

FREEDOM OF INFORMATION ACT ANNUAL REPORT

FOIA Data Submission Form for Federal Trade Commission

Fiscal Year 2005

(Oct. 1, 2004 - Sept. 30, 2005)

I. Basic Information Regarding Report

A. Name, title, address, and telephone number of person to be contacted with questions about the report.

Caitlin Tobin
Paralegal Specialist
600 Pennsylvania Avenue, N.W., Room 676
Washington, D.C. 20580
(202) 326-3059

B. Electronic address for report on the World Wide Web.

<http://www.ftc.gov/foia/2005r-fo.htm>

C. How to obtain a copy of the report in paper form.

Federal Trade Commission
Consumer Response Center
Room 130
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

II. How to Make a FOIA Request

All FOIA requests must be in the form of a written request precisely describing the records sought. Any request for nonpublic records will be handled as a FOIA request regardless of how it is identified, but requests should be identified as a "FOIA request" in order to avoid delays in processing.

FOIA requests should contain a precise description of the records sought, including the subject matter, relevant time period, and the name and address of any company to which the request pertains. Requests should also include an agreement to pay any FOIA processing fees, and the requestor's address and telephone number.

A. Names, addresses, and telephone numbers of all individual agency components and offices that receive FOIA requests.

Regardless of how submitted (via mail, fax, or e-mail) requests should be addressed

as follows:

Freedom of Information Act Request
FOIA Branch
Office of the General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Facsimile number is 202-326-3709.

E-mail address is: FOIA@FTC.GOV

B. Description of the agency's response-time ranges.

Over 69% of the requests submitted were completed within 20 days.

C. Description of why some requests are not granted.

The majority of requests that are initially denied, or partially denied, are based on personal privacy concerns reflected in FOIA Exemption 6. Many denials are also due to statutory constraints on disclosure or because disclosure would interfere with ongoing law enforcement activities.

III. Definitions of Terms and Acronyms Used in the Report

A. Agency-specific acronyms or terms.

1. FOIA - Freedom of Information Act (5 U.S.C. § 552)
2. FTC - Federal Trade Commission
3. HSR - Hart Scott Rodino (Clayton Act)
4. FY - Fiscal Year
5. PA - Privacy Act (5 U.S.C. § 552a)

B. Basic Terms, expressed in common terminology.⁽¹⁾

1. *FOIA/PA request* – Freedom of Information Act/Privacy Act request. A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records concerning oneself; such requests are also treated as FOIA requests. (All requests for access to records, regardless of which law is cited by the requester, are included in this report.)

2. *Initial Request* – a request to a federal agency for access to records under the Freedom of Information Act.

3. *Appeal* – a request to a federal agency asking that it review at a higher administrative level a full denial or partial denial of access to records under the Freedom of Information Act, or any other FOIA determination such as a matter

pertaining to fees.

4. *Processed Request or Appeal* – a request or appeal for which an agency has taken a final action on the request or the appeal in all respects.

5. *Multi-track processing* – a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests in each track are processed on a first-in/first-out basis. A requester who has an urgent need for records may request expedited processing (see below).

6. *Expedited processing* – an agency will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier.

7. *Simple request* – a FOIA request that an agency using multi-track processing places in its fastest (nonexpedited) track based on the volume and/or simplicity of records requested.

8. *Complex request* – a FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.

9. *Grant* – an agency decision to disclose all records in full in response to a FOIA request.

10. *Partial grant* – an agency decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entirety, but to withhold others in whole or in part.

11. *Denial* – an agency decision not to release any part of a record or records in response to a FOIA request because all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA's exemptions, or for some procedural reason (such as because no record is located in response to a FOIA request).

12. *Time limits* – the time period in the Freedom of Information Act for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a "perfected" FOIA request).

13. *"Perfected" request* – a FOIA request for records which adequately describes the records sought, which has been received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.

14. *Exemption 3 statute* – a separate federal statute prohibiting the disclosure of a

certain type of information and authorizing its withholding under FOIA subsection (b)(3).

15. *Median number* – the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.

16. *Average number* – the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.

IV. Exemption 3 Statutes

A. List of Exemption 3 statutes relied on by agency during current fiscal year.

Federal Trade Commission Act, § 6(f), as amended, 15 U.S.C. § 46(f) -- prohibits the disclosure of "any trade secrets or any commercial or financial information which is obtained from any person and which is privileged or confidential." Its use was upheld in *Doherty v. FTC*, 1981-1 Trade Cas. (CCH) § 64,117 (D.D.C. June 24, 1981).

Federal Trade Commission Act, § 21(b), 15 U.S.C. § 57b-2(b) -- prohibits the disclosure of any materials received pursuant to compulsory process in a law enforcement investigation. Its use was upheld in *Dairymen, Inc. v. FTC*, 1980-2 Trade Cas. (CCH) ¶ 63,479 (D.D.C. July 9, 1980).

Federal Trade Commission Act, § 21(f), 15 U.S.C. § 57b-2(f) -- exempts from disclosure material obtained pursuant to process or voluntarily in lieu of process in a law enforcement investigation. Its use was upheld in *A. Michael's Piano v. FTC*, 18 F.3d 138 (2d Cir. 1994).

Clayton Act (Hart-Scott-Rodino Provisions), § 7A(h), 15 U.S.C. § 18a(h) -- prohibits the disclosure of material filed pursuant to the premerger (HSR) provisions of the Act. Its use was upheld in *Lieberman v. FTC*, 771 F.2d 32 (2d Cir. 1985).

V. Initial FOIA/PA Access Requests

A. Number of initial requests.

1. Number of requests pending as of end of preceding fiscal year: **82***
2. Number of requests received during current fiscal year: **1024**
3. Number of requests processed during current fiscal year: **1002**
4. Number of requests pending as of end of current fiscal year: **104**

*One request was inadvertently omitted from the count last year.

B. Disposition of initial requests.

1. Total grants: **360**

2. Partial grants: **321**

3. Denials: **26**

a. Number of times each FOIA exemption used

(counting each exemption once per request)

Exemption 1	0
Exemption 2	3
Exemption 3	105
Exemption 4	29
Exemption 5	50
Exemption 6	282
Exemption 7(A)	24
Exemption 7(B)	0
Exemption 7(C)	7
Exemption 7(D)	7
Exemption 7(E)	0
Exemption 7(F)	0
Exemption 8	0
Exemption 9	0

4. Other reasons for non-disclosure: **295**

a. no records	182
b. referrals	2
c. withdrawn	56
d. fee-related	12
e. records not reasonably described	6

f. not a proper request for some other reason	9
g. not an agency record	4
h. duplicate request	17
i. other (specify)	7

(1) materials on the public record

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Number of appeals.

- 1. Number of appeals received during fiscal year: **12**
- 2. Number of appeals processed during fiscal year: **12**

B. Disposition of appeals.

- 1. Number completely upheld: **1**
- 2. Number partially reversed: **0**
- 3. Number completely reversed: **0**

a. Number of times each FOIA exemption used
(counting each exemption once per appeal)

Exemption 1	0
Exemption 2	0
Exemption 3	0
Exemption 4	0
Exemption 5	1
Exemption 6	0
Exemption 7(A)	0
Exemption 7(B)	0
Exemption 7(C)	0
Exemption 7(D)	0

Exemption 7(E)	0
Exemption 7(F)	0
Exemption 8	0
Exemption 9	0
4. Other reasons for non-disclosure (total): 11	
a. no records	7
b. referrals	0
c. withdrawn	4
d. fee-related	0
e. records not reasonably described	0
f. not a proper request for some other reason	0
g. not an agency record	0
h. duplicate request	0
i. other (specify)	0

VII. Compliance with Time Limits/Status of Pending Requests

A. Median time for processing requests.

1. Simple requests:
 - a. number of requests processed: **875**
 - b. median number of days to process: **6**
2. Complex requests
 - a. number of requests processed: **127**
 - b. median number of days to process: **53**
3. Requests accorded expedited processing: **0**

B. Status of pending requests.

1. Number of requests pending at end of FY 05: **104**
2. Median number of days that such requests were pending as of that date: **36**

VIII. Expedited Processing

The agency did not receive any requests that satisfied the requirements for expedited processing.

IX. Costs/FOIA Staffing

A. Staffing levels.

1. Number of full-time FOIA personnel: **4**
2. Number of personnel with part-time or occasional FOIA duties (in work-years): **2.25**
3. Total number of personnel (in work years): **6.25**

B. Total costs (staff and resources combined).

1. FOIA processing (including appeals): **\$465,985**
2. Litigation-related activities (estimated): **\$0**
3. Total Costs: **\$465,985**

X. Fees

A. Total fees collected FY 05:	\$16,479.06
B. Percentage of total costs	3.5%

XI. FOIA Regulations (Including Fee Schedule)

A copy of the Commission rules (including fee schedule), 16 C.F.R. §§ 4.8-13 (2001), are available in electronic form at <http://www.ftc.gov/ftc/legal.htm>.

Endnote

1. These definitions are taken from the Department of Justice Guidelines for Agency Preparation and Submission of Annual FOIA Reports, printed in the FOIA Update, Summer 1997.