on transparency.

Processes Could Be More Efficient

Use of Technology Could Be Expanded

NRC does not use technology to the fullest extent possible in processing its FOIA requests. The individuals in the program office responsible for searching for the requested information (also known as the subject matter experts) must provide the records to the FOIA office which, in turn, supplies the records to the requester. In many of these instances, when the subject matter experts locate the requested records, they must first redact any information that falls under one of the statutory exemptions.¹⁰ For example, any records containing personally identifiable information or classified information would either be completely withheld or provided to the requester with redactions protecting the sensitive information.

The entire redaction process is tedious and paper intensive. If subject matter experts need to redact any information, they must first make sure they print the responsive records as this process is currently done manually. They must then manually place "brackets" around the information they wish to redact before forwarding the records to the FOIA office. The FOIA office staff must then scan the hardcopies into their computers before completing the actual redaction using specialized software. For a large FOIA request, there could be hundreds or thousands of pages to redact.

⁹ This plan, created by the Obama administration in 2011 and updated in 2013, lists a set of commitments and actions that have or will be taken by the Federal Government to create a more efficient, effective, and accountable Government.

¹⁰ The statutory exemptions can be found in Appendix B. Additionally, in order to withhold information in agency records, a foreseeable harm statement must be provided for Exemptions 2 and 5.

Several staff expressed frustration with this manual process. For example:

- The previous NRC FOIA officer and two FOIA coordinators stated that reviewing FOIA records is “very time-consuming.”
- A contractor hired to process FOIA requests observed that the NRC FOIA process was still very “paper-laden” and opined that it should move to the electronic world.
- A FOIA coordinator from a regional office said that he wanted electronic processing because his office has so much paperwork even though many of their records are already electronic; this is due to the need to print their FOIA records for NRC headquarters.
- A FOIA staffer said that rather than dealing with paper and microfilm, storing and processing everything electronically would be the most efficient way to go.

A senior manager from DOJ stated that electronic processing really cuts down the manual processing time. The manager added that technology is the primary way to improve timeliness and that agencies need to go in the direction of processing FOIA requests electronically.

FOIAXpress

To process FOIA requests more efficiently, the FOIA office uses a commercial software application called FOIAXpress. FOIAXpress is a tool used for automating the FOIA request process by managing the entire lifecycle of a FOIA request, from initial request to final delivery of documents. The purpose of the software is to automate the FOIA request process in order to save Federal agencies time and money, while also ensuring compliance with DOJ requirements. However, as of March 28, 2014, NRC's FOIA office was using a version of FOIAXpress that was more than 2 years old (Version 7); the most current version is Version 9. This is significant for the following reasons:

Working with outdated software decreases efficiency and increases the likelihood of errors in processing FOIA requests.

1. Version 9 of FOIAXpress introduced a feature called Advanced Document Review. Advanced Document Review is a deduplication¹¹ technology that can significantly reduce email and document sets by filtering out duplicate and non-responsive emails and documents. This, in theory, saves valuable time and effort in redacting the FOIA records.

According to the DOJ Open Government Plan 2.0, one of the most common delays in the processing of FOIA requests across the Government is the time spent by FOIA personnel searching for, deduplicating, and conducting initial responsiveness reviews on records. Much of this is done by hand or by using commercial software with limited capabilities for advanced document review and redaction. These steps must take place before a FOIA professional can even begin to review records for the application of FOIA exemptions and for ultimate release to FOIA requesters.

2. As a free add-on feature to Version 9 of FOIAXpress, there is an additional tool called Public Access Link. Public Access Link is a public-facing Web portal that provides electronic communication between requesters and Federal agencies. Public Access Link allows requesters to electronically submit FOIA requests, correspond with NRC, check the status of a request, receive their final documents, and access a number of dashboard presentations on NRC's overall FOIA status – such as the number of open requests or number of requests received.

To ensure that additional costs were not the primary deterrent to upgrading the software, OIG reviewed the FOIAXpress contract and noted that NRC purchased the annual maintenance support package. This annual support includes software version upgrades of FOIAXpress at no additional cost.

¹¹ Deduplication eliminates extra copies of data by saving just one copy and replacing the other copies with pointers that lead back to the original copy. In its simplest form, deduplication eliminates duplicate copies of the same file.

Available Technology

In addition to FOIAXpress, there are other technologies available to assist with FOIA processing. According to DOJ FOIA best practices, a key aspect of FOIA processing involves searching for records within the agency. These searches frequently entail searching through voluminous numbers of email messages and disparate records systems throughout the organization. Achieving real efficiency in FOIA processing will entail agencies maximizing their electronic recordkeeping capacities to facilitate identification of the location of records responsive to requests.

Positive Steps

While NRC could improve its use of technology to process FOIA requests, the agency is doing several things well and has taken steps to increase its electronic presence. For example:

- OIS is in the process of providing regions and certain program offices copies of RedactXpress,¹² a software program which would allow subject matter experts to redact documents electronically rather than manually.
- NRC offers an extensive array of informational resources on its public Web site, including its FOIA Web page.
- In addition to its Web site, NRC proactively posts thousands of records in its publicly available electronic recordkeeping system (ADAMS),¹³ including records regarding the Fukushima disaster, investigation and enforcement actions, reactor regulation, nuclear material safety, licensing, environmental safety, nuclear security, nuclear research, and agency financial accountability.

¹² RedactXpress is a standalone redaction and declassification software tool used to permanently remove sensitive information from electronic documents. It eliminates the manual labor of making copies, tracking documents, and filing.

¹³ Agencywide Documents Access and Management System.

FOIA Training Can Be Improved

The FOIA training at NRC could be improved. While there is a basic online training course and some occasional agencywide live training sessions, there are currently no FOIA training requirements for FOIA specialists, FOIA coordinators, or agency staff in general. Many of the FOIA specialists and FOIA coordinators claimed that their training was essentially “on-the-job.”

Several NRC staff expressed frustration with the lack of training for some of the FOIA specialists. Some of the issues include:

- FOIA requests are often far too broad in scope, requiring FOIA coordinators to search for “any and all” related to a FOIA request. Several coordinators feel that the FOIA office does not do a sufficient job of calling requesters and narrowing the scope of their requests.
- Lack of knowledge regarding NRC’s processes and program offices.
- Lack of knowledge regarding FOIA law.

Further, as a possible indicator of a lack of training for NRC staff and FOIA coordinators, two external stakeholders who have frequently submitted NRC FOIA requests have also been frustrated with certain aspects of NRC’s FOIA process. Particularly, they were troubled by the inconsistent redactions produced by NRC.

For example, one stakeholder claimed that certain information may be redacted in one document of a FOIA request, but the same information will appear unredacted in another document of a separate FOIA request. The stakeholder questioned why something would be redacted in one document but not in another document. He also claimed that he requests certain documents on a regular basis and, most times, the documents come back with little or no redactions. Yet, the information is never publicly posted and he must go through the FOIA process each time for future requests.

Likewise, the other stakeholder had a similar complaint regarding NRC's "nonsensical redactions." He believes NRC is inconsistent with its use of security designations to withhold information. He has submitted FOIA requests for information that was not publicly available, yet the information was sent to him completely unredacted. In his view, the documents should have been redacted or they should have already been publicly available. NRC's Chief FOIA Officer confirmed that his biggest challenge was ensuring that NRC provides a consistent response to FOIA requests.

The lack of specific training requirements for NRC FOIA personnel is noteworthy for several reasons:

1. The FOIA office has recently experienced a high amount of turnover, losing some seasoned personnel with many years of experience.
2. With the impending FOIA centralization and FOIA coordinator roles moving to OIS, the new point-of-contact for each program office will likely be the office technical assistant. In NRC's current FOIA program, technical assistants typically play little or no role in the FOIA process.
3. FOIA coordinators currently service their own office. After centralization, coordinators will be servicing multiple offices, some of which they will have little familiarity with.
4. According to the FOIA.gov public Web site, approximately 74 percent of NRC's FOIA requests are considered to be complex requests, compared to 33 percent for all other Federal agencies. Complex requests involve more documents and coordination with multiple NRC offices and/or other Federal agencies.

Lack of Effective Controls

NRC has not fully used technology or created a training program because NRC management has not implemented effective internal controls. Specifically, there has been a lack of oversight and communication with regard to technology issues, and there is no clear written guidance or policy on training.

Lack of Oversight and Communication Regarding FOIAXpress

FOIAXpress has not been upgraded to its current version due to a lack of management oversight and communication. The initial upgrade request from Version 7 to Version 8 was sent to OIS by the FOIA office on June 25, 2013, yet the actual upgrade did not occur until March 28, 2014. The primary issue that stalled the upgrade was a technical problem in getting Version 8 to work with one of NRC's existing servers. When FOIA office staff were questioned about this, the consensus among the FOIA staff was that they did not understand the technical aspects of the issue and were relying on OIS to fix the problem.

OIG followed up on this issue in interviews with several staff and management in OIS. After interviews with the Deputy Director of OIS and the Chief Information Officer, FOIAXpress was upgraded to Version 8 – approximately 9 months after the FOIA office's initial request. Still, Version 8 is not the most current version of FOIAXpress.

During the course of these interviews, it became clear that there was no ownership of the overall process to upgrade the FOIAXpress software. Most of those interviewed could not answer questions about where the breakdown was occurring or who was responsible for overseeing it. It was readily apparent that there was no communication to or from the FOIA office and OIS senior management, while the situation lingered without being adequately addressed.

No Written Training Guidance or Program

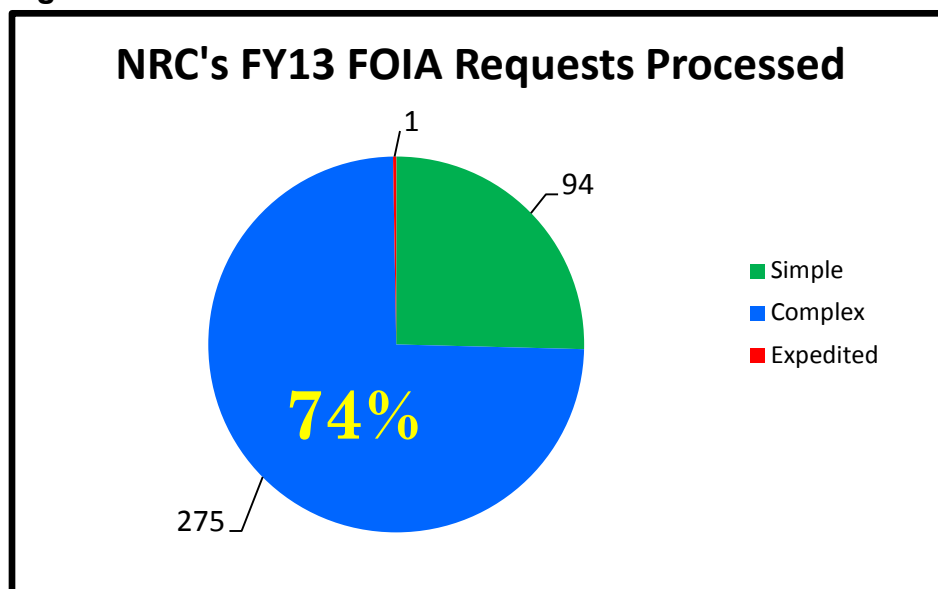
Currently, there are no formal training requirements for FOIA specialists and coordinators because there is no written training guidance or training program. With FOIA centralization soon approaching, the FOIA office has written a training plan that is currently in draft mode. In the 2014 Chief FOIA Officer Report to DOJ, NRC asserts it is "expanding existing substantive FOIA training based on best-practice FOIA procedures, scope of exemptions and exclusions, and up-to-date legal developments in tandem with FOIA centralization. This will be required for all FOIA professionals and available to all program office staff."

Two NRC training officials were interviewed and they stated that requiring all agency staff to take FOIA training would likely be difficult to implement. There is also the question of cost-benefit as making training mandatory for all NRC staff has a significant cost associated with it. While providing FOIA training for all NRC staff would be ideal, it is not practical because of budgetary constraints and only underscores the importance of having proper training for FOIA office personnel so they can properly guide and assist NRC staff.

Higher Costs and Reduced Timeliness

NRC has encountered high FOIA processing costs and has not been meeting the statutory 30-day limit to process complex FOIA requests. As mentioned earlier in the report, approximately 74 percent of NRC's FOIA requests are considered by the agency to be complex. This also is a factor in NRC's high processing costs and lack of timeliness. See Figure 2 for a breakdown of requests processed.¹⁴

Figure 2:



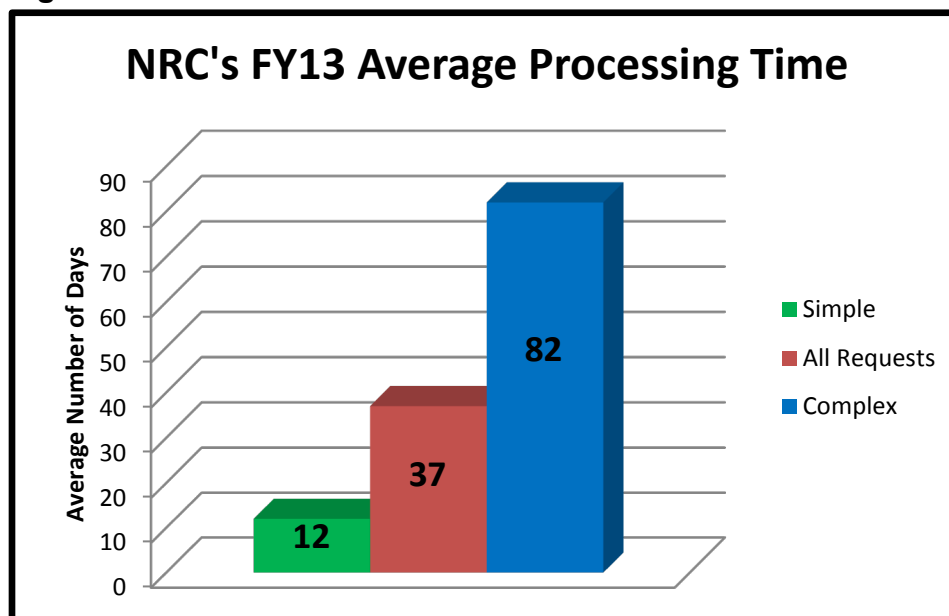
Source: OIG

¹⁴ Expedited requests are FOIA requests placed at the front of the processing queue where the requester clearly demonstrates a compelling need because (1) the failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or (2) with respect to a person primarily engaged in disseminating information, there is an urgency to inform the public concerning actual or alleged Federal Government activity.

NRC's cost per FOIA request processed is significantly higher than other agencies. NRC spent approximately \$7,225 per FOIA request processed in FY 2013.¹⁵ The average cost per request processed for the other 98 Federal agencies was about \$615. Other agencies subject to FOIA only consider approximately 33 percent of the requests received complex. This certainly played a significant factor in the disparity between FOIA processing costs, but the fact remains that NRC's cost per request processed still is extremely high.¹⁶

NRC is also not meeting its statutory 30-day timeliness requirement for processing complex FOIA requests. (See Figure 3 for NRC average processing times.)

Figure 3:



Source: OIG

¹⁵ NRC spent approximately \$2.67 million in processing 370 FOIA requests. Data for these calculations was obtained from the FOIA.gov public Web site.

¹⁶ To help offset the imbalance of NRC's complex requests compared to other Federal agencies; OIG also analyzed the cost per FOIA request by removing the Japan team's FOIA requests. While only a rough estimate, the cost per FOIA request dropped to approximately \$5,000 – still a large number in relation to all other Federal agencies.

Recommendations:

OIG recommends that the Executive Director for Operations:

1. Implement technology, such as RedactXpress, in the regions and larger program offices to more efficiently process FOIA requests.
2. Conduct annual reviews to determine the feasibility of upgrading technology within OIS to more efficiently process FOIA requests.
3. Develop a process to ensure that the FOIA office's information technology needs are met in a timely manner, specifically with regard to FOIAXpress updates.
4. Develop and implement an OCHCO and DOJ-approved formal training and development program for all FOIA office personnel.
5. Obtain DOJ FOIA e-learning training modules and encourage all agency staff to pursue completion through annual agency communications.
6. Reintroduce FOIA branch led training for NRC staff on an annual basis.
7. Conduct a review of FOIA requests to determine if frequently requested non-public documents can be proactively placed into public ADAMS for future use.

B. Management Level Reviews Are Inconsistent

NRC is not in compliance with FOIA regulations as initial disclosure reviews of FOIA records are done at inconsistent management levels. Federal regulations state that, during the initial disclosure review, the head of the responsible office must review agency records to determine whether the agency records are exempt from disclosure; however, there is no enforcement of this policy and there is no method to track these reviews. Additionally, NRC's internal guidance differs from the Code of Federal Regulations. This may result in (A) a reduced number of discretionary releases¹⁷ or (B) the inadvertent release of sensitive information.

Review and Approval Required

The Code of Federal Regulations requires that, during the initial disclosure review, the head of the responsible office shall review agency records to determine whether the agency records are exempt from disclosure.¹⁸ If the head of the office determines that, although exempt, the disclosure of the agency records will not be contrary to the public interest and will not affect the rights of any person, the head of the office may authorize disclosure of the agency records.

Additionally, Attorney General Holder's memo states:

An agency should not withhold information simply because it may do so legally. I strongly encourage agencies to make discretionary disclosures of information. An agency should not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption.

¹⁷ A discretionary disclosure, or discretionary release, is the approved release of information that falls under one of the FOIA exemptions. This information may be released because it poses no perceived harm to the agency or individuals involved.

¹⁸ [10 CFR 9.25\(f\)](#). However, the Commission, Office of the Secretary, Office of the Inspector General, and Office of General Counsel are subject to unique disclosure review requirements. See [10 CFR 9.25\(g\)](#) for specific details.

NRC Not in Compliance with FOIA Regulations

NRC is not in compliance with FOIA regulations as initial disclosure reviews are not consistently conducted by office directors. OIG contacted 19 FOIA coordinators from the program offices and 4 coordinators from the regional offices inquiring about office director review of FOIA records. While all four of the regions involve senior management at a branch chief level or above in FOIA records reviews, approximately half of the program offices surveyed revealed that no senior management reviewed their FOIA records.

According to FOIA office staff, a cover memo describing the contents of the FOIA records usually accompanied the records submitted to the FOIA office. It was common for FOIA coordinators to sign these cover memos without a signature from their senior management. The staffer said that the FOIA office will sometimes process FOIA records without any confirmation that program office senior management reviewed the records. Furthermore, if the FOIA records were emailed from a program office to the FOIA office, there may be no cover memo at all. Another person in the FOIA office stated that, as a practice, office directors rarely review FOIA responses coming to the FOIA office.

Lack of Internal Controls

NRC's initial disclosure reviews are inconsistent because there is a lack of effective controls. For instance:

- The use of the current cover memo is not enforced and it does not contain an area for senior management signoff.
- There is a disconnect between the Code of Federal Regulations and NRC's primary internal FOIA guidance, Management Directive 3.1.

Management Directive 3.1 states:

When information that is believed to be exempt from disclosure has been identified and bracketed, the director *or a management official at the Grade 15 level or higher* in the responsible office will review

the records, or portions thereof, proposed to be withheld and further determine whether disclosure of the exempt information will adversely affect the public interest or the rights of any person.

However, the Code of Federal Regulations specifies only the office director; it does not provide the option of a management official at Grade 15 level or higher to conduct the initial disclosure review.

While the four regional offices and roughly half of the program offices obtained senior management approval of FOIA packages, very few, if any, received approvals from the office director. The majority of these offices followed the guidance in Management Directive 3.1, not the Code of Federal Regulations. Despite the fact that office director review is in the Code of Federal Regulations, and a more flexible version is in Management Directive 3.1, neither policy is uniformly enforced by NRC management.

Potential for Releases

Without senior management initial disclosure review of FOIA records, there is the potential that (A) discretionary releases may not occur or (B) sensitive information could be inadvertently released. According to regulations, agency staff cannot release exemption-qualified information – this falls directly on the head of the office. Therefore, if the office director is not reviewing the FOIA record, the likelihood of overriding a subject matter expert's withholdings and making a discretionary release would significantly decrease.

On the other hand, if an office director or senior management official does not review a FOIA record, there is also the potential that sensitive information could be released. The FOIA coordinator and FOIA office may not have the expertise to sufficiently review the entire FOIA record, while the Office of the General Counsel generally reviews only redactions within FOIA records. If the subject matter expert elects not to make redactions in a FOIA record, then that information may be released without any further scrutiny.

Recommendations:

OIG recommends that the Executive Director for Operations:

8. Develop and implement a process to confirm appropriate program and regional office management review of FOIA records.
9. Either revise Management Directive 3.1 to comply with the disclosure review requirements found in 10 CFR Part 9.25(f) or revise 10 CFR Part 9.25(f) to allow office heads the authority to delegate the initial disclosure review determination responsibility to a designee at a managerial Grade 15 level or above.

IV. CHALLENGES

NRC's upcoming plan to centralize most FOIA coordinator positions into OIS presents several challenges for the agency. During interviews with staff, OIG found there is resistance to the upcoming centralization. FOIA specialists, FOIA coordinators, and an NRC manager all expressed concerns. Many staff interviewed believe that centralization will make the FOIA process less efficient by adding additional unintended steps and removing the expertise from the offices. Some of the concerns expressed to OIG by staff regarding centralization are:

- Centralization will just be “an extra layer to the process.”
- The FOIA process was set up in a decentralized way years ago (i.e., a coordinator in each office) because you want expertise in the office.
- There will be additional back and forth between offices and there could also be individuals in the program offices that have no experience processing FOIA requests.

Communication

Communication is the most significant challenge associated with centralization. Relevant, reliable, and timely communication is required to control operations and achieve objectives. Recently, OIG found an overall lack of effective communication within OIS during an *Audit of NRC's Information Technology Governance*.¹⁹ In light of this finding and staff's resistance to centralization, management's involvement and commitment to communication is essential. NRC management must communicate its vision of how a centralized FOIA office will function. In order to achieve buy-in, management should involve as many people as possible, communicate the essentials, and communicate frequently to respond to staff's needs.

¹⁹ This report ([OIG-14-A-04](#)) is publicly available in ADAMS; see accession number ML13343A244.

OIS management confirmed that communication is a challenge and is taking steps to address this. Management explained that the information technology coordinator centralization (also part of the agencywide initiative to reduce duplication of efforts) is going well and that they are applying the same model towards the FOIA centralization. Focus groups from program offices have been established to discuss issues with the FOIA process. Additionally, weekly centralization meetings were held with FOIA staff to solicit feedback.

Guidance

Ensuring that FOIA guidance documents are up to date is another challenge associated with centralization. Centralization will cause processes and procedures to change. Federal standards require clearly documenting processes at an appropriate level of detail to allow management to effectively monitor the activity. Guidance must be properly managed, maintained, and made available in order to meet its intended purpose. Management must plan to update or revise procedures with any changes resulting from centralization. Well-designed guidance documents, if used properly, can appropriately direct agency employees and increase efficiency.

Monitoring

Another challenge will be to determine if the centralization of FOIA staff is achieving the desired outcomes. Once centralization is complete, management should monitor performance measures and indicators to determine if the new centralized structure is performing as intended. A best practice would also be to conduct a self-assessment of the FOIA program after the centralization is complete. Management can then use the results of these efforts to modify any processes found to have weaknesses.

V. CONSOLIDATED LIST OF RECOMMENDATIONS

OIG recommends that the Executive Director for Operations:

1. Implement technology, such as RedactXpress, in the regions and larger program offices to more efficiently process FOIA requests.
2. Conduct annual reviews to determine the feasibility of upgrading technology within OIS to more efficiently process FOIA requests.
3. Develop a process to ensure that the FOIA office's information technology needs are met in a timely manner, specifically with regard to FOIAXpress updates.
4. Develop and implement an OCHCO and DOJ-approved formal training and development program for all FOIA office personnel.
5. Obtain DOJ FOIA e-learning training modules and encourage all agency staff to pursue completion through annual agency communications.
6. Reintroduce FOIA branch led training for NRC staff on an annual basis.
7. Conduct a review of FOIA requests to determine if frequently requested non-public documents can be proactively placed into public ADAMS for future use.
8. Develop and implement a process to confirm appropriate program and regional office management review of FOIA records.
9. Either revise Management Directive 3.1 to comply with the disclosure review requirements found in 10 CFR Part 9.25(f) or revise 10 CFR Part 9.25(f) to allow office heads the authority to delegate the initial disclosure review determination responsibility to a designee at a managerial Grade 15 level or above.

VI. AGENCY COMMENTS

An exit conference was held with the agency on June 11, 2014. Prior to this meeting, after reviewing a discussion draft, agency management provided supplemental information that has been incorporated into this report, as appropriate. As a result, agency management stated their general agreement with the findings and recommendations in this report and opted not to provide formal comments for inclusion in this report.

OBJECTIVE, SCOPE, AND METHODOLOGY

OBJECTIVE

The audit objective was to determine whether the FOIA process is efficient and complies with the current laws.

SCOPE

The audit reviewed NRC's activities related to FOIA with special emphasis on process and compliance with current laws. This audit did not review FOIA activities associated with the Japan FOIA efforts. OIG conducted this performance audit from November 2013 through April 2014 at NRC headquarters in Rockville, Maryland. Internal controls related to the audit objective were reviewed and analyzed. Throughout the audit, auditors were aware of the possibility or existence of fraud, waste, and abuse in the program.

METHODOLOGY

To address the audit objective, OIG auditors interviewed 65 individuals. These interviews included NRC management and staff at headquarters and staff at each of NRC's four regional offices. Regional office interviews were conducted by telephone. The interviews also included stakeholders and management from the Office of Information Policy at the Department of Justice. Furthermore, OIG reviewed Federal and internal agency guidance, including:

- Freedom of Information Act (5 U.S.C. § 552).
- 10 CFR Part 9, Subpart A, *Freedom of Information Act Regulations*.
- NRC Management Directive 3.53, *NRC Records and Document Management Program*.
- Executive Order 13392 of December 14, 2005, *Improving Agency Disclosure of Information*.

- 2009 Presidential Memorandum for the Heads of Executive Departments and Agencies.
- Attorney General Memorandum for the Heads of Executive Departments and Agencies.
- *Second Open Government National Action Plan for the United States of America.*

OIG auditors observed a walkthrough of the FOIA process and assessed the technological tools used for FOIA processing. Furthermore, OIG conducted a review and analysis of FOIA:

- Timeliness statistics.
- Training requirements.
- Processing costs.
- Approvals.
- Dispositions.
- Repetitive requests.

We conducted this performance audit in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The audit was conducted by Beth Serepca, Team Leader; Robert Woodward, Audit Manager; Michael Blair, Senior Analyst; Jenny Cheung, Auditor; and Regina Revinzon, Student Analyst.

Appendix B

FOIA Exemptions

Exemption number	Matters that are exempt from FOIA
(1)	(A) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to the Executive Order.
(2)	Related solely to the internal personnel rules and practices of an agency.
(3)	Specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that matters be withheld from the public in such a manner as to leave no discretion on the issue or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.
(4)	Trade secrets and commercial or financial information obtained from a person and privileged or confidential.
(5)	Interagency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency.
(6)	Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
(7)	Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:
(A)	could reasonably be expected to interfere with enforcement proceedings;
(B)	would deprive a person of a right to a fair trial or 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, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by confidential source;
(E)	would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or
(F)	could reasonably be expected to endanger the life or physical safety of an individual.
(8)	Contained in or related to examination, operating, or condition of reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.
(9)	Geological and geophysical information and data, including maps, concerning wells.