

# **2011: Chief FOIA Officer Report from the Pension Benefit Guaranty Corporation**

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## **Part I: Steps Taken to Apply the Presumption of Openness**

–As President Obama instructed in his January 21, FOIA Memorandum, The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails.”

1. Steps taken to apply the presumption of openness.
  - One of the first steps we took in 2009 was to distribute the President’s memorandum as well as the Attorney General’s FOIA Guidelines to all members of our Disclosure staff. Again in 2010 we distributed these two documents and conducted special training with the Disclosure staff to stress maximum disclosure of records to requesters while being certain to protect the privacy of individuals other than the requester. The training focused on changes in our internal guidance to provide maximum disclosure of requested records. We also conducted training for specific departments at our main location as well as our field offices around the country during which we emphasized the presumption of openness.

As indicated below, the vast majority of our requests are from participants in plans PBGC trustees. As a result, we are restricted by the constraints of the Privacy Act from making discretionary releases of this type of information to individuals other than the participant or their designated third party representatives. However, in 2010 we made several discretionary releases of records that did not involve participant information. These requests involved interagency memorandums that could have been withheld under exemption (b) (5) of FOIA. However, we exercised our discretion and released the records in an effort to provide greater transparency into PBGC program operations. Our FOIA processing is centralized in PBGC allowing the Disclosure Division to review each instance where the potential use of an exemption may be applied. In that review process, specific emphases is placed on possible discretionary release of the information in question. We examine each instance on a case-by-case basis in an effort to provide maximum disclosure of requested records. During 2010, PBGC’s Disclosure Officer met with various departments within PBGC to explain to both managers and employees the importance of the presumption of openness and how we can assure this is an agency-wide goal for PBGC.

PBGC currently protects the pensions of more than 44 million American workers and retirees in more than 27,500 private single-employer and multiemployer defined benefit pension plans. Over 90% of our FOIA requests are from participants in plans PBGC has trusteeed and now pays monthly pension benefits. Even prior to President Obama’s memorandum, PBGC considered participant requests for records to be very important because disclosure allows the participants to see records that explain how their pension plan provisions effect how their benefits are calculated and why their plan was taken over by PBGC. We very seldom use an exemption of FOIA to deny

participants access to relevant records. The exception occurs when other participants' records appear within the requested records and PBGC asserts exemption (b) (6) of the FOIA to protect the personal privacy of other pension plan participants.

- Statistics – In our 2010 FOIA Annual Report, we reported that PBGC processed 5,611 perfected requests that year. Of PBGC's responses to these requests, 3,989 or 71% were granted in full and involved requests for pension-related records. Another 233 responses or 5.8% were granted in part. Only 6 requests were denied in full. Of the 239 responses that were not granted in full, 218 relied on a partial (b)(6) exemption of the FOIA to withhold information relating to participants other than the requester from a record containing the FOIA requester's information. This —denial” is a bit of a misnomer since all of the information which the requester was seeking was fully provided. This leaves only 21 times during 2010 where a partial exemption was used and the requester did not receive all the requested information—scarcely 0.3% of all processed requests —where an exemption had to be used to withhold information.

2. Report whether your agency shows an increase in the number of requests where records have been released in full or where records have been released in part when compared with those numbers in the previous year's Annual FOIA report.

- During FY 2009 we processed 4,512 requests. Of those requests 3,626 (80.3%) were granted in full, and 192 (4.3%) were granted in part. In FY 2010 we processed 5,611 requests resulting in 3,989 (71%) full releases and 233 (4.2%) partial releases. While the percentage of full releases decreased between FY 2009 and FY 2010, PBGC experienced an increase of 1,099 requests in FY 2010.

These percentages do not add to 100 % because of reasons such as filing of duplicative requests, failure of requesters to follow-up with assurance of payment once an estimate of total time required to fulfill this request has been provided, failure of third party requesters to secure authorizations for subjects of records to allow disclosure and filing request with the wrong agency.

As explained above, the majority of our requests come from pension plan participants seeking to access records pertaining to themselves and their pension plan. PBGC is already statistically close to not using or very seldom using a exemption to fully deny access to records. As a result, drawing conclusions from a comparison between FY 2009 and FY 2010 is difficult. In FY 2009 we used an exemption only once to totally withhold requested information. In 2010 we used an exemption 6 times to totally withhold a document. As indicated above, in 2010 we processed 1,099 more requests than in 2009. It is true that the overall usage of exemptions to fully deny information increased from 1 to 6 in 2010. However this sample size is far too small to project into another year; we would be proud to continue to keep our denial rate at or below 6 times per year.

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

–Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests.”

1. Describe here the steps your agency has taken to ensure that your system for responding to requests is effective and efficient.
  - PBGC was one of the first government agencies to fully implement an electronic system to process FOIA requests in 1997. We have developed and refined this processing to allow a staff of eight analysts to process over 5,611 requests in FY 2010 with no backlog. PBGC’s system not only allows us to process all requests electronically, but also allows for daily monitoring of each request as well as tracking to ensure that we know the processing status of each request. All FOIA requests get an acknowledgement letter mailed within two business days of receipt. The determination letters that are issued when processing is completed are concise and to the point. If a person would like to discuss the status of their request they can call our toll free number and actually speak to the analysts processing their request. Our determination letters fully explain if any portion of a record is withheld, what exemption of the FOIA was used and the appeal rights afforded the requester. During FY 2010, we received only 4 appeals contesting FOIA determinations.
  - FOIA professionals have extensive daily IT support. We have an assigned individual that devotes full time support for the eFOIA processing system in use at PBGC. This individual assures a continued high level of support for our electronic processing system and retention of knowledge needed to deal with required modifications to the software to meet increased reporting requirements. In addition to support for the system, this individual is constantly looking for ways to improve the efficiency and reporting capabilities of the system.
  - Our agency FOIA professionals interact with all departments on a daily basis. We have appointed one of our FOIA professionals as a permanent member of our Web/intranet Change Control Board. One of the responsibilities of this board is to work with our Open Government Team to look for ways to make new information about PBGC available on the Open Government web- page. A further discussion of the Open Government web- page activities is presented under Part III below.
  - Both FOIA staffing and associated budget needs are reviewed on a quarterly basis or more often as appropriate to assure that as situations change we are able to provide alternative assistance. If trends reflect a sharp increase in FOIA activity we are poised to take appropriate action to provide adequate support.
  - Our FOIA processing system is monitored on a daily basis through various reports including error reports to assure that we catch problems as they occur and take appropriate steps to avoid similar problems in the future. Our ability to process over 5,600 requests in 2010 with just 11 full-time staff is a testament to the efficient and effective use of our electronic processing of FOIA requests.

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

–Agencies should readily and systematically post information online in advance of any public requests.”

1. Describe here the steps your agency has taken to increase the amount of material that is available on your agency’s website, including providing examples of proactive disclosures that have been made since issuance of the new FOIA guidelines.
  - During FY 2010 PBGC reviewed its web site and based on feedback, launched a newly designed web site offering the public a more intuitive way to get to information about PBGC and the pension plans we protect. This web site redesign enables quicker access to information, is easier to navigate and provides more information about PBGC and its insurance programs. It allows participants in our trustee plans greater access to information pertaining to their specific pension plan and PBGC guarantee limits, and also provides an –Open Government” section to allowing subscribers to receive various updated information. As discussed above, a FOIA professional has been appointed to the Web/intranet Change Control Board and, among other duties, assists in identifying records that would be appropriate for posting on our web site. With respect to utilization of social media, PBGC has begun using social media to distribute information that has been posted on its website. We have established a Facebook web page, a YouTube web page and a Twitter feed. These web pages are being used to increase proactive disclosure for PBGC.

When a plan is taken over by PBGC, we pay monthly pension benefits to pension plan participants when they become eligible to retire. As a proactive step, PBGC announces the takeover (trusteeship) of plans as they occur through press releases made available on its web site. PBGC also establishes a web page for each terminating pension plan where participants can visit to track progress of the termination, obtain information, and get updates from PBGC. Placing current pension plan status information on our web site allows participants to review the status of their plan termination and in part reduces the need to file a FOIA request to get that basic information about the status of their pension plan termination. Our web site is used by thousands of plan participants to get basic information on PBGC’s mission and how it will affect their specific terminated pension plan. We also send out a series of letters to all plan participants in our trustee plans informing them of their rights and entitlement to pension benefits.

Since the issuance of the new FOIA guidelines, PBGC has taken several steps to open information to the public. As indicated above, it has established an –Open Government” web page which allows a subscriber to receive updates to various data sets and information to help the American public better understand the work of PBGC. The data sets include a list of single-employer plans that have been trustee by PBGC, information about the financial assistance provided by PBGC to multiemployer plans, and current and historical information from PBGC’s financial statements. Finally, this page also explains how the public can provide suggestions to improve the Corporation’s work and performance. PBGC’s newly published information complements the many other Federal agency data sets located at

[www.data.gov](http://www.data.gov). PBGC will be providing additional data sets as they become available.

In addition, PBGC makes available on its web site redacted versions of final decisions regarding eligibility for benefits issued by PBGC's Appeals Board. These determinations often affect more than one participant in a specific pension plan, and the publication allows other participants and their representatives to review PBGC's analysis of factual situations and application of PBGC's regulations. These final appeal decisions often provide participants with the information they need and preclude having to file a FOIA request for similar information.

## **Part IV. Steps Taken to Improve Use of Technology**

### **Electronic receipt of requests:**

1. Does your agency currently receive requests electronically?
  - FOIA processing at PBGC is centralized, and therefore, no other components of PBGC receive, track or process FOIA requests. With respect to our centralized processing, as in past years, the majority of our requests are filed by pension plan participants (or third party representative) seeking access to pension plan records and/or copies of their participant file. Since the requested records are contained in part in a system of records covered by the Privacy Act of 1974 (as amended), access to copies of those records requires the signature of the subject of the record. As a result, e-mail requests for these types of records is not accepted since we do not know who is sending the e-mail and PBGC needs a signature from the subject of the record to verify the identity of the requester prior to disclosing the record. In this era of identity theft we take every step to assure the protections afforded by the Privacy Act of 1974 are followed to assure that participant records are only disclosed to the subject of the record or his/her authorized representative.

### **Electronic tracking of requests:**

2. Tracking of FOIA requests
  - As indicated above, processing of FOIA requests is centralized at PBGC. The Disclosure Division receives all FOIA requests for PBGC documents, tracks these requests electronically and processes the requests using our eFOIA software.

### **Electronic Processing of Requests:**

3. Does your agency track requests electronically?
  - PBGC's FOIA function is centralized, all receipt and processing of FOIA requests takes place in the Disclosure Division. As indicated above, PBGC implemented an electronic system to process and track all requests in 1997 as required by the Electronic Freedom of Information Act Amendment of 1996. As one of the first agencies to comply with the Act, PBGC has been in the forefront in the automation of the entire FOIA process. PBGC's system allows it to electronically track requests,

gather requested records from various other internal systems, review those records and make required redactions. We processed over 7,300 requests in FY 2008, a record number for PBGC. In 2010, our outreach efforts in part helped reduce the number of requests to 5,611. Any requester can call the number listed in our confirmation letter acknowledging their request and get an immediate update on the status of processing of their request. Our electronic processing system is adaptable and PBGC has modified it to meet new reporting requirements as developed by DOJ.

### **Electronic Preparation of Annual FOIA Report**

4. Does your agency utilize technology to prepare your agency Annual FOIA Report?
  - Yes, our electronic eFOIA system is FOIA specific and provides a detailed working report that calculates and finalizes all numerical calculations as required in the latest OIP FOIA report guidance from 2008. Furthermore, our system generates periodic reports allowing constant monitoring of the FOIA response progress in order to preemptively anticipate and solve issues before they cause production problems. This allows us to generate the FOIA Annual Report narrative quickly and with confidence that the information is accurate. We are satisfied with our existing system that prepares our Annual FOIA Report.

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

1. Backlog Status
  - We do not have a current backlog and credit this to the rapid electronic processing of all incoming FOIA requests. On requests that cover a voluminous PBGC records, we work with the requester to attempt to possibly narrow the scope of the request and provide partial disclosures to the requester at the earliest possible date. Our experience indicates that working directly with the requester improves understanding for both parties, achieves the desired disclosure more quickly, and greatly improves customer satisfaction. We are always striving to improve our electronic system by developing new procedures and modifying existing procedures to allow finite tracking of requests to assure the shortest processing time possible. Of the ten oldest pending requests as reported in our FOIA Fiscal Year 2010 report, six have been closed and four voluminous requests remain active with several partial disclosures made under each request.
2. Backlog Reduction Steps
  - Not applicable: see V.1. above. PBGC did not have a backlog in FY 2009 or FY 2010.
3. Steps taken to Improve Timeliness
  - While we have no backlog, we are constantly looking at ways to reduce processing time through more efficient use of our electronic processing system. We monitor processing time through special reports generated by our electronic processing

system. We set and adjust goals based on our constant monitoring of reports. During FY 2010, we were able to add an additional analyst as well as an additional support staff to assist in processing our increased FOIA workload. Our Chief FOIA Officer has been involved in overseeing our capacity to process increased numbers of FOIA requests. Particular attention has been placed on satisfying increased staffing needs and well as associated increased budget needs. Also during FY 2010, we have developed additional IT procedures to streamline the timeliness of electronic input of data as well as its accuracy. These IT improvements have allowed us to handle the increased volume of FOIA requests in a more efficient manner.

### **Spotlight on Success**

We are very proud of our ability to process in a timely manner the growing number of FOIA requests we receive each year. Providing prompt access to PBGC records has been a challenge. Our dedicated staff and support of management has allowed us to move forward each year by more efficiently utilizing our processing software and talents of the staff to continue to strive to make sure that transparency into PBGC program's and policies remains a reality for the public.