

**Federal Trade Commission  
FREEDOM OF INFORMATION ACT ANNUAL REPORT  
Fiscal Year 2011  
(Oct. 1, 2010 - Sept. 30, 2011)**

**TABLE OF CONTENTS**

I.	Basic Information Regarding Report	2
II.	Making a FOIA Request	2
III.	Acronyms, Definitions, and Exemptions	3
IV.	Exemption 3 Statutes	7
V.	FOIA Requests	9
VI.	Administrative Appeals of Initial Determinations of FOIA Requests	10
VII.	FOIA Requests: Response Time for Processed and Pending Requests	12
VIII.	Requests for Expedited Processing and Requests for Fee Waiver	14
IX.	FOIA Personnel and Costs	14
X.	Fees Collected for Processing Requests	14
XI.	FOIA Regulations	15
XII.	Backlogs, Consultations, and Comparisons	15

## **I. Basic Information Regarding Report**

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

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Paralegal Specialist  
600 Pennsylvania Avenue, N.W., Room 585  
Washington, D.C. 20580  
(202) 326-3475  
[Mkilloy@ftc.gov](mailto:Mkilloy@ftc.gov)

### **2. Electronic link for access to the Report on the FTC's website:**

<http://www.ftc.gov/foia/annualreports.shtm>.

### **3. 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. Making 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 delay 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 requester's address and telephone number.

**1. 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  
Office of the General Counsel  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
Facsimile number is 202-326-2477.  
E-mail address is: [FOIA@FTC.GOV](mailto:FOIA@FTC.GOV)

**2. Brief description of why some requests are not granted and an overview of certain general categories of records to which the FOIA exemptions apply.**

The FTC primarily receives requests for consumer complaints regarding a company's business practices and requests for records relating to the FTC's law enforcement investigations. 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. Acronyms, Definitions, and Exemptions**

**1. Agency-specific acronyms or terms.**

FOIA – Freedom of Information Act (5 U.S.C. § 552)

FTC – Federal Trade Commission

HSR – Hart Scott Rodino (Clayton Act)

FY – Fiscal Year

PA – Privacy Act (5 U.S.C. § 552a)

**2. Basic terms, expressed in common terminology.**

**a. Administrative Appeal** – a request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.

**b. 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.

- c. **Backlog** – the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.
- d. **Component** – for agencies that process requests on a decentralized basis, a “component” is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in their Annual FOIA Report data for both the agency overall and for each principal component of the agency.
- e. **Consultation** – the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.
- f. **Exemption 3 Statute** – a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.
- g. **FOIA Request** – a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a “third-party” request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., “first-party” requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act “systems of records” or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require the agency to utilize the FOIA in responding to the requester are included in this Report.

Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this Report.)

- h. **Full Grant** – an agency decision to disclose all records in full in response to a FOIA request.
- i. **Full Denial** – an agency decision not to release any records in response to a FOIA request because the records are exempt in their entirety under

one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.

- j. Median Number** – the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
- k. 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 granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.
  - i. Expedited Processing** – an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.
  - ii. Simple Request** – a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.
  - iii. Complex Request** – a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.
- l. Partial Grant/Partial Denial** – in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.
- m. Pending Request or Pending Administrative Appeal** – a request or administrative appeal for which an agency has not taken final action in all respects.
- n. Perfected Request** – a request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.
- o. Processed Request or Processed Administrative Appeal** – a request or administrative appeal for which an agency has taken final action in all respects.
- p. Range in Number of Days** – the lowest and highest number of days to process requests or administrative appeals.
- q. Time Limits** – the time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).

### 3. Descriptions of the nine FOIA exemptions.

- a. **Exemption 1:** classified national defense and foreign relations information
- b. **Exemption 2:** internal agency rules and practices
- c. **Exemption 3:** information that is prohibited from disclosure by another federal law
- d. **Exemption 4:** trade secrets and other confidential business information
- e. **Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges
- f. **Exemption 6:** information involving matters of personal privacy
- g. **Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual
- h. **Exemption 8:** information relating to the supervision of financial institutions
- i. **Exemption 9:** geological information on wells

#### IV. Exemption 3 Statutes

Statute	Type of Information Withheld	Case Citation	Total Number of Times Relied upon by Agency
15 U.S.C. § 46(f) (Federal Trade Commission Act)	"[A]ny trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential."	Doherty v. FTC, No. 80-0513, 1981 WL 2094, at *3 (D.D.C. June 24, 1981) (15 U.S.C. § 46(f)).	65
15 U.S.C. §57b-2 (Federal Trade Commission Act)	Certain investigative materials received by the FTC and "provided pursuant to any compulsory process under this subchapter or which is provided voluntarily in place of such compulsory process"	A. Michael's Piano, Inc. v. FTC, 18 F.3d 138, 143-44 (2d Cir. 1994) (15 U.S.C. § 57b-2); Carter, Fullerton & Hayes, LLC v. FTC, 637 F. Supp. 2d 1, 9 (D.D.C. 2009) (15 U.S.C. § 57b-2); National Educ. Ass'n v. FTC, No. 79-959-S, 1983 WL 1883, at *1 (D. Mass. Sept. 26, 1983) (15 U.S.C. § 57b-2).	125
15 U.S.C. §57b-2(b)	Materials received pursuant to compulsory process in a law enforcement investigation.	Its use was upheld in <i>Dairymen, Inc. v. FTC</i> , 1980-2 Trade Cas. (CCH) ¶ 63,479 (D.D.C. July 9, 1980).	1

15 U.S.C. §18a(h)	Information submitted in connection with the premerger notification provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976	Its use was upheld in <i>Lieberman v. FTC</i> , 771 F.2d 32 (2 <sup>nd</sup> Cir. 1985).	15
21 U.S.C. § 355	Any information or documentary material that may have been filed pursuant to the pharmaceutical agreement notification	None	3
41 U.S.C. § 253b(m)(1)	Contractor proposals that are in the possession or control of an executive agency and that have not been set forth or incorporated by reference into contracts	<i>Margolin v. NASA</i> , No. 09CV-00421-LRH-VPC, 2011 WL 1303221, at *6 (D. Nev. Mar. 31, 2011); <i>Hornbostel v. U.S. Dep't of the Interior</i> , 305 F. Supp. 2d 21, 30 (D.D.C. 2003), summary affirmance granted, No. 03-5257, 2004 WL 1900562 (D.C. Cir. Aug. 25, 2004)	1

**V. FOIA Request**

**A. Received, Processed and Pending FOIA Requests**

	Number of Requests Pending as of Start of Fiscal Year	Number of Requests Received in Fiscal Year	Number of Requests Processed in Fiscal Year	Number of Requests Pending as of End of Fiscal Year
Agency Overall	32	1523	1527	28

**B. (1) Disposition of FOIA Requests- ALL Processed Request**

Number of Full Grants	Number of Partial Grants & Partial Denials	Number of Denials Based on Exemptions	Number of Full Denials Based on Other Reasons than Exemption								Total
			No Records	Request Withdrawn	Fee-Related Reason	Records Not Reasonably Described	Improper FOIA Request for Other Reason	Not Agency Record	Duplicate Request	Other *See Chart	
732	440	27	228	25	15	13	9	8	16	14	1527

**B. (2) Disposition of FOIA Request- “Other” Reasons for “Full Denials Based on Reasons Other Than Exemptions”**

Description of “Other” Reasons for Denials from Chart B (1) & Number of Times Those Reasons Were Relied Upon	Total
Public Records	8
Glomar (The agency could neither confirm nor deny the existence of a record)	5
Burden (The resources required to process these requests would have caused an unreasonably burdensome search and review for the agency)	1

**B. (3) Disposition of FOIA Requests-Number of Times Exemptions Applied**

	Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(a)	Ex. 7(b)	Ex. 7(c)	Ex. 7(d)	Ex. 7(e)	Ex. 7(f)	Ex. 8	Ex. 9
Agency Total	0	1	152	66	80	383	46	0	8	10	2	0	0	0

**VI. Administrative Appeals of Initial Determinations of FOIA Requests**

**A. Received, Processed and Pending Administrative Appeals**

Number of Appeals Pending as of Start of Fiscal Year	Number of Appeals Received in Fiscal Year	Number of Appeals Processed in Fiscal Year	Number of Appeals Pending as of End of Fiscal Year
0	28	25	3

**B. Disposition of Administrative Appeals- All Processed Appeals**

Number Affirmed on Appeal	Number Partially Affirmed & Partially Reversed/Remanded on Appeal	Number Completely Reversed/Remanded on Appeal	Number of Appeals Closed for other Reasons	Total
17	5	2	1	25

**C. (1) Reasons for Denial On Appeal-Number of Times Exemptions Applied**

Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(a)	Ex. 7(b)	Ex. 7(c)	Ex. 7(d)	Ex. 7(e)	Ex. 7(f)	Ex. 8	Ex. 9
0	0	7	3	6	2	1	0	0	1	0	0	0	0

**C. (2) Reasons for Denial on Appeal-Reasons Other than Exemptions**

No Records	Records Referred at Initial Request Level	Request Withdrawn	Fee Related Reason	Records Not Reasonably Described	Improper Request For other Reason	Not Agency Record	Duplicate Request or Appeal	Request in Litigation	Appeal Based Solely on Denial of Request for Expedited Processing	Other
0	0	0	4	0	1	0	0	0	0	1

**C. (3) Reasons for Denial on Appeal-Other Reasons**

Description of "Other" Reasons for Denial on Appeal from Chart C VI(2) & Number of Times those Reasons Were Relied upon	Total
Appeal Not Received in 30 Day Time Limit	1

**C. (4) Response time for Administrative Appeals**

Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
21.9	19.24	10	41

**C. (5) Ten Oldest Pending Administrative Appeals**

	10 <sup>th</sup> Oldest Appeal	9 <sup>th</sup>	8 <sup>th</sup>	7 <sup>th</sup>	6 <sup>th</sup>	5 <sup>th</sup>	4 <sup>th</sup>	3 <sup>rd</sup>	2 <sup>nd</sup>	Oldest Appeal
Date of Receipt of Ten Oldest Appeals	N/A	N/A	N/A	N/A	N/A	N/A	N/A	9/16/11	9/9/11	8/1/11
Number of Days Pending	N/A	N/A	N/A	N/A	N/A	N/A	N/A	10	15	44

**VII. FOIA Request: Response time for Processed and Pending Requests**

**A. Processed Request- Response time for All Processed Perfected Requests**

	Simple				Complex				Expedited Processing			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest number of Days	Median number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
Agency Overall	3	5.29	1	129	26.5	49.48	1	463	16	11.4	1	18

**B. Processed Requests- Response Time for Perfected Request in Which Information was Granted**

	Simple				Complex				Expedited Processing			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest number of Days	Median number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
Agency Overall	3	5.35	1	129	36.5	60.63	1	463	18	18	18	18

**C. Processed Requests- Response Time in Day Increments**

**Simple Request**

	< 1	1-20 Days	21-40 Days	41-60 Days	61-80 days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	Total
Agency total	81	1088	26	5	5	3	1	1	0	0	0	0	0	0	1210

**Complex Request**

	< 1	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	Total
Agency total	4	129	53	43	20	16	15	10	5	4	5	6	1	1	312

**Request Granted Expedited Processing**

	< 1	1-20 days	21-40 days	41-60 Days	61-80 days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ days	Total
Agency total	0	0	2	0	0	0	0	0	0	0	0	0	0	0	2

**D. Pending Request-All**

**All Pending Perfected Request**

	Simple			Complex			Expedited		
	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days
Agency Overall	15	1	1.53	15	17	67.07	0	0	0

**E. Pending Request-Ten Oldest Perfected Requests**

10 <sup>th</sup> Oldest Request and Number of Days Pending	9 <sup>th</sup>	8 <sup>th</sup>	7 <sup>th</sup>	6 <sup>th</sup>	5 <sup>th</sup>	4 <sup>th</sup>	3 <sup>rd</sup>	2 <sup>nd</sup>	Oldest Request and Number of Days Pending
9/7/2011 16	8/31/2011 17	8/31/2011 21	8/30/2011 23	7/14/2011 33	5/25/2011 88	3/31/2011 128	3/22/2011 133	12/20/2010 196	05/12/2010 329

**VIII. Request for Expedited Processing and Request for Fee Waiver**

**A. Request for Expedited Processing**

	Number Granted	Number denied	No Determination: Closed in less than 10 days	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated within Ten Calendar Days
Agency Total	2	12	7	8	10.46	8

**B. Request for Fee Waiver**

	Number Granted	Number denied	Not Billable	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
Agency Total	13	23	55	15	22.64

**IX. FOIA Personnel and Costs**

	Personnel			Costs		
	Number of "Full-Time FOIA Employees"	Number of "Equivalent Full-Time FOIA Employee"	Total Number of "Full-Time FOIA Staff"	Processing Costs	Litigation Related Costs	Total Costs
Agency Overall	2	4.606	6.606	369,626.11	0	369,626.11

**X. Fees collected For Processing Requests**

	Total Amount of Fees Collected	Percentage of Total Costs
Agency Overall	30,418.88	8.23

## XI. FOIA Regulations

The Federal Trade Commission's FOIA regulations, including fee schedule, are located at [FTC FOIA Regulations 16 CFR 4.11](#)

## XII. Backlogs, Consultations, and Comparisons

	Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
Agency Overall	7	3

### B. Consultations on FOIA Requests- Received, Processed, and Pending Consultations

	Number of Consultations Received from Other Agencies	Agency from which Consultation was Received
Agency Overall	1	The Food and Drug Administration

### C. Consultations on FOIA Requests- Ten oldest Consultations Received from Other Agencies and Pending at the FTC

	Number of Consultations Pending at the End of FY2011
Agency Overall	0

### D. Comparison of Numbers of Requests from Previous and Current Annual Report- Request Received, Processed, and Backlogged

	Number of Request Received		Number of Requests Processed	
	Number Received During FY2010	Number Received During FY2011	Number Processed During FY2010	Number Processed During FY2011
Agency Overall	1294	1523	1280	1527
	Number of Backlogged Requests as of End of FY 2010		Number of Backlogged Requests as of End of FY2010	
Agency Overall	20		7	

**E. Comparison of Numbers of Administrative Appeals from Previous and current Annual Report- Appeals, Received, Processed, and Backlogged**

	Number of Appeals Received		Number of Appeals Processed	
	Number Received During FY2010	Number Received During FY2011	Number Processed During FY2009	Number Processed During FY2010
Agency Overall	12	28	13	25

	Number of Backlogged Appeals as of End of FY 2010	Number of Backlogged Appeals as of End of FY2011
Agency Overall	0	3