

THE NATIONAL SCIENCE FOUNDATION

2024 CHIEF FOIA OFFICER REPORT

Chief FOIA Officer: Angel R. Williams, General Counsel, Office of the General Counsel

Section I: FOIA Leadership and Applying the Presumption of Openness

The guiding principle underlying the Attorney General’s FOIA Guidelines is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

A. Leadership Support for FOIA

1. The FOIA requires each agency to designate a Chief FOIA Officer who is at least at the Assistant Secretary or equivalent level. *See* 5 U.S.C. § (j)(1) (2018). Is your agency’s Chief FOIA Officer at or above this level?

Yes. NSF has designated the NSF General Counsel as the Chief FOIA Officer.

2. Please provide the name and title of your agency’s Chief FOIA Officer.
Angel R. Williams, General Counsel.

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

NSF’s FOIA program represents a key element of NSF’s business processes for achieving openness and transparency. See NSF 2022-2026 Strategic Plan, Objective 4.1, available at <https://www.nsf.gov/pubs/2022/nsf22068/nsf22068.pdf> (“Built on a commitment to openness and transparency, NSF will follow a strategy of continuous improvement in business processes . . .”). As part of the FOIA program’s continued effort to improve its processes, the Chief FOIA Officer has advocated for more resources to support the program, resulting in the addition of another Government Information Specialist position, and the procurement of a FOIA case management support tool. Further, the FOIA program has received increased administrative support from the Office of the General Counsel’s new Operations Coordinator and an administrative support professional.

B. Presumption of Openness

4. The Attorney General’s 2022 FOIA Guidelines provides that “agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard with reviewing records and applying FOIA exemptions.” Does your agency provide such confirmation in its response letters?

Yes.

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interest protected by a FOIA exemption. This is commonly referred to as a *Glomar* response. If your agency tracks *Glomar* responses, please provide:

a. the number of times your agency issued a full or partial *Glomar* response (separate full and partial if possible);

Two Glomar responses (both full)

b. the number of times a *Glomar* response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).

Exemption 6 (2 times)

6. If your agency does not track the use of *Glomar* responses, what would your agency need to do to track this information in the future? If possible, please describe the resources and time involved.

N/A

7. Optional—If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

N/A

Section II: Ensuring Fair and Effective FOIA Administration

The Attorney General’s FOIA Guidelines provide that “[e]nsuring fair and effective FOIA administration requires...proper training, and a full understanding of FOIA obligations by the entire agency workforce.” The Guidelines reinforce longstanding guidance to “work with FOIA requesters in a spirit of cooperation.” The Attorney General also “urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency’s FOIA administration” as part of ensuring fair and effective FOIA administration.

A. FOIA Training.

1. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. *See* 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

The FOIA Public Liaison or FOIA/PA Officer makes a presentation about FOIA at bi-weekly New Employee Orientation Training sessions. The NSF FOIA Attorneys, FOIA/PA Officer, and Government Information Specialists provide guidance and advice regarding FOIA obligations on an ad-hoc basis at the request of Directorates and individuals within NSF.

2. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend substantive FOIA training during the reporting period such as that provided by the Department of Justice?

Yes.

3. If yes, please provide a brief description of the type of training attended and the topics covered.

During this reporting period, NSF FOIA staff took multi-session vendor training for the new FOIA case management tool procured by the agency (FOIAXpress). In addition to technical instruction, this training included substantive review of FOIA requirements, such as statutory deadlines, expedited processing, categories of requesters, FOIA exemptions, etc. NSF FOIA staff also participated in at least one of the following virtual FOIA training sessions: FOIA Training for FOIA Professionals, Virtual FOIA Litigation Seminar, Virtual Intro to the FOIA, Managing Freedom of Information Requests and Best Practices, and FOIA Overview (internal NSF).

4. Please provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

100%

5. OIP has directed agencies to “take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year.” If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency’s plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

N/A

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and if senior leaders at your agency received a briefing on your agency's FOIA resources, obligations and expectations during the FOIA process?

As also described above (see Section II.A.1), the FOIA Public Liaison or FOIA/PA Officer makes a presentation about FOIA at bi-weekly New Employee Orientation Training sessions. The NSF FOIA Attorneys, FOIA/PA Officer, and Government Information Specialists provide guidance and advice regarding FOIA obligations on an ad-hoc basis at the request of Directorates and individuals within NSF. These presentations are typically done using Power Point slides. In addition, the NSF Chief FOIA Officer has continued to brief the NSF Office of the Director regarding additional resources for the NSF FOIA program. These conversations resulted in NSF creating an additional Government Information Specialist position, increased FOIA administrative support, and procuring a FOIA case management support tool. Further, the FOIA program has received increased administrative support from the Office of the General Counsel's new Operations Coordinator and administrative support professional.

B. Outreach

7. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue, and, if applicable, any specific examples.

Yes. Consistent with DOJ guidance and training, FOIA professionals at NSF proactively contact requesters on almost a daily basis concerning complex or voluminous requests to clarify or narrow the scope of requests so that requesters can receive responses more quickly. Many of NSF's FOIA requests ask for scientific research grant proposals that are submitted to NSF for potential funding. NSF's FOIA professionals often reach out to requestors to see if they can reduce the number of proposals that they are asking for or if they are willing to limit the request to specific parts of a proposal in an effort to speed up the response process.

8. Outside of the standard request process or routine FOIA Liaison or FOIA Requester Service Center interactions, did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA? For example, did you proactively contact frequent requesters, host FOIA-related conference calls with open government groups, or provide FOIA training to members of the public? Please describe any such outreach or dialogue and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

No.

9. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during Fiscal Year 2023 (please provide a total number or an estimate of the number for the agency overall).

No requesters sought the services of the NSF FOIA Public Liaison this year.

C. Other Initiatives

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

Yes. NSF has evaluated the needs of its FOIA program in light of the current number of incoming FOIA requests, the complexity of those requests, and the current FOIA request backlog. NSF has increased the number of staff processing FOIA requests from two to three staff positions, the last of which was successfully filled this past year. As noted earlier, the FOIA program has received increased administrative support from the Office of the General Counsel's new Operations Coordinator and administrative support professional, who assists with FOIA request intake and logging. In addition, NSF procured a FOIA case management support tool to help its FOIA staff more efficiently process, track, and respond to FOIA requests.

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

NSF does not currently use data or processing metrics, but the FOIA case management support tool procured by the agency is about to come online and the NSF FOIA program anticipates exploring the use of this type of analysis and reporting in the future.

Section III: Proactive Disclosures

The Attorney General's 2022 FOIA Guidelines emphasize that "proactive disclosure of information is...fundamental to the faithful application of the FOIA." The Guidelines direct agencies to post records online quickly and systematically in advance of any public request" and reiterate that agencies should post records "in the most useful, searchable, and open formats possible."

1. Please describe what steps your agency takes to identify, track and post (a)(2) proactive disclosures.

The NSF e-Gov Content Inventory, https://www.nsf.gov/policies/egov_inventory.jsp, describes NSF's commitment to providing useful information to the public. This policy

also provides information about the four-priority approach NSF uses to provide information content along with a table laying out the different types of information that are made available under each of the priorities.

2. How long after identifying a record for proactive disclosures does it take your agency to post it?

NSF has no established timetable for making proactive disclosures, but it strives to make such disclosures as soon as possible after identifying such records or data for disclosure. NSF continually updates its public database of awards with abstracts of awarded proposals, resulting publications, and final reports on research results:

<http://www.nsf.gov/awardsearch/>, NSF publicizes agency data sets on the agency's Digital Strategy <https://www.nsf.gov/digitalstrategy/>, Open Government <https://www.nsf.gov/open/>, Open Data <http://www.nsf.gov/data> and Developer <http://www.nsf.gov/developer/> web pages, as well as through the agency's social media sites. Data from the National Center for Science and Engineering Statistics can be found here: <https://www.nsf.gov/statistics/data.cfm>. All of these data are refreshed and updated on an ongoing basis. Information about public access to the results of NSF funded research can be found here:

https://www.nsf.gov/news/special_reports/public_access/index.jsp. In addition, NSF makes its Proposal and Award Policies and Procedures Guide available here: https://nsf.gov/publications/pub_summ.jsp?ods_key=pappg

3. Does your agency post logs of its FOIA requests? If so, what information is contained in the logs? Are they posted in CSV format? If not, what format are they posted in?

Yes. NSF has posted logs of FOIA requests. See <https://www.nsf.gov/policies/foia-logs.jsp>. These logs have included Requester's Name, Organization, FY FOIA Number, Perfected Date, Status, Requested Records (brief narrative description). They are not posted in CSV format, but in XLSX and PDF formats, which are also reasonably accessible. NSF intends to bring its logs up to date as with the procurement of the new FOIA case management tool, after taking steps to verify the migration of data used to generate the logs.

4. Provide examples of any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

See Section III.2 above. NSF did not post any frequently requested records during this reporting year under 5 U.S.C. § 552(a)(2)(D).

5. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website?

Yes.

6. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine actionable formats to the extent feasible. If not posting in open formats, please explain why and note any challenges.

NSF made important improvements to “NSF by the Numbers” (NBTN), its portfolio dashboard accessible through NSF’s web site, at <https://new.nsf.gov/about/about-nsf-by-the-numbers>. NBTN provides and displays NSF award, proposal, and budget data in searchable, easy-to-digest format. To make this database more useful to the public, views in the various data dashboards are interactive, and information can be sorted using global filters, by geographic area, NSF Directorate, type of academic institution, etc. During this reporting period, NSF added a new “NSF’s Agency Priority Goal” dashboard, for the public to view and sort data relating to NSF’s efforts to improve representation in the scientific enterprise. The dashboard can be found at <https://tableau.external.nsf.gov/views/AgencyPriorityGoal/APGInstitutionGoal?%3Aembed=y&%3B%3B%3AisGuestRedirectFromVizportal=y>.

7. Does your proactive disclosure process or system involve a collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

Yes. The NSF Office of Legislative and Public Affairs coordinates the majority of information that appears on NSF’s website. In addition, components of NSF, including but not limited to, the NSF Chief Information Officer (CIO), Chief Data Officer (CDO), National Center for Science and Engineering Statistics (NCSES), and the National Science Board (NSB), all routinely produce reports, statistics, and other data of interest to the public.

8. Optional—Please describe the best practices used to improve proactive disclosure and any challenges your agency faces in this area.

N/A

Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General’s 2022 FOIA Guidelines emphasize the importance of making FOIA websites easily navigable and complying with the FOIA.gov interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public’s access to information.

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

Yes. The NSF FOIA program reviewed its technological needs and as a result has procured a FOIA case management tool to support the FOIA program.

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program.

Having procured the FOIA case management tool FOIAXpress, NSF has now substantially completed the migration of all active FOIA case files into the tool, in preparation for using the tool to process those requests. The tool should significantly enhance NSF's ability to respond to requests in a timely manner, to reduce its backlog of such requests, and to maintain reliable and complete documentation of all FOIA cases and statistical data needed for FOIA management and reporting purposes, including FOIA quarterly and annual reports.

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions?

Not currently, but NSF anticipates that the capabilities in the FOIA case management tool may aid in the identification of duplicative records responsive to a request and, where feasible, the automated redaction of such records.

4. OIP issued guidance in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

Yes.

5. Did all four of your agency's quarterly reports for Fiscal Year 2023 appear on FOIA.gov?

No, but three quarterly reports have been posted, and NSF is preparing to post the remaining quarter.

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2024.

As explained in the answer to the previous question, NSF will be successfully posting all quarterly reports.

7. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2022 Annual FOIA Report and, if available, for your agency's Fiscal Year 2023 Annual FOIA Report.

See https://www.nsf.gov/policies/foia_annual_reports.jsp

Raw statistical data for the agency's Annual FOIA Reports through Fiscal Year 2021 are posted at the above link. Raw statistical data for the agency's Fiscal Year 2022 and 2023 Annual FOIA Reports will be posted at this same link when those data become available.

8. In February 2019, DOJ and OMB issued joint Guidance establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

Yes.

9. Optional—Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

As discussed earlier, NSF has procured the FOIAXpress case management tool, which includes a public Web portal for submitting FOIA requests.

Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness in Responding to Requests, and Reduce Backlogs

The Attorney General's FOIA Guidelines instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

A. Remove Barriers to Access

1. Has your agency established alternative means of access to first-party requested records outside of the typical FOIA or Privacy Act process?

Yes, in some cases. See response to A.2 below.

2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.

For example, certain NSF databases may be accessed online (e.g., via research.gov) so that principal investigators (i.e., researchers) who submit research proposals, peer reviewers who review such proposals for funding by NSF, and others (e.g., researchers nominating their colleagues for awards) may register, login, and then access (and/or update) certain agency records relating to their participation in these agency activities, without the need to file a formal first-party FOIA/Privacy Act request.

3. Please describe any other steps your agency has taken to remove barriers to accessing government information.

See Sections III.2 through III.4 above.

B. Timeliness

4. For Fiscal Year 2023, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see section VIII.A. of your agency's Fiscal Year 2023 Annual FOIA Report.

There were no expedited requests granted or denied, as reported in NSF's Fiscal Year 2023 Annual FOIA Report.

5. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to section VIII.A of your agency's Fiscal Year 2023 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

In the event NSF receives any future request for expedited processing that it cannot adjudicate within ten calendar days, it will take steps (e.g., recruiting assistance from outside the FOIA program, within the NSF Office of the General Counsel) to assist with and prioritize that request to reduce the delay, if any, in processing it.

6. Does your agency utilize a separate track for simple requests?

Yes.

7. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2023?

No, the average number of days to process simple requests was 102 days.

8. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?

No.

9. Please provide the percentage of requests processed by your agency in Fiscal Year 2023 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A) x 100.

34.8%

10. If your agency does not track simple requests separately, was the average number of days to process all non-expedited requests twenty working days or fewer?

N/A

C. Backlogs

Backlogged Requests

11. If your agency had a backlog of requests at the close of Fiscal Year 2023, according to Annual FOIA Report section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2022?

No.

12. If not, according to Annual FOIA Report section XII.D.1, did your agency process more requests during Fiscal Year 2023 than it did during Fiscal Year 2022?

No.

13. If your agency's request backlog increased during Fiscal Year 2023, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming requests.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Litigation
- Any other reasons – please briefly describe or provide examples when possible.

NSF's FOIA program unexpectedly lost a GS-14 Government Information Specialist, who was replaced by a GS-12 Government Information Specialist. With a small FOIA processing staff of two individuals (i.e., the new Government Information Specialist and the FOIA/PA Officer) for nearly all of this reporting period, tackling backlogged FOIA requests, which are often complex and voluminous, while also processing new simple track requests, is challenging. In several cases involving voluminous requests, the requesters have been unwilling to narrow the scope. Approximately 29% of the FOIA requests NSF receives are "complex" and thus take more time and effort to close. Furthermore, during this reporting period, the FOIA program has three FOIA cases that remain in active court litigation. One of those cases, in particular, involves thousands of responsive pages of responsive documents. That case continues to require review, redaction, and rolling production of hundreds of pages monthly, by agreement with opposing counsel. That case has consumed a substantial part of the daily workload for the FOIA/PA Officer and the lead FOIA attorney in the matter, who recently left the agency. NSF is in the process of hiring another attorney to fill that position as quickly as possible, and will need to hire a new FOIA/PA Officer when the current one retires in the

next few months. As already noted, the FOIA program continues its efforts to address its backlog with additional resources, including the addition of a third FOIA professional staff position, increased administrative support, and the full implementation and use of a FOIA case management tool procured by the agency.

14. If you had a request backlog, please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2023. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (request received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with “N/A.”

189.9%

Backlogged Appeals

15. If your agency had a backlog of appeals at the close of Fiscal Year 2023, according to section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2022?

No. NSF did not have a backlog of appeals at the close of FY2023.

16. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2023 than it did during Fiscal Year 2022?

N/A

17. If your agency’s appeal backlog increased during Fiscal Year 2023, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming appeals.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Litigation
- Any other reasons – please briefly describe or provide examples when possible.

N/A

18. If you had an appeal backlog, please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2023. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section

VI.A) x 100. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2023 and/or has no appeal backlog, please answer with “N/A.”

N/A

D. Backlog Reduction Plans

19. In the 2023 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1,000 requests in Fiscal Year 2022 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year. If so, describe your agency’s efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2023?

N/A

20. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2023, please explain your agency’s plan to reduce this backlog during Fiscal Year 2024.

N/A

E. Reducing the Age of Requests, Appeals, and Consultations

Ten Oldest Requests

21. In Fiscal Year 2023, did your agency close the ten oldest pending perfected requests that were reported in section VII.E. of your Fiscal Year 2022 Annual FOIA Report?

No.

22. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in section VII.E of your Fiscal Year 2022 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

None.

23. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

NSF has focused on balancing the closure of old requests, most of which are complex, with the closure of new requests. NSF has had only two FOIA specialists who process FOIA requests during virtually all of this reporting period and receives hundreds of new requests each year, so achieving this balance is challenging. As noted earlier, NSF has taken steps to increase staffing, including administrative support, and to reduce backlog, including older requests.

Ten Oldest Appeals

24. In Fiscal Year 2023, did your agency close the ten oldest appeals that were reported pending in section VI.C.5 of your Fiscal Year 2022 Annual FOIA Report?

N/A. NSF did not have any pending appeals to report at the end of Fiscal Year 2022.

25. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in section VII.C.5 of your Fiscal Year 2022 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicated that.

N/A. NSF did not have any pending appeals to report at the end of Fiscal Year 2022.

26. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

N/A. See above.

Ten Oldest Consultations

27. In Fiscal Year 2023, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2022 Annual FOIA Report?

No.

28. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2022 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicated that.

NSF had fewer than ten total oldest consultations to close.

Additional Information Regarding Ten Oldest

29. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2024.

As described above in this report, NSF has taken steps that it hopes will help lead to a reduction in the FOIA request backlog, including the closure of its oldest requests and consultations, in the future.

F. Additional Information about FOIA Processing

30. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency's overall FOIA request processing and backlog. If possible, please indicate the number and nature of requests subject to litigation, common causes leading to litigation, and any other information to illustrate the impact of litigation on your overall FOIA administration.

Yes. During this reporting period, three FOIA cases have gone to litigation, and they remain active at the time of this report. Two of the cases, filed by the same requester, arise from her requests for records of Inspector General investigatory matters relating to the requester. The requester is representing herself (i.e., pro se). In the third case, the requester has retained counsel and, as noted earlier, has obtained an agreement under court supervision that NSF shall review and produce on a rolling basis hundreds of responsive pages monthly. That continuing obligation has had a significant ongoing impact on the agency's ability to process and respond to other pending FOIA requests.