U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Special Report

Congressionally Requested Inquiry Into EPA's Handling of Freedom of Information Act Requests

Report No. 11-P-0063

January 10, 2011

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Abbreviations

EPA	U.S. Environmental Protection Agency
FOIA	Freedom of Information Act
OIG	Office of Inspector General

U.S. Environmental Protection Agency
Office of Inspector General

11-P-0063
January 10, 2011

At a Glance

Catalyst for Improving the Environment

Why We Did This Review

Two members of Congress asked the Inspector General to review how the U.S. Environmental Protection Agency (EPA) handles requests under the Freedom of Information Act (FOIA). They were particularly interested in whether and, if so, the extent to which political appointees are made aware of information requests and have a role in request reviews or decisionmaking.

Background

FOIA gives the public the right to ask for records possessed by federal government agencies. Under EPA regulations, the head of an office, or that individual's designee, is authorized to grant or deny any request for EPA records. The heads of EPA's 23 major offices are political appointees.

For further information, contact our Office of Congressional, Public Affairs and Management at (202) 566-2391.

The full report is at:
www.epa.gov/oig/reports/2011/20110110-11-P-0063.pdf

Congressionally Requested Inquiry Into EPA's Handling of Freedom of Information Act Requests

What We Found

We concluded that EPA does not have a process to filter FOIA requests by political appointees. EPA policy permits releasing information at the lowest practicable level. Generally, political appointees are not involved in deciding FOIA requests, unless there is denial of information. We found exceptions, but political appointees were usually involved only to sign denials or partial denials. FOIA coordinators provided regular status reports on the processing of FOIA requests to managers at various levels within the office. In 3 of the 11 offices we reviewed, those managers were political appointees. However, none of the offices required routine review of FOIA requests by a political appointee.

In response to comments from EPA staff on the draft report, we made some minor wording changes.

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

OFFICE OF
INSPECTOR GENERAL

January 10, 2011

MEMORANDUM

SUBJECT: Congressionally Requested Inquiry into EPA's Handling of Freedom of Information Act Requests
Report No. 11-P-0063

FROM: Wade T. Najjum
Assistant Inspector General for Program Evaluation

TO: Malcolm D. Jackson
Assistant Administrator for Environmental Information and
Chief Information Officer

This is our report on the subject review conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The estimated cost of this report, calculated by multiplying the project's staff days and expenses by the applicable daily full cost billing rates in effect at the time, is $113,770.

Action Required

Because this report contains no recommendations, you are not required to respond to this report. However, if you submit a response, it will be posted on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal. We have no objections to the further release of this report to the public. We will post this report to our website at http://www.epa.gov/oig.

If you or your staff have any questions regarding this report, please contact Eric Lewis, Director, Special Reviews, at 202-566-2664 or lewis.eric@epa.gov; or Russell Moore, Project Manager, at 202-566-0808 or moore.russell@epa.gov.

Purpose

On August 23, 2010, Senator Charles E. Grassley, Ranking Member of the U.S. Senate Committee on Finance, and Congressman Darrell Issa, Ranking Member of the House Oversight and Government Reform Committee, requested the Inspector General, U.S. Environmental Protection Agency (EPA), to review EPA's Freedom of Information Act (FOIA) office to determine whether political appointees are made aware of information requests and have a role in reviews or decisionmaking related to those requests. They wanted to know whether EPA was engaged in political filtering of information.

Background

FOIA gives the public the right to ask for records possessed by federal government agencies. In 2002, EPA published regulations describing how it will process FOIA requests. One section provides that the head of an office, or that individual's designee, is authorized to grant or deny any request for a record of that office or other EPA records when appropriate. This regulation is consistent with a 1983 EPA delegation of authority; it gives the heads of major offices authority to make initial determinations related to FOIA requests, but allows them to delegate their authority (1) down to the division director level if EPA is denying release of all or part of the records based on a FOIA exemption, and (2) to an even lower level if all of the requested records are being released.

Including the Office of the Administrator, EPA has 23 major offices. The heads of these offices, as well as some of their deputies, are political appointees. In total, EPA has identified 67 positions that are filled by political appointees. These positions are subject to noncompetitive appointment because the duties may involve advocacy of administration policies and programs, and the incumbents usually have a close and confidential working relationship with the Agency or other key officials.

EPA has assigned staff to manage its FOIA process, including a national FOIA officer in the Office of Environmental Information, a FOIA officer in each region, and a FOIA coordinator for each of the major program offices. To track the FOIA requests, EPA uses an information management system called "FOIAXpress." Overall, EPA's FOIA process is decentralized. Each of the 23 major offices has established its own internal procedures for handling FOIA requests.

Scope and Methodology

We conducted this review from September through December 2010. The work centered on evaluating a sample of 50 FOIA requests to determine who was involved in processing them. These requests were selected from a universe of 157 requests EPA received between January 21, 2009, and August 31, 2010, that

concerned one of the following subjects the Office of Inspector General (OIG) believed might be of particular interest to EPA political appointees:

- BP oil spill
- Climate change
- Coal ash
- Environmental justice
- Hydraulic fracturing, or fracking
- Mountaintop mining

We identified the universe of requests by searching FOIAXpress. We reviewed the documentation in FOIAXpress associated with the 50 sample items. Except for inquiring about missing documentation, we did not evaluate the accuracy of the data in FOIAXpress. We interviewed the FOIA officer or FOIA coordinator for the following 11 organizations that processed the 50 requests under review:

- Office of the Administrator
- Office of Air and Radiation
- Office of Enforcement and Compliance Assurance
- Office of Inspector General
- Office of Solid Waste and Emergency Response
- Office of Water
- Region 1
- Region 3
- Region 4
- Region 5
- Region 6

For some requests, we also interviewed other EPA employees who were involved in responding. The interviews included a review of FOIA procedures for that office. In addition, we interviewed the EPA national FOIA officer.

We did not test the internal controls related to processing FOIA requests. Controls were evaluated during a prior review by the OIG. The related report, Report No. 09-P-0127, *EPA Has Improved Its Response to Freedom of Information Act Requests But Further Improvement Is Needed*, was issued on March 25, 2009. EPA is still implementing the corrective actions recommended in that report.

We conducted our work in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based upon our objectives.

Results

We concluded that EPA does not have a FOIA process that results in the filtering of requests by political appointees. Generally, political appointees are not involved in the FOIA process, either by policy or in practice. With few exceptions, information is released at the lowest practicable level, which EPA permits. Political appointees are usually involved only to sign denials or partial denials, as was the case in 2 of the 11 offices that we reviewed.

Of the 50 FOIA requests in our sample, political appointees were involved in only 7 of them. In two cases, political appointees were asked to search for responsive records. In four cases, a political appointee signed the response letter because the request resulted in partial denial of information. In one case, a political appointee signed the response letter even though all records were given to the requester, which was done at the discretion of the FOIA coordinator and was not directed by the political appointee.

Requests Are Not Filtered by Political Appointees

FOIA staff at headquarters and the regions are not political appointees. They review FOIA requests to determine who in their office might have responsive records. The organizational location of the FOIA staff varied across the 11 major offices we reviewed. Of the 11 FOIA officers and coordinators interviewed, 2 (for the Office of Air and Radiation and the Office of Enforcement and Compliance Assurance) work in the immediate office of the assistant administrator (a political appointee). However, these two coordinators have a process that is similar to the other nine offices that we reviewed; they assign all requests to staff without the involvement of the assistant administrator, and neither office specifies a role for political appointees in the FOIA process.

Staff Throughout EPA Collect Relevant Records

The FOIA officers and coordinators ask EPA offices with responsive records to provide them. Two of the sampled FOIA requests involved political appointees searching for records. However, in both cases, office staff searched for relevant records and forwarded what they had to the response coordinator for further action. The political appointee had no further involvement with the request.

Political Appointees Sign Denial Letters For Two Offices

Two of the 11 major offices we reviewed (Region 3 and Office of the Executive Secretariat, in the Office of the Administrator) had a political appointee sign all denial and partial denial response letters. Region 3 policy requires the regional administrator to sign all denial and partial denial response letters. None of the eight Region 3 response documents to FOIA requests we reviewed were signed by a political appointee, and none involved denials. The Office of the Executive

Secretariat has the director (who is a political appointee) sign all denial and partial denial letters. This practice ensures compliance with EPA policy that a division director or higher sign all denials or partial denials. The Director for the Office of the Executive Secretariat signed the response letters for five of the FOIA requests in our sample.

FOIA Staff Keeps Management Informed

The FOIA staff keeps EPA management informed about the FOIA process. All the FOIA officers and coordinators provided reports on FOIA processing to managers at various levels in the office. In 3 of the 11 major offices reviewed, the manager who received the reports was a political appointee.

Special Cases Do Not Involve Political Filtering

FOIA requests related to the BP oil spill are being monitored on an EPA-wide basis to ensure consistency in the responses due to the large number of documents requested and the significance of the issues involved. A staff member in the Office of General Counsel is notified when BP-related requests are received and when EPA responds. However, for BP-related requests that we reviewed, the response was sent to the Office of General Counsel after the information was released to the requester. At the time of our interviews, no political appointees from the Office of General Counsel were involved in processing these FOIA requests.

EPA has received numerous FOIA requests related to climate change, particularly regarding the April 2009 endangerment finding on greenhouse gases. To ensure EPA offices were handling these requests consistently, an informal work group was formed to review records. None of the members of this work group were political appointees.

Conclusion

Our analysis shows that political appointees at EPA are generally not involved in processing, screening, or approving FOIA requests. Even though our sample included only requests related to controversial subjects, political appointees were involved with 7 of the 50 instances reviewed. The activities of political appointees in the FOIA process at EPA generally include signing denials and partial denials, and receiving reports on FOIA processing. We found no evidence of systematic screening of FOIA requests by political appointees. Based on our review of their program, we conclude that the EPA does not have a process to filter FOIA requests by political appointees.

Agency Response and OIG Comment

To ensure the accuracy of this report, on December 8, 2010, we provided a draft to the Office of Environmental Information for review. In a memorandum dated January 7, 2011, the Assistant Administrator for Environmental Information agreed with the OIG conclusions. Based on Agency comments on the draft report, we made some minor wording changes. This memorandum is included as Appendix A.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in $000s)	
Rec. No.	Page No.	Subject	Status	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
		No recommendations					

[1] O = recommendation is open with agreed-to corrective actions pending
C = recommendation is closed with all agreed-to actions completed
U = recommendation is undecided with resolution efforts in progress

Appendix A

Agency Response

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

OFFICE OF
ENVIRONMENTAL INFORMATION

Jan – 7 2011

MEMORANDUM

SUBJECT: Draft Report: Congressionally Requested Inquiry Into EPA's Handling of Freedom of Information Act Requests - Project No. OPE-FY10-0027

FROM: Malcolm D. Jackson
Assistant Administrator and Chief Information Officer

TO: Eric Lewis
Director, Special Reviews
Office of Program Evaluation
Office of the Inspector General

Thank you for the opportunity to review the draft report "Congressionally Requested Inquiry Into EPA's Handling of Freedom of Information Act Requests," Project No. OPE-FY10-0027.

The U.S. Environmental Protection Agency (EPA) is committed to conducting its business in an open and transparent manner and takes pride in the quality of customer service it provides to Freedom of Information Act (FOIA) requesters. The Agency will continue to review its FOIA administration activities to identify opportunities to further strengthen and enhance its policies, procedures and processes. I understand that a few minor technical errors were communicated to your staff and will be corrected in the final report.

If you have any questions about EPA's FOIA Program, please feel free to contact Larry F. Gottesman, EPA National FOIA Officer, at (202) 566-2162.

Appendix B

Distribution

Office of the Administrator
Assistant Administrator for Environmental Information and Chief Information Officer
Agency Followup Official (the CFO)
Agency Followup Coordinator
General Counsel
Associate Administrator for Congressional and Intergovernmental Relations
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Director, Office of Regional Operations
Inspector General
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Office of the Administrator FOIA Coordinator