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# EXPORT-IMPORT BANK OF THE UNITED STATES

## Freedom of Information Act

### Chief FOIA Officer Report

March 15, 2010

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#### Part I – Steps Taken to Apply the Presumption of Openness

##### 1. Description

Shortly after President Obama issued the January 21, 2009 FOIA memorandum, and upon the issuance of Attorney General Holder's March 19, 2009 FOIA guidelines, the Office of the General Counsel provided guidance to the FOIA office, the Office of Communications, and other relevant senior staff on the content and legal significance of the memorandum. Most importantly, Bank staff involved in release determinations were notified of the need to shift Bank policy towards one of increased transparency and openness.

Exemption (b)(5), which encompasses the deliberative process privilege, is one of the exemptions most commonly used by the Bank. Release of documents that may be exempted under (b)(5) is one area where the Bank can and has exercised greater discretion in order to implement the presumption of openness. For example, as explained below, the Bank now releases certain memoranda and related correspondence that were previously withheld under (b)(5) on a routine basis.

##### 2. Disclosure Comparisons

When evaluating credit applications, Bank staff are required to prepare memoranda for the Bank's Board of Directors or Credit Committee that contain detailed analyses of the application under consideration as well as a financial analysis of the proposed borrower. The memoranda contain frank discussion and comments by staff and a recommendation for approval or denial. Preparation of these memoranda also generates internal correspondence between the Bank's various divisions.

In the past, the Board and Credit Committee memoranda and related correspondence were routinely withheld in full under Exemption (b)(5). Over the past year, the FOIA team has looked more closely at the use of Exemption (b)(5) and has released portions of these and other documents that had previously been withheld in full. In this regard, the overall use of Exemption (b)(5) has decreased. In FY 2008, Exemption (b)(5) was used in 15% of the requests processed in that year. In FY 2009, it was used in only 7% of requests.

The number of full grants and partial grants remained about the same on a percentage basis between FY 2008 and FY 2009. Of the requests processed in FY 2009 (88), 40% represented full grants and 43% were partial grants. Of the requests processed in FY 2008 (97), 42% represented full grants and 44% were partial grants.

## **Part II – Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests**

Ex-Im Bank is a small agency that over the past five years has received an average of 113 requests a year. The Bank's system for responding to requests has been in place for a number of years and has proven to be quite effective.

Most requests are received electronically either via email to a dedicated FOIA mailbox or through the Bank's web site. The requests are received electronically by the Bank's FOIA team to ensure that the initial request is seen by at least three people. The FOIA Specialist logs in the request and a tracking number is assigned and immediately provided to the requester via email. The FOIA Specialist analyzes each request to determine whether the request contains sufficient information to clearly identify the records in question. If the requested records are not clearly identified, the requester is contacted by telephone or in writing to seek clarification. If the request is overly broad, the FOIA Specialist works with the requester to determine their specific need so that the scope of the request can be narrowed.

Over the past year, the Bank installed the FOIAXpress software package to help make processing requests more efficient. FOIAXpress is discussed further in Part IV below.

The FOIA team meets weekly to review the status of all outstanding requests and discuss issues as they arise. This team approach has worked well to ensure that the status of every open request is regularly reviewed and discussed and that a request does not get overlooked.

## **Part III – Steps Taken to Increase Proactive Disclosures**

Ex-Im Bank has established an Open Government Initiative web page ([www.exim.gov/open](http://www.exim.gov/open)) containing information previously unavailable to the public. The page contains charts and graphs of program activity in addition to detailed downloadable data sets of the information behind the charts and graphs. These data sets are available at [USASpending.gov](http://USASpending.gov) as well and registered with [DATA.gov](http://DATA.gov). A link exists for the public to provide ongoing feedback on how the Bank can improve the availability and quality of information posted on the page. A formal plan is being developed that will build upon this initial effort.

## Part IV – Steps Taken to Greater Utilize Technology

1. Are requests received electronically.  
Yes. Most FOIA requests are received electronically via email ([foia@exim.gov](mailto:foia@exim.gov)) or through the Bank's web site at [www.exim.gov](http://www.exim.gov). Although most requests are received in this manner, a few requests are received through the mail or by fax.
2. If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically.  
N/A
3. Are requests tracked electronically.  
Yes. The Bank utilizes the FOIAXpress software package to track requests. All requests are entered in FOIAXpress; as they are entered the system assigns them a sequential tracking number. The system also generates an email to the requester advising them of their request tracking number.
4. If not, what are the current impediments to your agency utilizing a system to track requests electronically.  
N/A
5. Is technology used to process requests.  
Yes. The Bank installed FOIAXpress in July 2009. Prior to installation, all requests were processed manually. FOIAXpress has the capability to process a request from start to finish, storing all responsive documents electronically and performing redactions on-line. This has represented a significant shift towards the use of modern technology in the FOIA unit. While the transition is still underway, and some requests are still being processed manually, it is expected that through continued use of the system all requests will be processed through FOIAXpress.
6. If not, what are the current impediments to your agency utilizing technology to process requests.  
N/A.
7. Is the Annual FOIA Report prepared electronically.  
No.
8. If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report.  
FOIAXpress has the capability to produce the annual FOIA report. Because the system was implemented towards the end of FY 2009, the data transferred from the Bank's previous system was not entirely compatible and could not populate all the required elements to produce a complete report directly from FOIAXpress. By the end of FY 2010 the system will have been in use for more than a year and it is expected that the FY 2010 report will be produced directly from FOIAXpress.

## **Part V – Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests**

### 1. Backlog Status

At the end of FY 2009 there were 29 pending FOIA requests, the oldest of which was received July 28, 2008. At the end of FY 2008 there were 9 pending FOIA requests, the oldest of which was received March 7, 2007. There were no pending appeals at the end of FY 2009 or FY 2008.

### 2. Backlog Reduction Steps

The Bank employs one full time FOIA Specialist. Generally, when a backlog starts to develop, temporary help is brought in until the backlog is reduced. However, as discussed below, because of vacancies in the legal department, it was determined that there would have been little benefit in obtaining additional FOIA help. Now that vacancies have been filled in the legal department, the FOIA office has contracted for temporary FOIA assistance to reduce the current backlog.

### 3. Steps to Improve Timeliness

Response times increased in FY 2009 over FY 2008. This was due in part to several vacancies that occurred throughout the year at both the staff level and at senior management positions. The vacancies were in the legal department where the FOIA office routinely consults just before documents are packaged for release. Because the legal department was understaffed, it was unable to handle the usual FOIA workload. The vacancies were not immediately filled due to the transition in administrations. These factors resulted in an increase in the Bank's internal review and sign-off process. Since the beginning of FY 2010, however, vacancies have been filled which is expected to greatly reduce response times.