

Federal Trade Commission
FREEDOM OF INFORMATION ACT ANNUAL REPORT
Fiscal Year 2008
(Oct. 1, 2007 - Sept. 30, 2008)



TABLE OF CONTENTS

I.	Basic Information Regarding Report.....	2
II.	Making a FOIA Request.....	2
III.	Acronyms, Definitions, and Exemptions.....	3
IV.	Exemption 3 Statutes.....	7
V.	FOIA Requests.....	8
VI.	Administrative Appeals of Initial Determinations of FOIA Requests.....	9
VII.	FOIA Requests: Response Time for Processed and Pending Requests.....	10
VIII.	Requests for Expedited Processing and Requests for Fee Waiver.....	13
IX.	FOIA Personnel and Costs.....	14
X.	Fees Collected for Processing Requests.....	14
XI.	FOIA Regulations.....	14
XII.	Backlogs, Consultations, and Comparisons.....	14

I. Basic Information Regarding Report

A. Name, title, address, and telephone number of person to be contacted with questions about the report.

Christopher Falcone
Paralegal Specialist
600 Pennsylvania Avenue, N.W., Room 585
Washington, D.C. 20580
(202) 326-2027
cfalcone@ftc.gov

B. Electronic address for report on the World Wide Web.

<http://www.ftc.gov/foia/2008r-fo.pdf>

C. How to obtain a copy of the report in paper form.

Federal Trade Commission
Consumer Response Center
Room 130
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

II. How to Make a FOIA Request

All FOIA requests must be in the form of a written request precisely describing the records sought. Any request for nonpublic records will be handled as a FOIA request regardless of how it is identified, but requests should be identified as a "FOIA request" in order to avoid delay in processing.

FOIA requests should contain a precise description of the records sought, including the subject matter, relevant time period, and the name and address of any company to which the request pertains. Requests should also include an agreement to pay any FOIA processing fees, and the requester's address and telephone number.

1. Names, addresses, and telephone numbers of all individual agency components and offices that receive FOIA requests.

Regardless of how submitted (via mail, fax, or e-mail) requests should be addressed as follows:

Freedom of Information Act Request
Office of the General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Facsimile number is 202-326-2477.

E-mail address is: FOIA@FTC.GOV

2. Description of why some requests are not granted.

The majority of requests that are initially denied, or partially denied, are based on personal privacy concerns reflected in FOIA Exemption 6. Many denials are also due to statutory constraints on disclosure or because disclosure would interfere with ongoing law enforcement activities.

III. Acronyms, Definitions, and Exemptions

1. Agency-specific acronyms or terms.

1. FOIA – Freedom of Information Act (5 U.S.C. § 552)
2. FTC – Federal Trade Commission
3. HSR – Hart Scott Rodino (Clayton Act)
4. FY – Fiscal Year
5. PA – Privacy Act (5 U.S.C. § 552a)

2. Basic terms, expressed in common terminology.

- a. **Administrative Appeal** – a request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.
- b. **Average Number** – the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.
- c. **Backlog** – the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.

- d. **Component** – for agencies that process requests on a decentralized basis, a “component” is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in their Annual FOIA Report data for both the agency overall and for each principal component of the agency.
- e. **Consultation** – the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.
- f. **Exemption 3 Statute** – a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.
- g. **FOIA Request** – a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a “third-party” request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., “first-party” requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act “systems of records” or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require the agency to utilize the FOIA in responding to the requester are included in this Report.

Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this Report.)

- h. **Full Grant** – an agency decision to disclose all records in full in response to a FOIA request.
- i. **Full Denial** – an agency decision not to release any records in response to a FOIA request because the records are exempt in their entirety under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.
- j. **Median Number** – the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.

- k. **Multi-Track Processing** – a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.
 - i. **Expedited Processing** – an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.
 - ii. **Simple Request** – a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.
 - iii. **Complex Request** – a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.
 - l. **Partial Grant/Partial Denial** – in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.
 - m. **Pending Request or Pending Administrative Appeal** – a request or administrative appeal for which an agency has not taken final action in all respects.
 - n. **Perfected Request** – a request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.
 - o. **Processed Request or Processed Administrative Appeal** – a request or administrative appeal for which an agency has taken final action in all respects.
 - p. **Range in Number of Days** – the lowest and highest number of days to process requests or administrative appeals.
 - q. **Time Limits** – the time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).
3. Descriptions of the nine FOIA exemptions.
- a. **Exemption 1:** classified national defense and foreign relations information
 - b. **Exemption 2:** internal agency rules and practices

- c. **Exemption 3:** information that is prohibited from disclosure by another federal law
- d. **Exemption 4:** trade secrets and other confidential business information
- e. **Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges
- f. **Exemption 6:** information involving matters of personal privacy
- g. **Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual
- h. **Exemption 8:** information relating to the supervision of financial institutions
- i. **Exemption 9:** geological information on wells

IV. Exemption 3 Statutes

Statute	Type of Information Withheld	Case Citation	Total Number of Times Relied upon by Agency
FTC Act Section 6f, 15 U.S.C. §46(f)	“Any trade secrets or any commercial or financial information which is obtained from any person and which is privileged or confidential.”	Its use was upheld in <i>Doherty v. FTC</i> , 1981-1 Trade Cas. (CCH) § 64,117 (D.D.C. June 24, 1981).	23
FTC Act Section 21b, 15 U.S.C. §57b-2(b)	Materials received pursuant to compulsory process in a law enforcement investigation.	Its use was upheld in <i>Dairymen, Inc. v. FTC</i> , 1980-2 Trade Cas. (CCH) ¶ 63,479 (D.D.C. July 9, 1980).	4
FTC Act Section 21f, 15 U.S.C. §57b-2(f)	Material obtained pursuant to process or voluntarily in lieu of process in a law enforcement investigation.	Its use was upheld in <i>A. Michael's Piano v. FTC</i> , 18 F.3d 138 (2d Cir. 1994).	123
Clayton Act (Hart-Scott-Rodino Provisions), Section 7A(h), 15 U.S.C. §18a(h)	Material filed pursuant to the premerger (HSR) provisions of the Act.	Its use was upheld in <i>Lieberman v. FTC</i> , 771 F.2d 32 (2 nd Cir. 1985).	13
Section 1114 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, 21 U.S.C. § 355	Any information or documentary material that may have been filed pursuant to the pharmaceutical agreement notification.	None	2
Section 821 of the National Defense Authorization Act for Fiscal Year 1997, 41 U.S.C. §253b(m)(1)	Prohibits the disclosure of unsuccessful contract bid proposals.	Its use was upheld in <i>Hornbostel v. Department of Interior</i> , 305 F. Supp. 2d21 (D.D.C. 2003).	1

V. FOIA Requests

A. Received, Processed and Pending FOIA Requests

	Number of Requests Pending as of Start of Fiscal Year	Number of Requests Received in Fiscal Year	Number of Requests Processed in Fiscal Year	Number of Requests Pending as of End of Fiscal Year
Agency Overall	2	1184	1178	8

B. (1) Disposition of FOIA Requests – All Processed Requests

Number of Full Grants	Number of Partial Grants/Partial Denials	Number of Full Denials Based on Exemptions	Number of Full Denials Based on Reasons Other than Exemptions									
			No Records	All Records Referred to Another Component or Agency	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper FOIA Request for Other Reason	Not Agency Record	Duplicate Request	Other	Total
612	341	13	152	1	40	3	4	4	2	2	4	1178

B. (2) Disposition of FOIA Requests – “Other” Reasons for “Full Denials Based on Reasons Other than Exemptions”

Description of “Other” Reasons for Denials from Chart B (1) & Number of Times Those Reasons Were Relied upon	Total
Public Record (4)	4

B. (3) Disposition of FOIA Requests – Number of Times Exemptions Applied

	Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
Agency Total	0	7	145	22	57	298	22	0	0	1	0	0	0	0

VI. Administrative Appeals of Initial Determinations of FOIA Requests

A. Received, Processed and Pending Administrative Appeals

Number of Appeals Pending as of Start of Fiscal Year	Number of Appeals Received in Fiscal Year	Number of Appeals Processed in Fiscal Year	Number of Appeals Pending as of End of Fiscal Year
2	15	15	2

B. Disposition of Administrative Appeals – All Processed Appeals

Number Affirmed on Appeal	Number Partially Affirmed & Partially Reversed/Remanded on Appeal	Number Completely Reversed/Remanded on Appeal	Number of Appeals Closed for Other Reasons	Total
11	2	1	1	15

C. (1) Reasons for Denial on Appeal – Number of Times Exemptions Applied

Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
0	1	2	2	4	3	6	0	0	0	0	0	0	0

C. (2) Reasons for Denial on Appeal – Reasons Other than Exemptions

No Records	Records Referred at Initial Request Level	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper Request for Other Reasons	Not Agency Record	Duplicate Request or Appeal	Request in Litigation	Appeal Based Solely on Denial of Request for Expedited Processing	Other
1	0	1	0	0	0	0	0	0	0	1

C. (3) Reasons for Denial on Appeal – “Other” Reasons

Description of “Other” Reasons for Denial on Appeal from Chart C(2) & Number of Times Those Reasons Were Relied upon	Total
Submitted out-of-time (1)	1

C. (4) Response Time for Administrative Appeals

Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
14	13.8	9	20

C. (5) Ten Oldest Pending Administrative Appeals

	10 th Oldest Appeal	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Appeal
Date of Receipt of Ten Oldest Appeals	0	0	0	0	0	0	0	0	9/26/08	9/15/08
Number of Days Pending	0	0	0	0	0	0	0	0	3 days	12 days

VII. FOIA Requests: Response Time for Processed and Pending Requests

A. Processed Requests – Response Time for All Processed Perfected Requests

	Simple				Complex				Expedited Processing			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
Agency Overall	5	8.29	1	218	21	33.02	1	146	0	0	0	0

B. Processed Requests – Response Time for Perfected Requests in Which Information Was Granted

	Simple				Complex				Expedited Processing			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
Agency Overall	5	8.02	1	125	29	39.05	1	146	0	0	0	0

C. Processed Requests – Response Time in Day Increments

Simple Requests

	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	Total
Agency Overall	916	54	7	4	2	1	1	0	0	0	1	0	0	986

Complex Requests

	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	Total
Agency Overall	93	48	19	13	8	4	6	1	0	0	0	0	0	192

Requests Granted Expedited Processing

	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	Total
Agency Overall	0	0	0	0	0	0	0	0	0	0	0	0	0	0

D. Pending Requests – All

Pending Perfected Requests

	Simple			Complex			Expedited Processing		
	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days
Agency Overall	2	8.5	8.5	5	4	5.4	0	0	0

E. Pending Requests – Ten Oldest Perfected Requests

Agency Overall	10 th Oldest Request and Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Request and Number of Days Pending
		0	0	9/28/08 2 days	9/25/08 4 days	9/25/08 4 days	9/24/08 5 days	9/23/08 6 days	9/16/08 11 days	9/15/08 12 days

VIII. Requests for Expedited Processing and Requests for Fee Waiver

A. Requests for Expedited Processing

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
Agency Overall	0	0	0	0	0

B. Requests for Fee Waiver

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
Agency Overall	5	7	18.5	20.67

IX. FOIA Personnel and Costs

	Personnel			Costs		
	Number of “Full-Time FOIA Employees”	Number of “Equivalent Full-Time FOIA Employee”	Total Number of “Full-Time FOIA Staff	Processing Costs	Litigation-Related Costs	Total Costs
Agency Overall	5	1.665	6.665	\$385,766.21	\$47,539.28	\$433,305.49

X. Fees Collected for Processing Requests

	Total Amount of Fees Collected	Percentage of Total Costs
Agency Overall	\$29,339.60	6.77%

XI. FOIA Regulations

The Federal Trade Commission’s FOIA regulations, including the fee schedule, are located at <http://www.ftc.gov/foia/index.shtm>.

XII. Backlogs, Consultations, and Comparisons

A. Backlogs of FOIA Requests and Administrative Appeals

	Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
Agency Overall	1	0

We received a complex FOIA request and estimated that it would cost several million dollars to complete due to the voluminous number of documents and the search time. After negotiating with the requester, they narrowed the scope of the request. Thus far, we have sent five partial responses totaling approximately 6,000 pages of records.

B. Consultations on FOIA Requests – Received, Processed, and Pending Consultations

The Federal Trade Commission did not receive any consultations from other agencies during FY2008.

C. Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency

The Federal Trade Commission did not receive any consultations from other agencies during FY2008.

D. Comparison of Numbers of Requests from Previous and Current Annual Report – Requests Received, Processed, and Backlogged

	Number of Requests Received		Number of Requests Processed	
	Number Received During FY2007	Number Received During FY2008	Number Processed During FY2007	Number Processed During FY2008
Agency Overall	1038	1184	1055	1178

	Number of Backlogged Requests as of End of FY2007	Number of Backlogged Requests as of End of FY2008
Agency Overall	0	1

E. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report – Appeals Received, Processed, and Backlogged

	Number of Appeals Received		Number of Appeals Processed	
	Number Received During FY2007	Number Received During FY2008	Number Processed During FY2007	Number Processed During FY2008
Agency Overall	19	15	19	15

	Number of Backlogged Appeals as of End of FY2007	Number of Backlogged Appeals as of End of FY2008
Agency Overall	0	0