

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

**Chief FOIA Officer Report**



**Office of Freedom of Information Act,  
Records Management, and Security**

**March 9, 2012**

## **2012 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?*

*The Securities and Exchange Commission (SEC) held two FOIA conferences during the reporting time frame, in July 2011 and September 2011.*

2. *Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?*

*In addition to the conferences mentioned above, several FOIA staff members attended FOIA training offered by DOJ and ASAP throughout the year.*

3. *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 FY2010 and FY2011 Annual FOIA reports, discretionary releases have increased.*

4. *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 withholding.*

5. *Describe your agency's process to review records to determine whether discretionary releases are possible.*

*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.*

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

*During FY 2011, 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 legislation. Featured at the top of the SEC's homepage is a large area devoted to the SEC's initiatives under the sweeping reform legislation, which includes a section where all public comments are invited and posted.*

*As the Chairman of the SEC notes, "This law creates a new, more effective regulatory structure, fills a host of regulatory gaps, brings greater public transparency and market accountability to the financial system and gives investors important protections and greater input into corporate governance."*

*In Section V.B.(1) of your agency's Annual FOIA Report, entitled "Disposition of FOIA Requests – All Processed Requests" the first two columns list the "Number of Full Grants" and the "Number of Partial Grants/Partial Denials." Compare your agency's 2011 Annual FOIA Report with last year's Annual FOIA Report, and answer the following questions:*

7. *Did your agency have an increase in the number of responses where records were released in full?*

*Yes. The SEC realized an increase of 36% more full releases.*

8. *Did your agency have an increase in the number of responses where records were released in part?*

*The SEC realized a decrease in partial releases.*

## **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. *Is there regular interaction between agency FOIA professionals and the Chief FOIA Officer?*

*Because the SEC's FOIA operations are centralized at Headquarters, the lines of communication and daily interaction between the FOIA staff and the Chief FOIA Officer are direct and frequent. The Chief FOIA Officer is regularly updated on FOIA Office needs and issues.*

3. *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 received a same day or 1-day priority.*

4. *Describe the steps your agency has taken to assess 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.*

5. *Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.*

*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 2011 to March 2012). 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. *Has your agency added new material to your website since last 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, and 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. *Provide examples of the records, datasets, videos, etc., that have been posted this past year.*

*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 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.*

3. *Describe the system your agency uses to routinely identify records that are appropriate for posting.*

*In addition to the postings described in 2., above, in 2011 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. *Beyond posting new material, is your agency taking steps to make the 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, 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. When public access appears limited to public filings, the Office of FOIA Services is contacted via a Public Information Request to assist in locating the records which should be publicly available. 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.*

5. *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](http://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 handling FOIA requests. For 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 processes requests on a decentralized basis, do all components of your agency receive requests electronically?*

*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 not, 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:*

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?*

*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.*

6. *If so, describe the technological improvements being made.*

*Please refer to the response to Number 5, 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 2011 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 2011, was the average number of days to process simple requests twenty working days or fewer?*

*Yes, the average was eleven 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 2011 as compared to Fiscal Year 2010. 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 2010 and Fiscal Year 2011 should be used for this section.*

- a. If your agency had a backlog of requests at the close of Fiscal Year 2011, did that backlog decrease as compared with Fiscal Year 2010?*

*Yes.*

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2011, did that backlog decrease as compared to Fiscal Year 2010?*

*No.*

- c. In Fiscal Year 2011, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2010?*

*Yes.*

- d. In Fiscal Year 2011, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2010?*



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? N/A*
- b. *Was the lack of a reduction in the request backlog caused by a loss of staff? N/A*
- c. *Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received? N/A*
- 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? No.*
- b. *Was the lack of a reduction in the appeal backlog caused by a loss of staff? No.*
- c. *Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the requests received? Yes.*
- d. *What other causes, if any, contributed to the lack of a decrease in the appeal backlog? None.*

*All agencies should strive to both reduce any existing backlogs or requests and appeals and to improve their timeliness in responding to requests and appeals. Describe the steps your agency is taking to make improvements in those areas. In doing so, answer the following questions and then also include any other steps being taken to reduce backlogs and to improve timeliness.*

1. *Does your agency routinely set goals and monitor the progress of your FOIA caseload?*

*The goal is to process within the time frame prescribed under the FOIA. FOIA workload progress is constantly monitored and measured via daily workload and case reports as well as meetings with staff.*

2. *Has your agency increased its FOIA staffing?*

*The Office of FOIA Services maintained its staffing levels from FY2010.*

3. *Has your agency made IT improvements to increase timeliness?*

*Yes. The commercial product used by the SEC to track requests is routinely updated. The product has been instrumental in organizing workload for efficiency and timeliness. Hardware improvements, such as faster, high-resolution scanners, are routinely procured as technology improves.*

4. *If your agency receives consultations from other agencies, has your agency taken steps to improve the efficiency of the handling of such consultations, such as utilizing IT to share the documents, or establishing guidelines or agreements with other agencies on the handling of particular information to speed up or eliminate the need for consultations?*

*To date, no issues have arisen regarding the process for handling consultations.*

**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 2011?*

*No.*

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

*N/A.*

**Spotlight on Success**

*Out of all the activities undertaken by your agency since March 2011 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.*

*Despite a record number of requests received by the SEC in FY2011, the agency's backlog continued to decrease, and the number of requests pending at the end of the fiscal year was the lowest it has been in 9 years.*