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# EXPORT-IMPORT BANK OF THE UNITED STATES

## Freedom of Information Act

### Chief FOIA Officer Report

February 28, 2012

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

##### 1. Description of Steps Taken

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, Ex-Im Bank’s Office of the General Counsel (OGC) provided guidance to the FOIA office, the Office of Communications, and other relevant senior staff on the content and legal significance of the memorandum. Bank staff involved in release determinations were notified of the need to shift Bank policy towards one of increased transparency and openness.

In 2011, Ex-Im Bank continued to exercise ever-greater discretion and further minimized the application of FOIA Exemption (b)(5), which encompasses the deliberative process privilege and is the second most common Exemption the Bank considers when processing FOIA requests. In order to maximize discretionary releases, Ex-Im Bank’s FOIA Specialist meets frequently with staff attorneys to review and discuss pending requests whose responsive documents include material that was previously withheld under Exemption (b)(5). And, the FOIA Team now consults more frequently with the Bank components that created/generated the records in question, in order to discuss the records’ significance and determine any actual harm in disclosure.

In 2011 as in previous years, Ex-Im Bank’s FOIA Team attended and participated in such informational gatherings as DOJ Updates and American Society of Access Professionals’ (ASAP) FOIA Training seminars. While Ex-Im Bank did not conduct formal training in 2011, the FOIA Team has been making appropriate Bank staff aware of the significance of timely searches for and production of responsive documents; this has, on occasion, been an issue when some offices are not aware that the FOIA Team is required to review all documents responsive to a FOIA request, including those that may be released on a discretionary basis. Ex-Im Bank is moving forward with its plans to update its FOIA regulations in the year ahead and will incorporate the “presumption of openness” principle into the new version.

##### 2. Making Headway

When Ex-Im Bank receives applications for participation in its loan, guarantee and insurance programs, a great deal of E-Mail correspondence is traditionally generated as each potential transaction makes its way through the Bank’s due diligence and decision-making processes. This correspondence contains candid discussion, comments and

recommendations by Bank staff. Quite often, Bank staff attorneys are included in this correspondence, providing legal advice and recommendations to staff processing the applications. This dialog is especially sensitive because it often addresses matters of a high degree of business confidentiality, such as financial information that is being submitted to the Bank as part of the application process.

In 2011, Ex-Im Bank continued to receive several requests whose responses involved the Team's review of many more than usual of these lengthy E-Mail "threads". This E-Mail correspondence had typically been withheld in full or in part in accordance with Exemption (b)(5), under both the deliberative process *and* the attorney-client privileges. Over the past year, Ex-Im Bank continued to apply the presumption of openness by more closely examining the use of Exemption (b)(5) and has released greater portions of these and other documents that had previously been withheld in full or in part. In this regard, the overall use of Exemption (b)(5) has decreased. In FY 2010, Exemption (b)(5) was used in 8.5% of the requests processed in that year, with a slight decrease to 8% in FY 2011. Significantly, the Bank has nonetheless released information contained in these documents that would previously have been withheld under Exemption (b)(5).

In FY 2011, full grants increased slightly and partial grants decreased slightly in comparison with FY 2010. Of the 95 requests processed in FY 2010, 39% represented full grants and 43% were partial grants. Of the 100 requests processed in FY 2011, 41% were full grants and 41% 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 100 requests per 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.

Ex-Im Bank receives most requests electronically, either via E-Mail to a dedicated FOIA mailbox or through a fillable form on the Bank's web site. Because Ex-Im Bank is a small Agency and its FOIA office is centralized, there is only one component within the Bank which receives FOIA requests. Each member of the Bank's FOIA Team receives these requests via E-Mail; this ensures that the initial request is seen by at least two people. The FOIA Team logs in each request and a tracking number is assigned and immediately provided to the requester via E-Mail. The Team 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 identifiable, the FOIA Public Liaison contacts the requester via telephone or E-Mail to seek clarification. If the request is overly broad, the Liaison works with the requester to determine their specific need so the scope of the request can be clearly defined and the request can be processed in the most expeditious manner possible.

Ex-Im Bank hired one temporary employee for six months in FY 2011 to assist with processing backlogged FOIA requests. Ex-Im Bank is, as of this report, awaiting the arrival of one temporary FOIA analyst to assist with backlog reduction. Additionally, the Team continues to employ an informal “fast track” response system, which allows us to process simpler requests expeditiously without delaying the handling of more complex requests.

Ex-Im Bank has also made IT improvements to allow us to process requests in a more timely manner: the Bank utilizes a FOIA-specific software package to more efficiently track, provide responses to and otherwise process FOIA requests. All members of the Bank’s centralized FOIA Team have access to this software, which is further discussed in Part IV below. Ex-Im Bank’s FOIA Team does, indeed, enjoy effective IT support. Specific members of the Bank’s Information Technology (IT) Team have been assigned to serve as liaisons between the FOIA Team and the software vendor’s IT staff; this support has proven to be integral to successful utilization of this software. Members of the Bank’s FOIA and IT Teams regularly consult with the software vendor’s IT staff in order to identify, discuss and effect updates and improvements.

The FOIA Team meets regularly to review the status of all outstanding requests and discuss any issues as they arise, and to set and adjust goals if necessary. And, the FOIA Public Liaison meets weekly with the Chief FOIA Officer to discuss any ongoing FOIA issues and actions that may need to be taken.

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

In FY 2011, Ex-Im Bank proactively placed a large amount of statistical data related to Bank transactions on our FOIA Web site. These data files contain information on participants in the transactions, as well as on the transactions themselves, over the past five years, and are updated quarterly. To maximize use by the public, the files are downloadable and are posted in CSV format for the users’ convenience; users may create custom reports using these files. Also included with each data file is a “key” that explains each column heading in every data file. These files are available on Ex-Im Bank’s Web site at <http://www.exim.gov/open/index.cfm#downdata>. The Bank has received a great deal of positive feedback from the public in response to this posting, from previous FOIA requesters as well as individuals who would have otherwise requested the data under the FOIA. Ex-Im Bank is also working with our IT Team to create a FOIA-specific feedback button and a search mechanism on our FOIA Web site.

Ex-Im Bank’s FOIA and Open Government Teams work together to maintain its Open Government Initiative web page ([www.exim.gov/open](http://www.exim.gov/open)) containing information previously unavailable to the public unless requested. The page contains charts and graphs of program activity in addition to detailed downloadable data sets of the information behind the charts and graphs. 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.

Ex-Im Bank's FOIA Team meets at least quarterly to review recent disclosures, identify request and disclosure trends as well as information that may be of interest to the public, and discusses placing that information on our FOIA Web site. The Team is investigating the possible use of social media such as Twitter and Facebook, on which Ex-Im Bank would place live links to proactive disclosures on our Web site, as well as information and updates on the Bank's FOIA process. The Bank is also considering the use of YouTube for disseminating information to the public about Ex-Im Bank's FOIA process, progress, request trends and recent disclosures.

#### **Part IV – Steps Taken to Greater Utilize Technology**

Ex-Im Bank is a small Agency whose FOIA function is centralized, so requests go to only one "component". All members of the FOIA Team have the capability to receive and track FOIA requests electronically. Ex-Im Bank receives most of its FOIA requests electronically via E-Mail ([foia@exim.gov](mailto:foia@exim.gov)) or through a fillable form on the Bank's web site at [www.exim.gov](http://www.exim.gov). The Bank also receives several requests per year via U.S. Mail or facsimile. Although FOIA requesters currently are not able to electronically track their requests, Ex-Im Bank is planning to acquire enhancements to its FOIA processing software package that will allow that to take place within the next year. Ex-Im Bank is also investigating the purchase and use of "de-duplicating" software, which would be particularly useful when processing lengthy E-Mail "threads" in response to FOIA requests. Additionally, more internal documents are being filed electronically at the time they are created, making it faster and easier to conduct searches for these documents.

Ex-Im Bank utilizes a FOIA-specific software package to track and process FOIA requests. All requests are entered into this system; as they are entered, the system assigns them a sequential tracking number. The system also generates an E-Mail to the requester acknowledging the Bank's receipt of their request and providing them with their request's tracking number. It also provides the name and telephone number of a member of the FOIA Team in the event the requester has questions or would like to inquire as to the status of his/her request. The software package has the capability to process a request from receipt through to completion, storing all responsive documents electronically and allowing redactions to be made on-line. This software package also generates Ex-Im Bank's Annual FOIA Report. Ex-Im Bank's FOIA and IT Teams regularly consult with the software vendor's IT staff to further enhance and fine-tune the package to Ex-Im Bank's specific needs, from everyday processing functions to generating the Annual FOIA Report.

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

Ex-Im Bank does use separate tracks for simple and complex FOIA requests. For FY 2011, the average number of days to process requests classified as “Simple” was 32, with the lowest number of days being one.

### 1. Backlog Status

Ex-Im Bank’s end-of-year backlog of requests increased slightly from 22 at FYE 2010 to 24 at FYE 2011. The end-of-year backlog of appeals increased from zero at FYE 2010 to one at FYE 2011.

In FY 2011, Ex-Im Bank closed out eight of the “Ten Oldest Pending FOIA Requests” discussed in the Bank’s FY 2010 Annual FOIA Report. There were no backlogged or pending appeals at the end of FY 2010. The increased backlog of FOIA requests is not the result of either a) an increase in the number of requests or b) a loss of staff; rather, the increase has resulted from a larger than usual amount of **complex** FOIA requests whose responsive documents were exceptionally voluminous.

### 2. Backlog Reduction Steps

Ex-Im Bank’s FOIA Team meets regularly to monitor the FOIA caseload and to and discuss any issues as they arise, including backlogged requests, and to set and adjust goals if necessary. Generally, when a backlog trend is identified, the Bank hires temporary staff to help clear the backlog. Ex-Im Bank hired one temporary employee for six months in FY 2011 to assist with reducing the backlog of requests and is, as of this report, awaiting the arrival of one temporary FOIA analyst to assist with backlog reduction.

### 3. IT Improvements to Improve Timeliness

As discussed above, Ex-Im Bank utilizes an on-line FOIA processing system to track and process requests. The Bank’s FOIA and IT Teams regularly consult with the software vendor’s IT staff to further enhance and fine-tune its FOIA software-processing package to Ex-Im Bank’s specific needs. Ex-Im Bank is also investigating the purchase and use of “de-duplicating” software, which would be particularly useful in reducing request processing time. Additionally, more internal documents are being filed electronically at the time they are created, making it faster and easier to conduct searches for these documents.

Ex-Im Bank very occasionally receives requests for consultations from other Agencies, and did not receive any in either FY 2011 or 2010. Ex-Im Bank has an effective system in place for processing consultations in a timely manner when we do receive them. The Bank’s FOIA Team processes these requests, as all others, via our FOIA-specific software package and they are placed in our queue of requests based upon the date the

requesting Agency received them. As a result, the Bank has been able to process referrals with minimal delays.

Ex-Im Bank did not invoke a statutory exclusion in FY 2011.

## **Part VI - Spotlight on Success**

- Ex-Im Bank consistently makes every effort to provide all releasable documents or parts thereof to FOIA requesters, and the FOIA Team routinely searches all locations within the Bank in which responsive documents could reasonably be expected to be found before providing our final response to requesters. However, on several occasions in 2011 while conducting business not related to any of the FOIA requests, Ex-Im Bank staff came upon additional releasable documents in locations where these documents would not normally have been located. Staff took the initiative to provide the documents to the FOIA Team, who released the documents to the requesters although we had already provided our final response.
- In March 2011, a data analyst generated electronic data in response to a FOIA request. The analyst discovered that there was unexpected additional, older data available not indicated by the data base and that was previously thought to be unavailable, so the analyst pulled that information as well and added it to what he had already generated. The requester contacted the Bank to say how happy he was to receive the unexpected information.
- In 2011, Ex-Im Bank's FOIA Specialist and Archivist worked together to assist a FOIA requester in gathering information going back many years. The requester was a student working on his thesis. The Bank received a very kind note of thanks from this requester for our assistance, and the requester even acknowledged Ex-Im Bank, the FOIA Specialist and the Archivist in his thesis!