



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 7, 2012

To: Attorney General Eric Holder

From: Sarah M. Mathias
Associate General Counsel for Project Management
Chief FOIA Officer

Re: Chief FOIA Officer Report

In response to your FOIA Guidelines, this is the Federal Trade Commission's report on implementing the Freedom of Information Act during 2011.

I. Steps Taken to Apply the Presumption of Openness

1. The Assistant General Counsel responsible for the FTC FOIA program conducted several formal training sessions throughout FY2011 on all aspects of FOIA including during the New Attorney and Economist retreat, training of all of the divisions of the Bureau of Competition, and training of the Bureau of Consumer Protection Front Office.
2. All paralegals attend the Office of Legal Education's 3-day FOIA training program and are provided in-house training on FOIA procedures and policies. In addition, managers in each division of the agency have designated a FOIA access officer who coordinates the search for records of that division. The FOIA access officer receives additional FOIA training in searching for records and identifying record storage locations.
3. In FY2011, the FTC made discretionary releases of otherwise exempt information.
4. The Agency's discretionary disclosures particularly related to material covered by Exemption 5.

5. As the FTC's FOIA team reviews documents subject to a FOIA request, they understand that the goal is to review with an eye to openness and transparency as well as to whether the FTC can make a discretionary release that will produce no foreseeable harm from release.

6. The Federal Trade Commission discloses information in response to Freedom of Information Act requests and on its own initiative. The FTC routinely places a large volume of records on the agency's website to foster knowledge of the FTC's programs and activities. In addition, the agency's FOIA office applies the presumption of openness to the extent possible in the law enforcement context.

7. The FTC processed 1527 FOIA requests in FY 2011, with slightly approximately 48% of all requests granted in full, 29% were partially granted, and only 2% of requests were denied in full. In FY 2010 nearly 50% of all requests were granted in full, 25% were granted in part, and 2% were denied in full. The requests that were denied in full were denied based on statutory prohibitions on disclosure, because the subject documents contained personal information implicating privacy concerns, because they concerned active law enforcement matters, or were privileged deliberations. These percentages demonstrate the agency's commitment to openness, while protecting the agency's critical interest in conducting non-public law enforcement investigations. These numbers are consistent with FY2010 with a slight increase in the number of partial grants.

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II. Steps Taken to Ensure that the Federal Trade Commission has an Effective system for Responding to Requests

1. The Federal Trade Commission's FOIA branch is located within the Office of General Counsel. The operations are overseen by the Assistant General Counsel for Information and Legal Support. The branch is staffed by one lead paralegal, and eight additional paralegals.

In addition to engaging managers at all levels, the FOIA office works closely with the agency IT specialists. The FTC FOIA office operates in a wholly electronic environment. When staff identifies record locations, IT staff ensures that the FOIA staff receives access to the appropriate drives, folders, or databases to download the responsive records. IT supports the commercial off-the-shelf FOIA software used to process all FOIA requests. FOIA staff also work with the agency's web team to post materials on the agency's website, <http://www.ftc.gov>, when applicable.

2. Yes, there is regular interaction between the FTC's FOIA professionals and the Chief FOIA Officer. During FY2011, the Chief FOIA Officer met almost every Monday with the Assistant General Counsel responsible for the FTC's FOIA program, as well as on an as-needed basis when issues arose. In addition, the Chief FOIA officer periodically

meets with our other FOIA professionals.

3. FOIA staff participated in the activities of the Agency's Open Government team.

4. The agency is always evaluating staffing levels. During a portion of FY2011, there was a period that the Agency was understaffed and was actively working to hire more staff. The Agency was able to hire more FOIA professionals before the end of the fiscal year to ensure that it was adequately staffed. As the Agency continues to evaluate its needs, it anticipates losing several FOIA professionals this coming summer and has begun the process to ensure we can replace these FOIA professionals as they leave the Agency. We also continue to evaluate the potential of increasing FOIA requests and we believe we may need to increase the staffing of the FOIA office and are looking at ways to do that under the possibility of budget cuts.

5. When the agency receives a FOIA request, the FOIA staff member reviews the request and searches the agency's electronic record keeping system to identify which divisions may have responsive records. The FOIA staff then sends a request for documents to the relevant FOIA access officers, who search for responsive records. As discussed earlier, the FOIA office has conducted numerous FOIA trainings throughout the agency. A new round of training in the divisions is scheduled to begin in March 2012. Each year, new attorneys receive an introduction to the FOIA as part of a required off-site training program for all new FTC attorneys.

III. Steps Taken to Increase Proactive Disclosures

1. As discussed earlier, the agency maintains a robust website and discloses a large volume of material on its website at its own initiative. The agency routinely identifies records that are appropriate for posting, including all adjudicative decisions, rulemaking materials and comments, workshop information, speeches, and a wide range of other documents.

2. The FOIA reading room is updated when the agency receives three requests for the same records. The FOIA staff self-identifies such records and with further training, we expect Agency staff will also identify additional records appropriate for proactive disclosure.

3. In addition to the website, the agency maintains a Facebook page and a twitter account. Both are used to ensure that information is broadcast to the widest audience possible in a timely fashion. The agency discloses material daily to best serve the public.

4. The Agency is in the process of overhauling its website. With the completion of that build out, the ability to search the Agency's website will greatly improve. We have also been reviewing our website to make sure that while we are proactive with our disclosures we are also ensuring that personally identifiable information is protected and not inadvertently disclosed.

IV. Steps Taken to Greater Use Technology

1. The FTC has a centralized FOIA process to receive FOIA requests electronically. The agency has been receiving FOIA requests electronically since 2001. The Agency has a dedicated email address (FOIA@ftc.gov) and on-line request form (<https://www.ftc.gov/ftc/foia.htm>); if requests are received in hard copy they are converted into electronic form. The FTC also process 100% of our requests electronically and has been doing so since 2003.
2. The FTC processes FOIA requests through a centralized process.
3. Currently, a requester cannot track the status of his/her request electronically. However, internally, the agency tracks all requests electronically.
4. At the present time, we have not begun to take steps that would allow a requester to track the status of his/her request electronically.
5. All FOIA requests are electronically processed. All new FOIA requests are entered into the database and assigned a tracking number. Once they are assigned to FOIA staff, the staff uses the application to send out requests for documents, track the status, import the responsive records for review and redaction, generate response letters and send the records in the format requested. Paper records are scanned and then electronically imported into the system. All portions of the request are performed electronically and the Agency uses its electronic processing system to generate the Annual Report.

V. Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

1. The agency makes every effort to respond to request in a timely manner. Most complex requests and many simple requests require the agency to locate and review thousands of pages of records. The average number of days to respond to simple requests was twenty working days or fewer; on average, the number of days to respond to simple requests in FY2011 was 5.29 days.

We closed 9 of the 10 oldest requests from F72010 in FY2011. We still have one request pending, which has over 30,000 pages of responsive records. Thus far, we have reviewed and released 18,000 pages in seven different partial responses.

This year, the agency's backlog decreased from 32 in FY 2010 to 30 in FY2011. The Agency sent four partial responses out of the 30 backlogged requests. Of the 30 backlogged cases, there were actually only 8 overdue requests. Because the FTC makes rolling releases in order to provide requesters as many records as possible in a timely fashion, some FOIA requests remain open despite the agency having substantially responded. The backlog of requests to which no response has yet been made is significantly below 1%.

Even though we started FY2011 with a low staff level we were able to decrease our backlog even with an increase in requests. We were able to decrease our backlog because our staff is well trained and they worked for overtime and credit hours. The majority of the backlog requests are complex requests involving tens of thousands of pages of records. In those instances, the agency provides responses on a rolling basis. The Agency sent 4 partial responses out of the 30 backlogged requests. Of the 30 backlogged cases, there were actually only 8 overdue requests. Because the FTC makes rolling releases in order to provide requesters as many records as possible in a timely fashion, some FOIA requests remain open despite the agency having substantially responded. The backlog of requests to which no response has yet been made is significantly below 1%.

In FY2010 the agency did not have any pending FOIA appeal and did not have any pending in FY2011. There is no administrative appeal backlog.

Despite the low backlog, the FOIA branch continues to train agency staff to reduce the processing time further. In addition, the agency has new, operating software that should enable faster searching and review of electronic records. The Agency and Chief FOIA Officer set goals for backlog reduction and monitor the caseload. The Chief FOIA Officer engages IT, senior level officials, and the Office of Human Capital in discussion about improving staffing levels, and using technology and existing staff to improve response times and reduce the backlog.

The FTC occasionally receives consultations from other agencies. The Agency has entered agreements with some other agencies, *e.g.*, the Consumer Financial Protection Board, on the handling of particular information. The FTC uses information technology to share documents when possible.

VI. Use of FOIA's Law Enforcement "Exclusions"

1. The FTC did not invoke a statutory exclusion as subject to the requirements of 5 U.S.C.552 sec. 552(c)(1), (2), (3).

VII. Spotlight on Success

In FY2011, we increased our discretionary disclosures, particularly relating to material covered by Exemption 5. Working with senior staff at the agency, the FOIA Office released a large volume of the material, most of it discretionarily, to the requesters. The materials included the discretionary release of internal deliberations at the highest level, demonstrating the agency's commitment to openness.