

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Chief FOIA Officer Report



Office of Support Operations

February 16, 2017

Agencies Receiving More than 1,000 Requests in FY2015

Content of 2017 Chief FOIA Officer Reports

Chief FOIA Officer: Barry Walters, Director of Support Operations

Section 1: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's [FOIA Memorandum](#) and the DOJ's [2009 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 Training

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

Yes.

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

Within the reporting period, FOIA professionals attended in-house training that focused on the application of FOIA exemptions, adequacy of search, responsiveness of records and fee related issues. This training included an overview of processing requests made under the Privacy Act. FOIA staff also attended additional training relating to effective communication with requesters.

All FOIA staff attended in-house training on FOIA processes concerning records within the SEC's Division of Corporation Finance. This training included a detailed review of the applicability of Exemption 4 of the FOIA.

SEC FOIA professionals attended the American Society of Access Professionals (ASAP) 9th National Training Conference. FOIA staff also attended the following courses offered by DOJ, Office of Information Policy: The FOIA for Attorneys and Access Professionals, DOJ Advanced FOIA Seminar, and the FOIA Processing Workshop. Further, during the reporting period FOIA staff attended IAPP Certification Foundation and Certified Information Privacy Professional/G Training.

3. 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.

4. 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

B. Outreach

5. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA?

In June and July 2016, the Chief FOIA Officer and the FOIA Officer met with “good government” groups (the Revolving Door Project, Vice News and the Project on Government Oversight), and a member of the academic community to explain SEC FOIA processing and to solicit what might be done to improve transparency at the SEC. Subsequently during the reporting period, the SEC reached out to these groups to determine if there was anything further that might be done to assist them.

6. If you did not conduct any outreach during the reporting period, please describe why.

N/A

C. Other Initiatives

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

The SEC’s Office of FOIA Services coordinated with DOJ’s Office of Information Policy in order to provide SEC staff with two FOIA e-Learning Modules. The first module is an in-depth course specifically designed for FOIA professionals. The second is a brief module designed for all federal employees that provides a primer on the FOIA. Both are available to all staff on the SEC’s internal training site.

In addition, the SEC posted to its website a video from the U.S. Department of Justice marking the 50th anniversary of the Freedom of Information Act. The video emphasizes the history and importance of the FOIA.

8. 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 2016, the Chair 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

The DOJ's [2009 FOIA Guidelines](#) emphasized 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 describes your agency's efforts in this area.

A. Processing Procedures

1. For Fiscal Year 2016, 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 2016 Annual FOIA Report.

5.38 days

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.

The Office of FOIA Services generated monthly reports that included statistical analyses, which provided the ability to compare and contrast with prior year reporting.

4. Please provide an estimate of how many requests your agency processed in Fiscal Year 2016 that were from commercial use requesters. If your agency is decentralized, please identify any components within your agency that received a majority of their requests from commercial use requesters.

8,037 requests were from commercial use requesters.

B. Requester Services

5. Does your agency provide a mechanism for requesters to provide feedback about their experience with the FOIA process at your agency? If so, please describe the methods used, such as making the FOIA Public Liaison available to receive feedback, using surveys posted on the agency's website, etc.

The SEC advises requesters in all substantive FOIA response letters that they may contact the SEC's FOIA public liaisons if they have any questions concerning the processing of their requests. FOIA Public Liaison contact information is provided in these letters. SEC FOIA Public Liaison contact information is also available on the SEC's FOIA webpage. Additionally, the SEC provides an electronic form on its FOIA webpage that allows the public to submit questions or comments. https://www.sec.gov/forms/foia_feedback.

6. 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 how often requesters sought assistance from your agency's FOIA Public Liaison.

Requesters sought assistance only occasionally. Contact with SEC FOIA Public Liaisons occurred in approximately 5% or less of the total requests made during the reporting period.

7. The FOIA Improvement Act of 2016 requires agencies to make their reference material or guide for requesting records or information from the agency electronically available to the public. Please provide a link to your agency's FOIA reference guide.

<https://www.sec.gov/Article/foia-reference-guide.html>

C. Other Initiatives

8. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as improving search processes, eliminating redundancy, etc., please describe them here.

The training that was referenced in Section 1, Part A. FOIA Training explored ways in which to eliminate unnecessary FOIA referrals to other divisions and offices within the SEC.

Section III: Steps Taken to Increase Proactive Disclosures

Both the [President's](#) and [DOJ's](#) FOIA memoranda 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.

A. Posting Material

1. Describe your agency's process or system for identifying "frequently requested" records that should be posted online.

Upon receipt of each request, SEC FOIA professionals conduct a search of the electronic FOIA tracking system for all prior requests made for the same records. Under normal circumstances, where it is determined that there have been three requests made for the same records; the

materials are posted to the SEC's website at Frequently Requested FOIA Documents at <https://www.sec.gov/oso/foia-freq-docs-custom-list-page>.

In addition, the SEC is moving forward with the Office of Information Policy's "Release to One, Release to All" initiative. This is being accomplished by the implementation of a public-facing web portal that complements the SEC's FOIA system. Ultimately, the portal will allow access to all FOIA requests filed with the SEC, all substantive response letters sent to the requesters by SEC FOIA staff, and all records released in response to FOIA requests.

2. Does your agency have a distinct process or system in place to identify other records for proactive disclosure? If so, please describe your agency's process or system.

The SEC takes affirmative steps to make information public without waiting for specific requests. Routinely, the SEC proactively posts information to its website in an effort to be more transparent and to better serve the public.

SEC FOIA staff review every request to determine where there may be a heightened public interest in the responsive records or an expectation of future interest. These records are then considered for proactive disclosure by posting them to the SEC's website.

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 encountered challenges that make it difficult to post records you otherwise would like to post?

Yes.

4. If so, briefly explain those challenges and how your agency is working to overcome them.

In response to this same question on the 2016 Chief FOIA Officer report, the SEC indicated that in certain instances records comprised of aggregate data were so large that posting was problematic. The SEC still experiences difficulties with this same issue.

For example, the SEC receives numerous requests for data related to Form ADV. Form ADV is the uniform form used by investment advisers to register with the SEC. Because of challenges with the size of the requested data, the SEC has had difficulty in posting the records. Despite challenges with large amounts of data, FOIA staff continues to coordinate with other SEC program offices in attempting to find less costly, more efficient ways to make posting possible.

5. Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.

During the reporting period the SEC posted the following records:

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- Commission Votes on actions filed in Federal Court from April 8, 2013 through August 26, 2016. <http://www.sec.gov/data/enforcement/commission-votes-actions-filed-cases-2013-04-10.xlsx>
 - Financial Statement Data Sets, which provide selected information extracted from exhibits to corporate financial reports filed with the Commission using eXtensible Business Reporting Language (XBRL). <https://www.sec.gov/dera/data/financial-statement-data-sets.html>
 - Fails-to-Deliver Data. <https://www.sec.gov/foia/docs/failsdata.htm>
 - Company Information About Active Broker-Dealers. <https://www.sec.gov/foia/docs/bdfoia.htm>
 - Money Market Fund Statistics. <https://www.sec.gov/divisions/investment/mmf-statistics/mmf-statistics-2016-11.pdf>
 - FOIA Request Logs by Quarter and Fiscal Year. <https://www.sec.gov/foia/docs/foia-logs.htm>

6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe these efforts.

In promoting proactive disclosures, the SEC's FOIA webpage has included a "What's New" section that lists the five most recent postings to the FOIA page. Additionally, FOIA logs are now posted quarterly, instead of annually.

Further, components within the SEC have announced the availability of records on their specific page of the SEC's website. Other SEC components maintain a separate space for newly available and/or frequently requested records. An example is the Division of Trading and Markets, which has its own "Frequently Requested Documents" page at <https://www.sec.gov/divisions/marketreg/mrfreqreq.shtml>.

Finally, during the reporting period the SEC's Office of FOIA Services directly contacted media outlets to advise them of the availability of records. These outlets had previously demonstrated interest in similar records.

B. Other Initiatives

7. If there are any other steps your agency has taken to improve proactive disclosures, please describe them here. For example, has your agency engaged requesters in determining how and what to post? Has your agency used web analytics to inform your proactive disclosures?

The SEC communicated directly with requesters regarding records that could be made proactively available online. The SEC has not used web analytics to inform its proactive disclosures.

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.

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.

A. Making Material Posted Online More Useful

1. 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.

2. 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>). Further, as referenced above in Section II, Part B. Requester Services, the SEC also has a form available for the public to provide feedback and suggestions.

3. Have your agency's FOIA professionals interacted with other agency staff (such as technology specialists or public affairs or communications professionals) in order to identify if there are any new ways to post agency information online?

The SEC's Office of FOIA Services routinely works with IT specialists and with SEC components in order to find ways to accommodate the requester community by enhancing search and access capabilities. For example, the Office of FOIA Services is presently coordinating with the SEC's Office of the Secretary to explore ways in which to make available, on an ongoing basis, the Commission votes on actions filed in Federal Court noted in Section III, Part A. Posting Material. In another instance, despite challenges with the size of the data, FOIA staff is currently working with the SEC's Division of Investment Management to post all Form ADV data obtained from a self-regulatory organization, the Financial Industry Regulatory Authority. It is anticipated that this data will be updated quarterly or semi-annually.

B. Use of Technology to Facilitate Processing of Requests

4. Did your agency conduct training for FOIA staff on any new processing tools during the reporting period, such as for a new case management system, or for search, redaction, or other processing tools?

No.

5. 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? If yes please describe:

- The technological improvements being made.
- The impact of using these technologies on your agency's request processing.

As noted in Section II, Part A. Posting Material, the SEC's Office of FOIA Services is implementing a public-facing web portal known as the Public Access Link (PAL). This portal will provide efficient and secure communication between requesters and the SEC. The PAL integrates with the SEC's FOIA processing application and tracking system, FOIA Xpress, to facilitate the SEC's disclosure of information. The PAL will allow for, among other things, real time request status updates, the ability to view the original request and submission of supporting documents to requests.

6. Are there additional tools that could be utilized by your agency to create further efficiencies?

The SEC continues searching for tools that will allow for more efficient processing. Obtaining and employing these tools, however, is often contingent upon cost and the availability of resources.

C. Other Initiatives

7. Did your agency successfully post all four quarterly reports for Fiscal Year 2016?

Yes.

8. 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 2017.

N/A

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

The President's FOIA Memorandum and the DOJ's 2009 FOIA Guidelines have 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 2016 Annual FOIA Report and, when applicable, your agency's 2015 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 so, for your agency overall in Fiscal Year 2016, was the average number of days to process simple requests twenty working days or fewer?

Yes.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2016 that were placed in your simple track.

Approximately 98% of the requests processed were placed in our simple track (14,949 Simple Processed vs. 15,196 Total Processed).

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 2015 and Fiscal Year 2016 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 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015? If not, explain why and describe the causes that contributed to your agency not being able reduce its backlog.

Yes.

6. If not, 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:

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- 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.

N/A

7. 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 2016.

0.6%

BACKLOGGED APPEALS

8. If your agency had a backlog of appeals at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015? If not, explain why and describe the causes that contributed to your agency not being able reduce backlog.

Yes

9. If not, 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.

N/A

10. 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 2016. If your agency did not receive any appeals in Fiscal Year 2016 and/or has no appeal backlog, please answer with "N/A."

0.3%

C. Backlog Reduction Plans

11. In the 2016 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2015 was asked to provide a plan for achieving backlog reduction in

the year ahead. Did your 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 2016?

N/A

12. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2016, what is your agency's plan to reduce this backlog during Fiscal Year 2017?

N/A

D. Status of Ten 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 2015 and Fiscal Year 2016 when completing this section of your Chief FOIA Officer Report.

TEN OLDEST REQUESTS

13. In Fiscal Year 2016, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

No

14. 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 2015 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

Seven out of the ten oldest requests were closed.

15. Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?

Two cases were withdrawn. Interim responses were provided in one of these cases.

TEN OLDEST APPEALS

16. In Fiscal Year 2016, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

Yes.

17. 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 2015 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that

N/A

TEN OLDEST CONSULTATIONS

18. In Fiscal Year 2016, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

Yes.

19. 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 2015 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

N/A

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

20. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2015.

Of the three oldest requests from Fiscal Year 2015, all were in our complex track. No appeals or consultations remained from the prior year.

21. 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

22. 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 2017.

The three remaining complex queue requests are presently being processed.

F. Interim Responses

23. Does your agency have a system in place to provide interim responses to requesters when appropriate? *See OIP Guidance, “[The Importance of Good Communication with FOIA Requesters](#).”* (Mar. 1, 2010)

SEC FOIA staff are trained to provide requesters with interim responses, rather than waiting until all records are located and processed. To the greatest extent possible, the SEC tries to issue rolling releases of records.

24. If your agency had a backlog in Fiscal Year 2016, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

A substantive, interim response was issued in approximately 5% or less of the cases in the SEC’s backlog for FY2016.

G. Success Stories

Out of all the activities undertaken by your agency since March 2016 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, these agency [success stories](#) will be highlighted during Sunshine Week by OIP. 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.

The SEC reduced its backlog of more than 2% (434 requests) in FY2015 to less than 1% (90 requests) in FY2016. The reduction was made possible by focusing on completing older requests while juggling an increase in the number of substantive requests from the prior year. In FY2015, the media submitted 20% of the SEC’s FOIA requests, while educational requesters submitted 5% of all requests. In FY2016, the media submitted 25% of the requests with educational requesters submitting 13% of all requests. Additionally, the SEC has been working to implement the Public Access Link to its FOIA tracking system, which will allow requesters and members of the public to access the status of requests online without the need to contact FOIA office liaisons.