

Export-Import Bank of the United States
Review of the Freedom of Information Act Operations & Plan for Improvement of
Agency Performance
June 14, 2006

Introduction

On December 14, 2005, President Bush signed Executive Order 13392 entitled “Improving Agency Disclosure of Information.” The executive order is directed at improving agency performance and service to the public with regard to the Freedom of Information Act (FOIA) by establishing policy objectives and mandating certain agency actions.

Objectives set forth in the executive order are to:

1. respond to FOIA requests in a courteous and appropriate manner;
2. provide requesters, and the public in general, with citizen-centered ways to learn about the FOIA process, about agency records that are available to the public, and about the status of a FOIA request and appropriate information about the agency’s response; and
3. process requests in an efficient and appropriate manner and achieve tangible, measurable improvements in FOIA processing.

The actions mandated by the executive order to carry out the above policy objectives are to:

1. designate an agency official at the assistant secretary or equivalent level to serve as the Chief FOIA Officer;
2. establish a FOIA Requester Service Center to serve as a place a requester can contact to obtain the status of a request or request information about the agency’s FOIA process;
3. designate one or more FOIA Public Liaisons to serve as a point of contact for requesters to raise concerns about the agency’s response to a request;
4. conduct a review of the agency’s FOIA operation to determine if practices are consistent with the policies set forth above;
5. develop an agency specific plan to ensure the agency’s FOIA process is in accordance with policies set forth above; and
6. submit to the Attorney General and the OMB Director and publish on the agency’s website a report that summarizes the agency review with a copy of the agency plan.

The Bank has a well established FOIA program that operates efficiently and emphasizes customer service. Pursuant to the Executive Order, the Export-Import Bank of the United States (Ex-Im or Bank) has taken action on the first three items, as is further described below. The remaining items are addressed in this review of current FOIA practices and accompanying agency plan.

A. Nature of FOIA Operations

FOIA Structure

In response to the executive order, on January 10, 2006, Ex-Im's Chairman and President (Acting) designated the Senior Vice President and Chief Financial Officer as the Chief FOIA Officer. The Deputy Treasurer-Controller serves as the FOIA Public Liaison. The Requester Service Center is staffed by a FOIA Specialist who is devoted full-time to FOIA duties.

Procedure for Processing FOIA Requests

A multi-track processing system is one where incoming requests are separated into various groups. A multi-track system usually has two tracks: 1) a track for requests that can be processed relatively quickly and require little review; and 2) a track for requests where gathering documents may take some time or the documents requiring review are voluminous and processing time can be substantial. Although Ex-Im does not formally employ a multi-track system in practice Ex-Im has numerous requests in process at any one time.

FOIA requests are submitted by regular mail, email, and fax. Emails are generally submitted to the Bank's FOIA mail box at foia@exim.gov, although some emails are received directly by the Public Liaison or the FOIA Specialist. Emails to the FOIA mailbox are automatically copied to the Chief FOIA Officer, the FOIA Public Liaison, the FOIA Specialist, and a designated FOIA attorney-advisor.

All requests are logged in a database by the FOIA Specialist. The database tracks relevant information pertaining to the request, including requester name and address, date, tracking number, details of the request, and current status.

Upon receipt of a request, a letter is sent to the requester that acknowledges receipt of the request and provides the tracking number assigned to the request.

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.

If the requester has not offered to pay fees, the FOIA Specialist will contact the requester to make sure that the requester is willing to pay fees if applicable. If a fee waiver is requested, the FOIA Specialist makes the initial determination as to the validity of the waiver request and makes a recommendation to the FOIA Liaison or Chief FOIA Officer.

The FOIA Specialist determines which offices or Ex-Im staff to contact to obtain the information to respond to the request and notifies them of the FOIA request. In most

cases, this is Central Files or the Office of Information Management. The FOIA Specialist keeps track of the progress of obtaining the necessary records for each open request and follows up as necessary to make sure that records are received in a timely manner.

For each request, the FOIA Specialist reviews the collected information for relevance to the request and determines which records should be released, denied or partially released in accordance with the FOIA. The documents are separated by those that are to be released in full, released with proposed redactions, and denied in full. The proposed redactions along with the exemptions are noted on the documents. After the documents have been reviewed, a letter is drafted to respond to the request. The letter states the exemptions used (if any), the basic reason for the exemptions, and provides appeal rights and appeal instructions to the requester.

The entire package is given to the FOIA Public Liaison for review. After any comments have been addressed, the FOIA Specialist prepares the package for final release and sends it to the requester.

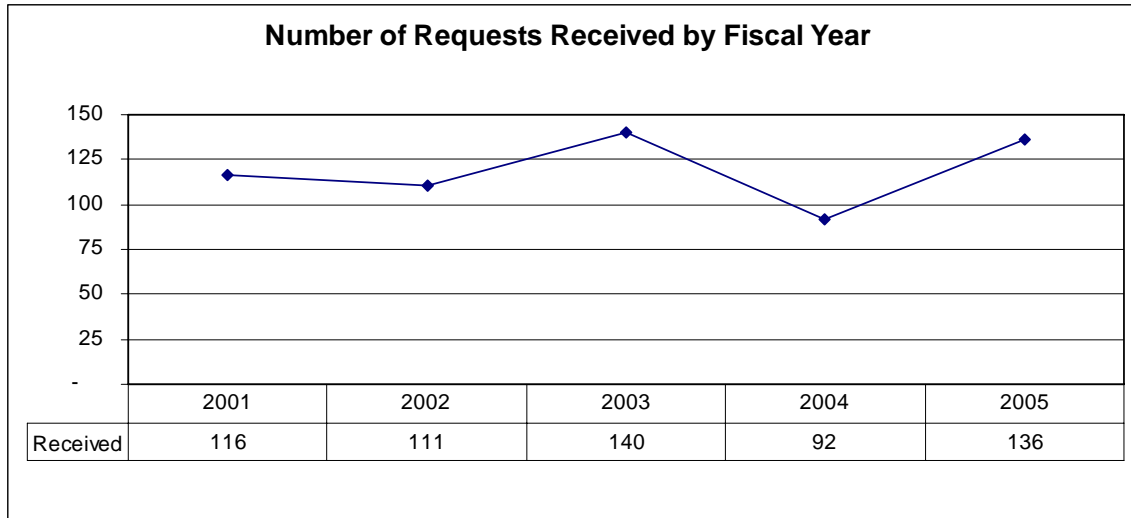
On a weekly basis, the FOIA Public Liaison, the FOIA Specialist, and the FOIA attorney-advisor formally meet to review the status of all open requests and discuss any issues that have developed while processing the requests. The Chief FOIA Officer is also kept apprised of any potential issues.

B. Areas Selected for Review

Workload and Processing Time

Prior to FY 2001, FOIA requests were assigned to various Bank staff depending on the nature of the request. Staff handled these requests as part of their regular duties. In November 2000, the Bank hired its first full-time FOIA Specialist specifically dedicated to processing FOIA requests. Since that time, the Bank has had a process in place which has remained relatively unchanged and provides a period of consistency for historical analysis.

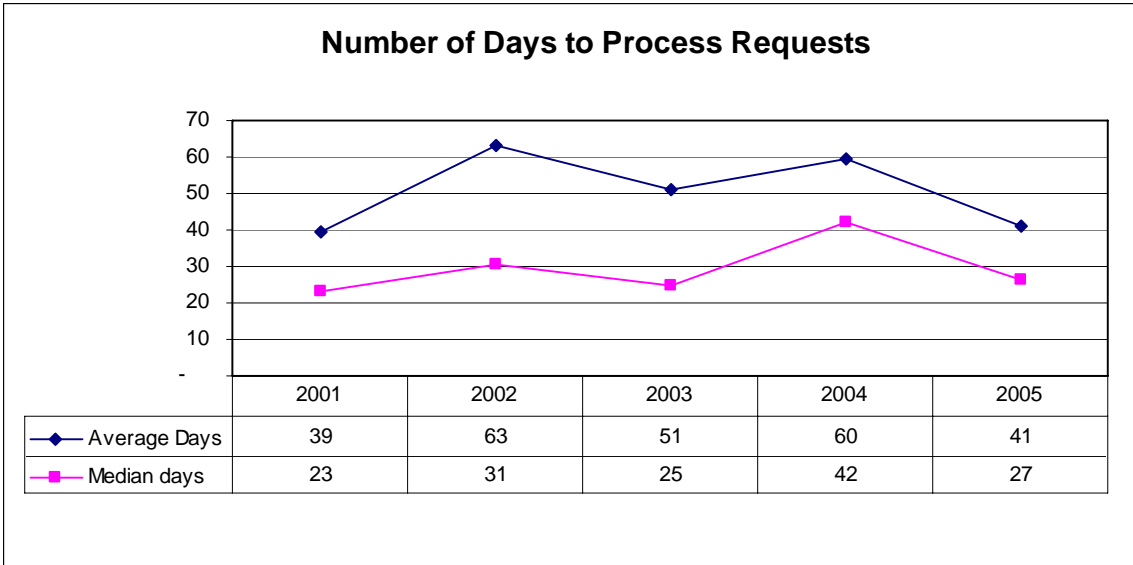
From FY 2001 through FY 2005, 595 requests were received for an average of 119 requests per year.



Over this period, the average number of calendar days to process requests received in that year has ranged from a low of 39 days to a high of 63 days. The median processing time has ranged from 23 days to 42 days. The actual number of days to process a single request has ranged from one day to 715 days.

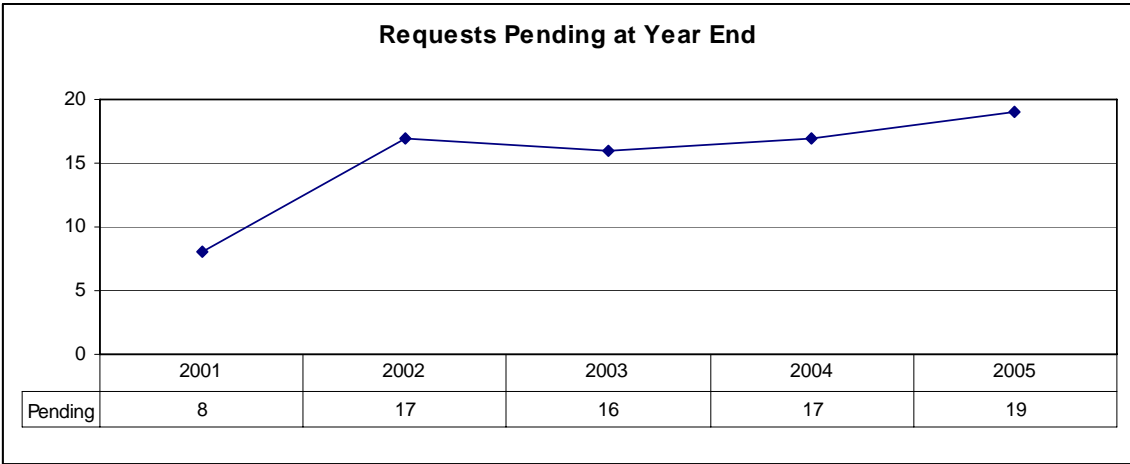
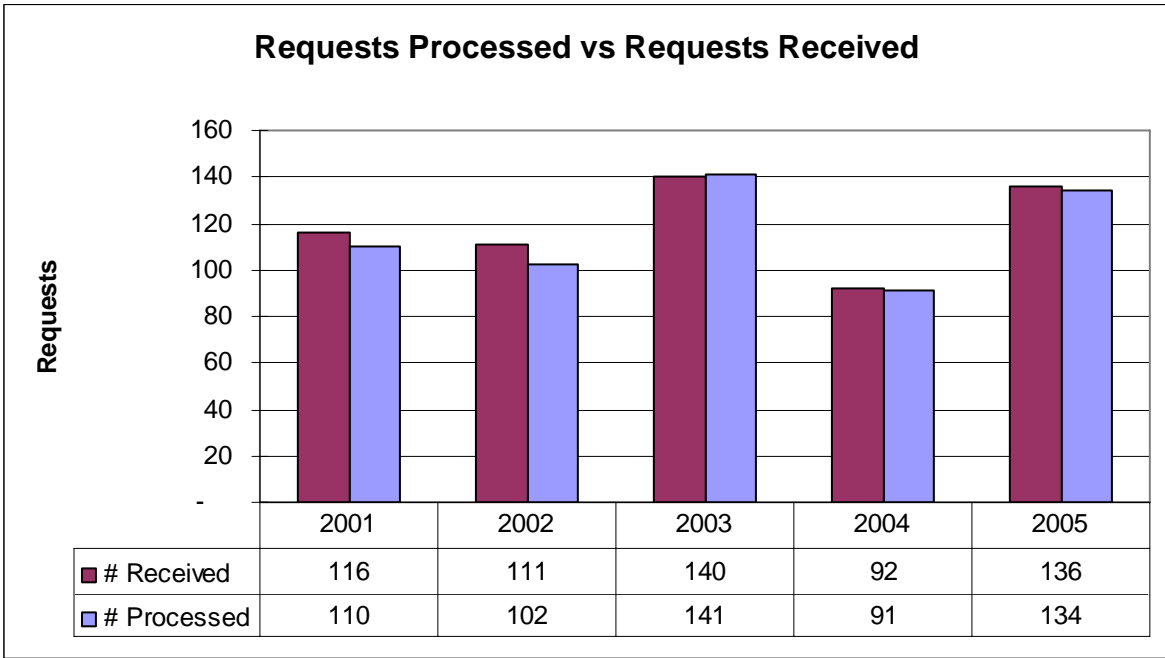
Of the 595 requests received, 6 (1%) were withdrawn, 311 (52%) were completed in 30 days or less, 452 (76%) were completed in 60 days or less, 564 (95%) were completed in 180 days or less, and 582 (98%) were completed in 365 days or less. Only 7 requests (1%) took more than one year to process.

Of the seven requests taking more than one year to process, one involved a transaction where one of the participants in the transaction was engaged in litigation. This delayed the response until legal issues surrounding the litigation could be resolved. The remaining six involved complex commercial projects. Contributing to the lengthy processing time was the fact that large complex projects generate an extremely large volume of documents, including emails. Some documents were highly technical, containing engineering, financial, and environmental information that often required consultation with Bank staff having relevant expertise and external project participants.



The increase in processing time in FY 2002 was due to eleven requests for documents related to a certain project participant. The requests took an average of 137 days to process each request because of the large volume of documents involved. The increase in FY 2004 was due to a number of requests involving some controversial projects that were unusually time consuming to process.

The following two charts show the number of requests processed in a year compared to the number of requests received in a year. Although 2004 was the low point in the number of requests received during the five year period, the complexity of the requests received that year, as previously mentioned, hindered staff in reducing the number of unprocessed requests from one year-end to the next.



It should be noted that the pending request chart above represents a specific point in time (September 30), and at any given point throughout the past five years the number of unprocessed requests has varied widely (although historical statistics are not available, FOIA staff believe unprocessed requests have ranged from a low of approximately 5 requests to a high of as many as 30).

Ex-Im Website

There is a FOIA link on the Bank’s home page that takes a user to a page entitled “Freedom of Information Act Requirements.” This page goes into some detail on how to make a FOIA request. It also has the contact number for the FOIA Requester Service

Center, and the name and phone number of both the FOIA Public Liaison and Chief FOIA Officer.

FOIA information can also be accessed from the home page at “About Ex-Im”, “The Agency” and “Freedom of Information Act”. This page has links to “How to Make a Request”, the Bank’s FOIA and Privacy Act Regulations, the annual FOIA report for the past eight years, and a link to the Department of Justice’s FOIA website. There is also a section entitled “Frequently Requested Records” which contains links to a list of IMPAC Credit Card Holders and the Bank’s Annual Financial Report for the past several years.

FOIA Reading Room

Subsection (a)(2) of the FOIA provides that an agency shall make available certain records for public inspection and copying. This is commonly referred to as reading room access.

There are three traditional categories of reading room records:

- final opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of administrative cases;
- agency policy statements and interpretations which have been adopted by the agency and are not published in the Federal Register; and
- certain administrative staff manuals and instructions to staff that affect a member of the public.

The Electronic Freedom of Information Act Amendments of 1996 further modified subsection (a)(2) as follows:

- a fourth category of reading room records was created to include records processed and disclosed in response to a FOIA request that have become or are likely to become the subject of subsequent requests for substantially the same records; and
- records created on or after November 1, 1996 in all four reading room categories must be made available to the public by electronic means.

Since FY 2001, the Bank has not received a request for reading room access. In the event that a request for reading room access is received, arrangements would be made to accommodate the requester.

Regarding the documents that are to be available in the reading room, the Bank does not have any documents that fall into the three categories of “traditional” records. Concerning the fourth category of records, there are some routinely requested records on the FOIA web page, namely a list of purchase card holders and the most recent annual financial reports. In addition, there is information throughout Ex-Im’s website that would fall into this category, such as Board and Credit Committee minutes, bylaws, lender and broker data, etc. However, the FOIA page does not currently have links to this information.

C. Results of Review

Processing Time

Over the past five years the Bank has received an average of 119 requests per year. The median number of days to process these requests has averaged approximately 30 days. The number of pending requests at the end of the year (backlog) has averaged 15.

As long as requests are received on a steady basis, there will always be a number of unprocessed requests due to the time it takes to gather information and then review it for release. After an increase in the number of unprocessed requests from FY 2001 to FY 2002 (as measured at year end), the number has remained relatively steady. As mentioned previously, the number of unprocessed requests has varied widely depending on the point in time it is measured. The eight requests at the end of FY 2001 may be the result of an unusually low level of activity at that particular time and is not representative of normal activity.

Trying to compare Ex-Im's activity against the activity of other agencies would be difficult due to the variables involved. For example, documents related to Ex-Im's transactions can be very technical and voluminous, especially for controversial project cases for which the Bank tends to get multiple requests. These transactions have documents related to engineering evaluations, environmental reports, financial information of the project participants, as well as a great deal of correspondence, including emails. The documents can be time consuming to review and often require consultation with various Bank staff and external project participants. Other variables that can affect comparison of performance statistics includes the mission and size of the agency, which directly affects the type and volume of requests received, and the number of personnel devoted to the FOIA process.

All requesters receive an acknowledgement within the 20 day statutory requirement. The average of 15 unprocessed requests seems to be an acceptable level given that one full time FOIA Specialist processes all requests and the median time for processing requests is only 30 days. Current staffing is adequate, and in the event that a request requires the review of a large volume of documents, or a significant number of requests are backlogged for a sustained period, temporary help can be obtained from an outside personnel agency (which has been done in the past). Also, the following recommendation to link various information on Ex-Im's web site to the FOIA page and to expand some types of information should help to reduce the number of requests in the future.

FOIA Website

Over the past few years the Bank has spent a considerable amount of time improving the content of its external website. The entire site contains information that would likely be of value to potential FOIA requesters. However, if a requester goes directly to the FOIA page on the site, the requester would not be aware of all the various

types of information that is available throughout the entire website because the FOIA page does not mention or link to this information. Providing links on the FOIA page to other areas of the website, and expanding the information as needed, could provide better customer service and significantly reduce the number of FOIA requests processed each year.

D. Areas for Improvement and Timeline for Implementation

1. Name: Ex-Im's Website
2. Goal: Link existing information on Ex-Im's website to the FOIA page and post additional information as needed, without disclosing information that would not be released through the normal FOIA process. Make certain information available to download.
3. Steps to be taken: Include information on yearly authorizations similar to what is published in the annual report, information regarding participants in Ex-Im's programs (exporters, banks, borrowers), and any other "routine" information that may be of value to the public. To the extent that this type of information is already on the site, provide links on the FOIA page to this information. In addition to viewing the information on-line, the data could be made available in spreadsheets that could be downloaded.
4. Time milestones: Complete by December 31, 2006

-
1. Name: FOIA Reading Room
 2. Goal: Improve reading room access.
 3. Steps to be taken: As mentioned above, the Bank does not have space specifically dedicated to a FOIA reading room. Given the historical lack of requests for reading room access, dedicated space is not necessary. However, an electronic reading room needs to be established on Ex-Im's website as required by the E-FOIA legislation.

Documents required to be made available, in both paper and electronic format, need to be gathered. The paper copies should be stored together in a common location and the electronic versions posted on the website.
 4. Time milestones: Completed by December 31, 2006

-
1. Name: Customer Service

2. Goal: Improve information provided to requester.
 3. Steps to be taken: the initial Ex-Im acknowledgement sent to the FOIA requester indicates the FOIA tracking number assigned to the request, but it does not provide an Ex-Im contact name, phone number or email address. Modify the acknowledgement letter to include this information.
 4. Time milestones: Implement immediately
-

1. Name: Customer Service
2. Goal: Assist public in filing FOIA request. Provide a template to help ensure that a proper and complete request is submitted. This should reduce the need to go back to the requester for clarification or obtaining agreement to pay fees.
3. Steps to be taken: Include a link on the FOIA web page to a FOIA request letter template. The template could be filled in on-line and automatically submitted to the FOIA mailbox after completion, or it can be used as a guide for requesters who draft their own request.
4. Time milestones: Implement by September 30, 2006.