

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Chief FOIA Officer Report



Office of Support Operations

March 5, 2013

SEC 2013 Chief FOIA Officer Report

Section I: Steps Taken to Apply the Presumption of Openness

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period? Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?

The Securities and Exchange Commission (SEC) held two training events and two FOIA conferences during the reporting time frame. In addition to the SEC-sponsored conferences, several FOIA staff members attended FOIA training offered by the Department of Justice and American Society of Access Professionals.

2. Did your agency make any discretionary releases of otherwise exempt information?

Each FOIA request is unique, and decisions to release or withhold records or portions thereof are made on a case-by-case basis after reviewing the records. Based on a comparison of the Fiscal Year (FY) 2011 and FY 2012 Annual FOIA reports, discretionary releases have increased.

3. What exemptions would have covered the information that was released as a matter of discretion?

Primarily, exemption (b)(5) would be used in cases of discretionary release.

4. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.

During FY 2012, the SEC was involved in initiatives to restore financial stability and to revise oversight capabilities. To foster public and industry awareness and involvement in reform efforts, the SEC posted information related to its rulemaking efforts to protect the investing public under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub.L. 111–203. Featured at the top of the SEC's homepage is a large area devoted to the SEC's initiatives under the reform legislation, which includes a section where all public comments are invited and posted.

5. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

Each FOIA request is unique, and decisions to release or withhold records or portions thereof are made on a case-by-case basis after reviewing the records. Documents are reviewed in light of the memoranda issued by the President and the Attorney General, and whether or not the release of documents would adversely affect the mission of the SEC.

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

As the Attorney General emphasized in his FOIA Guidelines, "[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."

This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support.

Describe here the steps your agency has taken to ensure that its system for responding to requests is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

1. Do FOIA professionals within your agency have sufficient IT support?

The SEC's FOIA operations are centralized at Headquarters under the Chief FOIA Officer. The Office of FOIA Services has strong support from the Office of Information Technology.

2. Do your FOIA professionals work with your agency's Open Government Team?

The Office of FOIA Services follows the protocol developed by the Open Government Team, located in the Office of the Secretary of the Commission. This protocol is posted on the SEC's website and serves to provide all SEC components with defined dissemination criteria along with data quality assurance guidelines. Due to the high volume of information posted daily by the SEC, there is also guidance on prioritization of requests for public posting. The Office of FOIA Services generally obtains top-level posting priority — meaning that requests for posting to the FOIA web page receive a same day or 1-day priority.

3. Has your agency assessed whether adequate staffing is being devoted to FOIA administration?

The Office of FOIA Services regularly assesses the staffing needs of the office based on the volume and complexity of FOIA requests. The Annual FOIA report is used to determine whether staff requires more training or additional FTE to meet statutory deadlines.

4. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, streamlining consultations, eliminating redundancy, etc.

The Annual FOIA Report provides an opportunity to audit the program for any unique or systemic issues. Each year the FOIA Officer reviews the results and underlying data in the Annual Report. Subsequently, findings may indicate that staff need focused training, policies or procedures may need to be revised or reinforced and/or that changes to system configuration are needed. Additionally, new or revised software enhancements may be indicated.

Section III: Steps Taken to Increase Proactive Disclosures

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Describe here the steps your agency has taken both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2012 to March 2013). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

1. Provide examples of material that your agency has posted this past year.

The SEC regularly posts new and timely investor-related information to its website. Examples include posting the latest regulatory actions front and center on the homepage, positioning the new Whistleblower tips and complaints portal at the top of the home page, maintaining a constant stream of new and updated information under our What's New tab, and categorizing information by topics that enable visitors to find information quickly.

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, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities on the site, creating mobile applications, providing explanatory material, etc.?

Proactive disclosures under the FOIA (5 USC 552(a)(2)) are the responsibility of all SEC offices. The SEC requires electronic filing and disclosure of an immense amount of registration and registration-related filings based on various provisions of the Securities and Exchange Acts. The Office of FOIA Services will contact the appropriate Division or Office to determine when or where the records will be made available and relay that information to the requestor.

3. If so, provide examples of such improvements.

In connection to regulatory reform, the following types of records are being published: rulemaking records and public comment letters; municipal advisor electronic registration; press releases; a variety of information for investors (see www.investor.gov); all Divisions and Offices have increased content on their web pages and the information is also accessible by subject-matter link; and the types of regulatory actions posted have increased to include SRO (Self-Regulatory Organization) and NMS (National Market Systems) Plans for public comment.

In addition to the postings described above, in FY 2012 the SEC posted additional or enhanced records to the Frequently Requested FOIA documents page including Office of Inspector General reports; data on Alternative Trading Systems; Fails to Deliver Data; and Company Information about Registered Investment Advisors and Active Broker Dealers.

4. Describe any other steps taken to increase proactive disclosures at your agency.

The SEC uses a variety of dissemination platforms to reach the widest possible audience for information dissemination. Examples include offering the public the opportunity to sign up for an RSS Feed of SEC news, or subscribe to receive SEC updates by e-mail. Public registrations are accessible via the EDGAR system on the SEC homepage. Investor alerts and bulletins can be linked to social web sites such as Twitter and Facebook via www.investor.gov.

Section IV: Steps Taken to Greater Utilize Technology

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. In 2010 and 2011, agencies reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2013, as we did in 2012, the questions have been further refined and now also address different, more innovative aspects of technology use.

Electronic receipt of FOIA requests:

1. Can FOIA requests be made electronically to your agency?

Yes.

2. If your agency is decentralized, can FOIA requests be made electronically to *all* components of your agency?

The SEC's FOIA operations are centralized in one office which has the capability to receive all requests electronically.

Online tracking of FOIA requests:

3. Can a FOIA requester track the status of his/her request electronically?

At this time requesters cannot track the status of their request electronically.

4. If so, describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.

N/A.

5. In particular, does your agency tracking system provide the requester with an estimated date of completion for his or her request?

N/A.

6. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability?

The Office of FOIA Services is exploring adding this functionality, subject to funding resources.

Use of technology to facilitate processing of requests:

7. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA

efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

The Office of FOIA Services partnered with the Office of Records Management Services to facilitate more efficient database searches to respond to FOIA requests. We are also exploring the feasibility of automatic posting of exhibits to public filings on the SEC's publicly searchable database, EDGAR.

8. If so, describe the technological improvements being made.

Please refer to the response to Number 7, above.

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

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section 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 and appeals. *For the figures required in this Section, please use those contained in the specified sections of your agency's 2012 Annual FOIA Report.*

1. 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. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.
 - a. Does your agency utilize a separate track for simple requests?

Yes.

- b. If so, for your agency overall, for Fiscal Year 2012, was the average number of days to process simple requests twenty working days or fewer?

Yes, the average was 14 days.

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

N/A.

2. Sections XII.D.(2) and XII.E.(2) of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report – Backlogged Requests/Appeals," show the numbers of any backlog of pending requests or pending appeals from Fiscal Year 2012 as compared to Fiscal Year 2011. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition, Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," and Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," from both Fiscal Year 2011 and Fiscal Year 2012 should be used for this section.

- a. If your agency had a backlog of requests at the close of Fiscal Year 2012, did that backlog decrease as compared with Fiscal Year 2011?

No.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011?

Yes.

- c. In Fiscal Year 2012, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2011?

No.

- d. In Fiscal Year 2012, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2011?

No.

3. If you answered "no" to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation:

Request Backlog:

- a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?

No.

- b. Was the lack of a reduction in the request backlog caused by a loss of staff?

Yes. During the relevant time period the FOIA Office experienced a temporary loss in staffing.

- c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?

Yes. During the relevant time period the SEC received an increasing number of requests for records that presented novel processing issues. For example, there was an increase in the number of requests for whistleblower records and market manipulation records. These records are inherently complex and require specialized review.

- d. What other causes, if any, contributed to the lack of a decrease in the request backlog?

N/A.

Administrative Appeal Backlog:

- a. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?

N/A.

- b. Was the lack of a reduction in the appeal backlog caused by a loss of staff?

N/A.

- c. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received?

N/A.

- d. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?

N/A.

4. OIP has issued guidance encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information. If your agency had a backlog in Fiscal Year 2012, please provide an estimate of the number of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

The SEC processes all FOIA requests with a high level of customer service in mind. Although it is not possible to provide an exact estimate on the number of backlogged requests where we provided an interim response, it is our practice to provide interim releases whenever possible.

Use of FOIA's Law Enforcement "Exclusions"

In order to increase transparency regarding the use of the FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to "treat the records as not subject to the requirements of [the FOIA]," 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. Did your agency invoke a statutory exclusion during Fiscal Year 2012?

No.

2. If so, what was the total number of times exclusions were invoked?

N/A.

Spotlight on Success

Out of all the activities undertaken by your agency since March 2012 to increase transparency and improve FOIA administration, describe here 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.

An example of SEC's commitment to improving FOIA administration is the increase in the number of requests that were granted in full, complemented by significantly fewer number of FOIA appeals received than in previous years.

In addition, despite unexpected staffing shortages for most of the year, and a near record number of requests received by the SEC in FY 2012, the agency processed almost as many requests as in FY 2011.