



National Science Foundation • Office of Inspector General
4201 Wilson Boulevard, Suite I-1135, Arlington, Virginia 22230

October 08, 2015

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
U.S. Senate
Washington, DC 20510

Dear Senator Johnson:

I am writing in response to your June 23, 2015 letter to the National Science Foundation (NSF) Office of the Inspector General expressing concerns about the potential involvement of non-career officials with the Freedom of Information Act (FOIA) process at NSF. Specifically, you asked us to “analyze the involvement of non-career officials’ involvement in the FOIA response process at the National Science Foundation (NSF), if any, for the period of January 1, 2007 to the present.”

The NSF has no political appointees among its rank-and-file staff. The Director and Deputy Director, and the Members of the Presidentially-appointed National Science Board are the only political appointees within the Foundation.

Pursuant to your request, we conducted an inspection to assess involvement by non-career officials with the FOIA process at the Foundation. Our interviews of NSF FOIA personnel did not identify any involvement by political appointees in the processing of NSF FOIA requests. There was also no evidence of any political appointee involvement in the sample of FOIA files we reviewed. As requested, we are enclosing a written certification from the NSF Chief FOIA Officer that no non-career officials were involved in the agency’s FOIA response process. The complete results of our review are attached.

Should you have any questions, or if you would like to discuss this matter further, please contact me or Ken Chason, Counsel to the IG, at 703-292-7100.

Sincerely,

A handwritten signature in black ink, appearing to read "Allison Lerner", is written above the typed name.

Allison Lerner
Inspector General

Attachments

Inspection Report: Involvement by Non-Career Officials with the FOIA Process at the National Science Foundation

Background and Results in Brief

The NSF has no political appointees¹ among its rank-and-file staff. The Director and Deputy Director,² and the Members of the Presidentially-appointed National Science Board (NSB)³ are the only political appointees within the Foundation. As such, this review focused on whether or not these individuals had any involvement in the FOIA process. We found no evidence of any such involvement.

The NSF FOIA Process

Two components of the NSF have independent FOIA responsibilities: the Office of General Counsel (OGC), which serves as NSF's Chief FOIA Officer, and the National Science Board Office (NSBO).⁴

Office of General Counsel

Executive Order 13392 requires the head of each Federal Government agency to designate a senior official at the Assistant Secretary or equivalent level to serve as its Chief FOIA Officer. At NSF, the Chief FOIA Officer is a GS-14 Assistant General Counsel in the OGC. Day-to-day FOIA operations at NSF are overseen and conducted by the GS-14 FOIA Officer and part-time FOIA Staff Assistant; all three employees are career staff.

The FOIA Officer is responsible for seeking records from NSF Directorates to respond to FOIA requests and for making the initial determination with respect to those requests. Initial determinations are the agency's first substantive response to a FOIA request: they range from a release of all requested documents, a determination that the agency could not locate requested records, or a determination that the records are wholly or partially exempt from disclosure. Appeals of initial determinations are decided by the NSF General Counsel, a career employee.

¹ Schedule C, non-career Senior Executive Service, or Senate-confirmed appointees.

² The positions of Director and Deputy Director are appointed by the President and confirmed by the U.S. Senate. NSF's statutory authority establishes a six-year term for the Director.

³ The NSB is made up of 24 part-time Members who are presidentially appointed for six year terms. Until October 2012, Members were confirmed by the U.S. Senate.

⁴ The NSF OIG receives and processes FOIA inquiries related to audits and investigative cases conducted by its office; all statistics for FOIA requests processed by OIG are reported by fiscal year in NSF FOIA Annual Reports: https://www.nsf.gov/policies/foia_annual_reports.jsp. There are no political appointees in the OIG.

National Science Board

The NSB serves as an independent body of advisors to both the President and the Congress on policy and education matters related to science and engineering. The NSF Act of 1950, as amended, states that nominees to the “Board (1) shall be eminent in the fields of the basic, medical, or social sciences, engineering, agriculture, education, research management or public affairs; (2) shall be selected solely on the basis of established records of distinguished service; and (3) shall be so selected as to provide representation of the views of scientific and engineering leaders in all areas of the nation.” The NSB elects its own Chairman and Vice Chairman. The Chairman, in turn, is authorized to make appointments to the NSB staff. The NSB Office is headed by the Board Executive Officer.

The career Senior Counsel of the NSB is responsible for responding to FOIA requests related to NSB matters.

Results of Our Review

Office of General Counsel

The NSF General Counsel told us that, “to the best of my knowledge and belief, no non-career officials were involved in the department or agency’s response to any FOIA request;” his written certification is submitted with this letter.

The Chief FOIA Officer and FOIA Officer we interviewed also told us that they did not have any involvement with any political appointee related to FOIA requests. They explained that all FOIA requests are received and processed by the FOIA Officer, who records them in an electronic FOIA log. The FOIA Officer requests responsive documents from the relevant NSF directorate(s), reviews the documents provided, and makes the initial determination regarding NSF’s response.

Because the majority of NSF’s FOIA requests involve requests for proposals funded by NSF, the FOIA Officer must contact the proposal’s Principal Investigator (PI) to determine whether the proposal contains information subject to a FOIA exemption. If the proposal is collaborative, or has multiple PIs, the FOIA Officer must contact each PI or collaborator individually to identify potentially exempt material before making the agency’s initial determination.

We reviewed the electronic FOIA log for request years 2009 – 2015. We identified 59 requests for agency records with search terms that: included political appointees,⁵ asked for information related to the White House or Administration,⁶ Congress or its Members;⁷ or were from political

⁵ Schedule C, non-career members of the Senior Executive Service, Senate-confirmed appointees, political appointees, or the Chief Operating Officer/Director/Deputy Director of NSF.

⁶ Administration, Executive Office of the President, Office of Management and Budget, White House, Obama.

⁷ Congress, Senate, House, Committee(s), and individual Members.

organizations,⁸ press organizations,⁹ and interest groups.¹⁰ We chose these terms because they appeared to be the most likely non-proposal FOIA requests to be of interest to political appointees.

Of the 59 requests, we selected 18 FOIA files for review that specifically requested White House or Department of Justice documents; political appointee waivers, recusals, resumes and appointments; and correspondence between a Committee or Member(s) of Congress and NSF. We identified two FOIA requests referred to a career staff member in the Director's Office by the then-FOIA Officer: (1) a 2009 request for "All documents related to transition preparation, direction, and guidance for agency during the 2008-2009 presidential transition;" and (2) a 2012 FOIA request for records of the former NSF Chief Operating Officer/Deputy Director and his participation on the President's Management Council. According to the NSF FOIA log, the 2009 response received a partial response of 81 pages.¹¹ The 2012 file we reviewed contained a response from the OD career staff member, who provided 13 calendar appointments and one document to the FOIA officer in response; the FOIA request was completed in two days. Although these FOIA requests appeared most likely to interest political appointees, we found no evidence of such involvement in our review of the 18 files. All statistics for FOIA requests processed by OGC are reported by fiscal year in NSF FOIA Annual Reports: https://www.nsf.gov/policies/foia_annual_reports.jsp.

National Science Board

We interviewed the Executive Officer and Senior Counsel of the NSB, both of whom are career employees. The Senior Counsel told us that she received two FOIA requests for information approximately three years ago, collected the requested information, and prepared a response after discussing exemptions and redactions with the then-NSF FOIA Officer in OGC. She did not inform or consult with any members of the NSB in preparing the FOIA response. The Senior Counsel told us that although the NSB has not received any subsequent FOIA requests, she would be responsible for responding to any requests received.

Conclusion

Our interviews of NSF FOIA personnel did not identify any involvement by political appointees in the FOIA response process. There was no evidence of any political appointee involvement in the files we reviewed.

⁸ National Republican Senatorial Committee, Democratic Senatorial Campaign Committee, Democratic National Convention, or U.S. Senate.

⁹ Politico, Wall Street Journal, Bloomberg News, Washington Times, Pittsburgh Tribune-Review.

¹⁰ National Security Archive, Cause of Action, 339 Group LLC, American Bridge 21st Century

¹¹ FOIA exemptions 5 and 6 applied to the request.