

FEDERAL TRADE COMMISSION

SARAH MACKEY
ASSOCIATE GENERAL COUNSEL
AND
CHIEF FOIA OFFICER



FEBRUARY 2013

I. Steps Taken to Apply the Presumption of Openness

1. Shortly after the President's FOIA memorandum and the Attorney General's FOIA Guidelines were published, the Chief FOIA officer circulated the materials to all agency senior managers and to each division designee responsible for coordinating those FOIA responses. Also, the Assistant General Counsel responsible for the FTC FOIA program conducted several formal training sessions throughout FY2012 on all aspects of FOIA including training for the Agency's new Commissioner and a presentation for all new attorneys and economists. The Assistant General Counsel also provided refresher training to the Office of Public Policy. All of the FOIA training highlighted the important role of each employee in the FOIA process and strongly encouraged staff to contact the FOIA Unit with any FOIA concerns.

All paralegals attend the Office of Legal Education's 3-day FOIA training program and receive 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.

2. In FY2012, the FTC made discretionary releases of otherwise exempt information.

3. The FTC made its discretionary disclosures particularly related to material covered by Exemption 5.

4. In FY2012, the FTC increased its percentage of partially granted material. To do so, the FTC's FOIA Team reviewed documents with an eye towards openness and transparency, while considering the foreseeable harm that could result from a discretionary release. Absent a compelling reason for withholding, most information protected solely by Exemption 5 in a file closed over ten years is released, except for certain documents that retain a presumption against release regardless of age. Other information frequently released as a matter of discretion includes the summary, conclusion and signature portions of final memoranda.

5. 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.

II. Steps Taken to Ensure that the Agency has an Effective System for Responding to Requests

1. 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. FOIA staff participated in the activities of the Agency's Open Government Team.
3. The agency is always evaluating staffing levels. During the summer of FY2012, the Agency hired more FOIA staff to meet the Agency's ever increasing FOIA needs. As the Agency continues to evaluate its needs, it anticipates losing several FOIA professionals this coming summer. As a result, the FOIA branch has begun the hiring process to replace FOIA professionals as they leave the Agency. The FOIA branch also continues to evaluate the potential of an increase in the number of FOIA requests. If an increase occurs, the branch may need to increase the staff of the FOIA office and are looking at ways to do that under the possibility of budget cuts.
4. The Federal Trade Commission's FOIA branch is located within the Office of General Counsel. The Assistant General Counsel oversees the operations for Information and Legal Support. Two attorney and seven paralegals staff the branch. When the agency receives a FOIA request, the FOIA staff specialist 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. FOIA staff members also meet regularly to discuss requests received and assess how they can improve their responses and efficiency.

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 multiple requests for the same records. The FOIA staff identifies such records and with further training, Agency staff will identify additional records appropriate for proactive disclosure.

3. The Agency is in the process of overhauling its website. With the completion of the build out, the ability to search the Agency's website will greatly improve. The FOIA branch continually reviews its website to make sure that the Agency is proactive with its disclosures, while also protecting personally identifiable information from disclosure.

4. 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.

IV. Steps Taken to Use Technology More Effectively

1. Yes.

2. 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.hm>). If requests are received in hard copy, they are converted into electronic form. The FTC processes 100% of its requests electronically and has been doing so since 2003.

3. Currently, a requester cannot track the status of his/her requests electronically.

4. N/A.

5. N/A.

6. The Agency has begun to look into steps that would allow a requester to track the status of his/her request electronically.

7. The agency tracks all requests electronically in the FOIAXpress application (a commercial FOIA application). All FOIA requests are processed in FOIAXpress. 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. Because all portions of the request are performed in FOIAXpress, the agency uses the system to generate the Annual Report and Quarterly Reports.

8. In addition, the agency has new, FOIAXpress operating software that should enable faster searching and review of electronic records.

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

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 Agency routinely responded to simple requests within twenty working days; on average, the number of days to respond to simple requests in FY2012 was 5.29 days.

2. In FY2012, the FTC closed 10 of the 10 oldest requests from FY2011.

The Agency decreased its FY2011 FOIA backlog from eight overdue requests to one because the FOIA staff is well trained and they worked for overtime and credit hours. The majority of the FY11 backlog requests were complex requests involving tens of thousands of pages of records. In FY2012, there was only one overdue request. In that one instance, the FTC made rolling releases. The backlog of requests to which no response has yet been made is 0%. There is no appeal backlog.

3. Despite only one request in backlog, the FOIA branch continues to train Agency staff to improve administrative efficiency by decreasing the processing time further. The Agency and Chief FOIA Officer monitor the caseload. The Chief FOIA Officer also engages IT, senior level officials, FOIA staff, and the Office of Human Capital in discussion about improving staffing levels, and technology to improve the timeliness in responding to requests.

4. This year, the number of requests pending at the end of the fiscal year decreased from 30 in FY2011 to seven in FY 2012. The Agency made partial response in two of the pending 7. Of the seven pending requests, there was actually only one overdue request. Because the FTC makes rolling releases in order to provide the requesters as many responses as possible in a timely fashion, some FOIA requests remain open despite the Agency having substantially responded.

VI. 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

1. In FY2012 despite tight budgets, the Agency demonstrated its commitment to a strong FOIA program and took steps to add resources to the FOIA program. These resources included, but were not limited to, the hiring of more FOIA staff, training, and software updates. These additional rescoures enabled the FOIA Unit to close out ten of its ten oldest requests while simultaneously processing new requests efficiently and expeditiously.

2. The Agency also increased its number of partial grants by approximately 10%. Working with senior staff at the agency, the FOIA Office released a large volume of the material, to the requesters. The materials included the discretionary release of internal deliberations at the highest level, demonstrating the Agency's commitment to openness.