

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Chief FOIA Officer Report



Office of Support Operations

February 26, 2020

High-Volume Agencies Receiving More Than 50 Requests in FY19

Content of 2020 Chief FOIA Officer Reports

Section I: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying DOJ's [FOIA Guidelines](#) is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

A. FOIA Leadership

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at the Assistant Secretary or equivalent level. Is your agency's Chief FOIA Officer at this level?

Yes.

2. Please provide the name and title of your agency's Chief FOIA Officer.

Barry Walters, Director of the Office of Support Operations.

B. FOIA Training

3. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any substantive FOIA training or conference during the reporting period such as that provided by the Department of Justice?

Yes.

4. If yes, please provide a brief description of the type of training attended or conducted and the topics covered.

Within the reporting period, SEC FOIA professionals attended training that included, but was not limited to, the following:

- Department of Justice Advanced Freedom of Information Act Seminar;
- Department of Justice Annual FOIA Report Training;
- FOIAXpress 10.2 training (upgrades were made to the system described in Section IV.1. below);
- In-house training focusing on FOIA Exemption 5 and the foreseeable harm standard.

5. Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

100% of the SEC's full-time FOIA staff attended substantive FOIA training.

6. OIP has [directed agencies](#) to “take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year.” If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency’s plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

N/A

C. Outreach

7. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency’s FOIA administration.

Throughout the reporting period, the Office of FOIA Services (OFS) staff regularly engaged the SEC FOIA requester community in order to better understand requests and to assist in timely processing. These interactions provided insight into the requesters’ priorities so that responses could be tailored to best suit their needs. An example of such interaction occurred in November 2019 when OFS contacted two of its frequent FOIA requesters, each of which submit in excess of 200 requests each month. These communications allowed the SEC to more efficiently process these requests.

Additional interaction with the FOIA community included:

- Met with MuckRock News after the SEC won the requester’s annual FOIA competition for the third consecutive year.
- Because of the SEC’s award winning FOIA program, the former Information Commissioner of the Republic of Croatia (2013-2018), asked to meet with the SEC in order to conduct research for an academic paper that will examine access laws in the United States and the European Union.
- The SEC met with a high volume requester to discuss its requests and processing.

During the reporting period, the Chief FOIA Officer and OFS staff met with a law school professor who is a transparency advocate conducting research for a book about the future of FOIA. The discussion concerned SEC FOIA processing and included such topics as resource constraints, measures taken to increase affirmative disclosure, and alternative methods of delivering information. The SEC used this opportunity to solicit what might be done to improve transparency at the SEC.

An SEC staff member presently serves on the FOIA Advisory Committee, which is designed to foster dialog with the requester community and thereby improve FOIA administration. Apart from federal employees, the committee is comprised of non-governmental FOIA advocates and academics.

D. Other Initiatives

8. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA.

SEC FOIA liaisons within the components of the SEC are required to annually review the SEC's "FOIA and Privacy Act Request Processing Guidance for Liaisons." This guidance describes the basic processes and procedures for FOIA liaisons and other SEC staff so that they might better assist the FOIA office in processing requests. Revisions are periodically made to the guidance to address changing law and OIP guidance.

The SEC's intranet provides links to the "DOJ Executive Briefing on the Freedom of Information Act" (<https://www.justice.gov/opa/video/department-justice-executive-briefing-freedom-information-act-foia>) and the DOJ OIP training page (<https://www.justice.gov/oip/training>).

SEC staff are encouraged to contact SEC FOIA Public Liaisons for any FOIA related issues or questions.

9. Optional -- If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

In recognition of "Sunshine Week" in March 2019, the Chairman of the SEC emailed all staff in order to highlight the importance of the FOIA and maintaining transparency and openness.

Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests

DOJ's [FOIA Guidelines](#) emphasize that "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." It is essential that agencies effectively manage their FOIA program.

Please answer the following questions to describe the steps your agency has taken to ensure that the management of your FOIA program is effective and efficient. You should also include any additional information that that describes your agency's efforts in this area.

1. For Fiscal Year 2019, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2019 Annual FOIA Report.

The average number of days for adjudicating requests for expedited processing was 5.43.

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

N/A

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report data, using active workflows and track management, reviewing and updating processing procedures, etc.

- Note: In September 2017, OIP released a FOIA Self-Assessment Toolkit as a resource for agencies conducting a self-assessment of their FOIA program. The Toolkit is available on OIP's website for all agencies to use.

The SEC relies upon quality control metrics that are constantly monitored and assessed. These metrics allow for more timely responses to requests for expedition and fee waivers, monitoring the backlog, managing staff workflows, more efficient complex track processing, and making adjustments in resource allocation and staff utilization to increase and manage production. The OFS generates monthly reports that include statistical analyses, which provide the ability to compare and contrast with prior reporting. The OFS management team continuously examines the FOIA process at the SEC to improve efficiency and to ensure compliance.

4. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2019 (please provide a total number or an estimate of the number).

Although OFS does not track this information, it is estimated that contact with SEC FOIA Public Liaisons occurred on ten (10) or fewer occasions. OFS includes an addendum page to response letters. This addendum was created in observation of the advisory opinion OGIS issued in July 2017 concerning agency communications and the need to notify requesters of OGIS's dispute resolution services and the services provided by agency FOIA Public Liaisons. Additionally, SEC FOIA Professionals comprise the SEC's FOIA Requester Service Center and routinely receive inquiries for assistance from requesters regarding their requests or the FOIA in general.

5. Optional -- Please describe:

- Best practices used to ensure that your FOIA system operates efficiently and effectively

OFS maintains a template repository to assist FOIA professionals in providing timely and quality responses to requesters. The template library addresses a variety of potential responses and scenarios.

- Any challenges your agency faces in this area

Section III: Steps Taken to Increase Proactive Disclosures

The Department of Justice has long focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you

should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

1. Provide examples of any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

During the reporting period the SEC proactively posted records to OFS's Frequently Requested Documents webpage at <https://www.sec.gov/foia-frequently-requested-documents>. Records requested three or more time can be found here. Examples of records that were requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D) during the reporting period:

- Chairman's Calendars (<https://www.sec.gov/foia/docs/sec-chair-calendar.htm>)
- Records on Tesla and Elon Musk (<https://www.sec.gov/files/tesla-elon-musk-records-foia-5.pdf>)

The following are examples of the records proactively posted on the OFS website:

[Information About Registered Investment Advisers and Exempt Reporting Advisers](#)
[Company Information About Active Broker-Dealers](#)
[Information About Registered Municipal Advisors](#)
[Investment Company Series and Class Information](#)
[Fails-to-Deliver Data](#)

Additional proactive disclosures are posted by the SEC at <https://www.sec.gov/open>. A sample of the records posted there follows:

High-value data sets
[Money Market Fund Information](#)
[Closed-End Fund Information](#)
[Business Development Company Report](#)
[SEC Administrative Proceedings for 2009 and 2010](#)
[SEC Litigation Releases for 2009 and 2010](#)

Records and Reports
[FY 2016 Congressional Justification in Brief](#)
[Agency Financial Reports](#)
[Reports on Equal Employment Opportunity Programs](#)

The SEC also posts specialized data in forms most helpful to the individuals who regularly access its website. This data includes records on the SEC's Division of Economic and Risk Analysis webpage at <https://www.sec.gov/dera/data>, which offers investors and market participants access to aggregated data from filings for research and analysis.

[Mutual Fund Prospectus Risk/Return Summary](#)
[Crowdfunding Offerings](#)
[Form D](#)
[Regulation A](#)

The SEC's Division of Investment Management's Analytics Office makes similar records available at <https://www.sec.gov/investment/analytics-office>:

[Investment Company Data](#)

[Investment Adviser Data](#)

[Money Market Fund Statistics](#)

[Private Funds Statistics](#)

[Annual Staff Report Relating to the Use of Form PF Data](#)

2. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website?

Yes.

3. If yes, please provide examples of such improvements.

The SEC regularly updates a log of additions to the website, which keeps visitors apprised of new information (<http://www.sec.gov/news/whatsnew/wn-today.shtml>). The SEC has a separate web page where high value data sets are available. <https://www.sec.gov/data>. Descriptions of the most recently published data sets can be found on the SEC's main web page. Individuals may sign up to receive SEC email updates as well. The SEC also has a form available on its website for the public to provide feedback and suggestions.

In promoting proactive disclosures, the SEC's FOIA webpage includes a "What's New" section that lists the five most recent postings to the FOIA page. Additionally, FOIA logs are posted quarterly. Many divisions and offices within the SEC make records available on their specific page of the SEC's website. Some divisions and offices maintain a separate space for newly available and/or frequently requested records. Examples are the Division of Trading and Markets, which has its own "Frequently Requested Documents" page at <https://www.sec.gov/divisions/marketreg/mrfreqreq.shtml> and the Division of Corporation Finance which posts "Frequently Requested Materials" at <https://www.sec.gov/divisions/corpfin/cffreqreq.shtml>.

4. Optional -- Please describe:

- Best practices used to improve proactive disclosures
- Any challenges your agency faces in this area

Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information more accessible. In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that that describes your agency's efforts in this area.

1. Is your agency leveraging or exploring any new technology to facilitate efficiency in its FOIA administration that you have not previously reported? If so, please describe the type of technology.

Yes. The OFS utilizes FOIAXpress, an electronic document management and tracking system that allows staff to store and review records and process FOIA requests. For new FOIA requests, searches of FOIAXpress can locate prior FOIA requests for the same records. All SEC databases are subject to FOIA searches. SEC staff search the appropriate database(s), including internal and external websites, to determine the existence of responsive records. Staff will also conduct generalized internet searches to determine the public availability of responsive records. This may include searches of LexisNexis and PACER, as necessary. All searches are conducted using the subject of the FOIA request or other key terms that might reasonably determine if any responsive records exist. Where there is uncertainty, key words are obtained by coordinating with the requester.

The SEC's Office of Records Management and OFS are working together on a project intended to modernize microfiche equipment available to FOIA staff. The ability to search microfiche provides requesters with access to records dating back as far as the 1930s.

The OFS website is consistently updated to make it easier for the public to submit FOIA and Privacy Act requests and appeals with online request forms.

2. OIP issued [guidance](#) in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources, and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

Yes.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2019?

Yes. All quarterly reports were posted to the SEC website at <https://www.sec.gov/foia/foia-reports.shtml#quarterly>. Only 3 of the 4 quarterly reports appeared on FOIA.gov.

4. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2020.

N/A

5. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2018 Annual FOIA Report and, if available, for your agency's Fiscal Year 2019 Annual FOIA Report.

FY 2018: <https://www.sec.gov/foia/arfoia18-raw.csv>

FY 2019: <https://www.sec.gov/foia/arfoia19-raw.csv>

6. Optional -- Please describe:

- Best practices used in greater utilizing technology
- Any challenges your agency faces in this area

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs

The Department of Justice has emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations.

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2019 Annual FOIA Report and, when applicable, your agency's 2018 Annual FOIA Report.

A. Simple Track

Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

1. Does your agency utilize a separate track for simple requests?

Yes.

2. If your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2019?

Yes.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2019 that were placed in your simple track.

99%

4. If your agency does not track simple requests separately, was the average number of days to process all non-expedited requests twenty working days or fewer?

N/A

B. Backlogs

Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2018 and Fiscal Year 2019 when completing this section of your Chief FOIA Officer Report.

BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?

No.

FY2018: 112

FY2019: 184

6. If not, did your agency process more requests during Fiscal Year 2019 than it did during Fiscal Year 2018?

No.

FY2018: 14,248

FY2019: 11,487

7. If your agency's request backlog increased during Fiscal Year 2019, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming requests.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

The SEC's request backlog increased during Fiscal Year 2019 due to a loss of staff and an increase in the complexity of the requests received. The complexity of the requests required further consultation with staff in other divisions and offices and review of voluminous documents. Further, all OFS staff responsible for processing FOIA requests were furloughed during the reporting period for 30 days. The combination of all these factors resulted in the request backlog increase.

8. If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2019. If your agency has no request backlog, please answer with "N/A."

The percentage of requests that make up the backlog = 1.59%. 11,546 = # of requests received. 184 = # of backlogged requests.

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?

No. (2018 backlog = 0; 2019 backlog = 4)

10. If not, did your agency process more appeals during Fiscal Year 2019 than it did during Fiscal Year 2018?

No. (2018 processed 637; 2019 processed 587)

11. If your agency's appeal backlog increased during Fiscal Year 2019, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming appeals.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

The small increase in the SEC's appeal backlog for Fiscal Year 2019 primarily reflects a normal fluctuation in how many appeals happen to be open at a time. The government furlough and the complexity of appeals, however, impacted the agency's timing in processing appeals. Staff in the Office of the General Counsel responsible for processing appeals were furloughed for 30 days, and Exemption 4 appeals required additional time in light of the Supreme Court's decision in *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019).

12. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2019. If your agency did not receive any appeals in Fiscal Year 2019 and/or has no appeal backlog, please answer with "N/A."

The percentage of requests that make up the backlog = .67%. 596 = # of appeals received. 4 = # of backlogged requests.

C. Backlog Reduction Plans

13. In the 2019 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2018 was asked to provide a plan for achieving backlog reduction in the year ahead. Did you agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2019?

N/A

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2019, what is your agency's plan to reduce this backlog during Fiscal Year 2020?

N/A

D. Status of Oldest Requests, Appeals, and Consultations

Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2018 and Fiscal Year 2019 when completing this section of your Chief FOIA Officer Report.

OLDEST REQUESTS

15. In Fiscal Year 2019, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

No.

16. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2018 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

One request was closed of the ten oldest from the 2018 Annual FOIA Report.

17. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

In order to reduce the overall age of pending requests, OFS follows best practices that include emphasizing consistent and meaningful communication with requesters, conducting regular training of FOIA and non-FOIA staff, and attempting to maintain a high degree of employee satisfaction.

TEN OLDEST APPEALS

18. In Fiscal Year 2019, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

Yes.

19. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2018 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

In FY18 there were 6 appeals still pending. All 6 were closed.

20. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

The SEC's Office of the General Counsel (OGC) processes all FOIA appeals. Adjudicating appeals can present complex issues that require further consultation with staff in other divisions and offices and review of voluminous documents. To reduce the overall age of pending appeals, OGC observes the best practices emphasized by OFS, which are articulated in Section V.D., Question 17.

TEN OLDEST CONSULTATIONS

21. In Fiscal Year 2019, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

N/A

22. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2018 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

N/A

E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans

23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2019.

OFS was only able to close one of its ten oldest pending perfected requests in Fiscal Year 2019. Time lost because of the furlough, staff attrition, and an increase in the complexity of the requests received prevented OFS from closing its ten oldest requests and appeals. Since the beginning of Fiscal Year 2020, OFS has closed four more of the ten oldest pending requests. This is reflected in the SEC's FY20 Q1 Quarterly FOIA Report.

24. If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was

initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

N/A

25. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2020.

The SEC plans to adhere to its best practices as described in response to Section V.D., Question 17.

F. Success Stories

Out of all the activities undertaken by your agency since March 2019 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency’s efforts. The success story can come from any one of the five key areas. As noted above, OIP will highlight these agency success stories during Sunshine Week. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

During the reporting period, an SEC FOIA staff member served on the FOIA Advisory Committee. The SEC is proud to have a voice in improving FOIA administration and transparency in the federal government.

As a medium-sized agency, the SEC processes FOIA requests at a level received at much larger federal agencies, averaging approximately 13,000 per year in each of the last three years. Despite the volume of requests, which included many of significant complexity, the SEC closed FY2019 with a backlog of 1.6% (184 requests).

The SEC was recognized by MuckRock, a non-profit, collaborative news site that requests, analyzes, and shares government records, as the Most Responsive Agency in their 2019 FOIA March Madness. This is the third consecutive year that the SEC has won this award.