
EXPORT-IMPORT BANK OF THE UNITED STATES

Freedom of Information Act

Chief FOIA Officer Report

February 16, 2011

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. Most importantly, Bank staff involved in release determinations were notified of the need to shift Bank policy towards one of increased transparency and openness.

In the past year, Ex-Im Bank has continued to exercise ever-greater discretion in order to minimize 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). Additionally, 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.

Ex-Im Bank's FOIA Team routinely attends and participates in such informational gatherings as DOJ Updates and American Society of Access Professionals' (ASAP) seminars. The Team is also discussing ways to provide training to other Bank staff on the significance of timely search 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 also 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 2010, Ex-Im Bank received several requests whose responses involved the Team's review of many more than usual of these lengthy E-Mail "threads". This E-Mail correspondence has 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 has expanded its efforts to apply the presumption of openness by re-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 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, with only a slight increase in FY 2010 to 8.5%; however, it is noteworthy that, despite the slight increase in the past year, the Bank has nonetheless released information contained in these documents that would previously have been withheld under Exemption (b)(5).

The number of full grants and partial grants remained about the same on a percentage basis between FY 2009 and FY 2010. Of the requests processed in FY 2010 (95), 39% represented full grants and 43% were partial grants. Of the requests processed in FY 2009 (88), 40% represented full grants and 43% 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 105 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 three 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, a member of the Team contacts the requester via telephone or E-Mail to seek clarification. If the request is overly broad, the FOIA Team 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 two months in FY 2010 to assist with processing backlogged FOIA requests. And, Ex-Im Bank is, as of this report, employing one temporary employee to work on one FOIA request whose responsive documents are exceptionally voluminous; this allows the FOIA Team to keep other requests in the queue moving. 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. Additionally, Ex-Im Bank’s FOIA Team does, indeed, have 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.

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

Part III – Steps Taken to Increase Proactive Disclosures

Ex-Im Bank’s FOIA and Open Government Teams work together to maintain its Open Government Initiative web page (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 has also continued to place new and updated information for FY 2010 on its FOIA Web page (www.exim.gov/about/disclosure/foia), such as minutes of Ex-Im Bank’s Board of Directors meetings and links to USASpending.gov for information on Ex-Im Bank’s Federal Funding Accountability and Transparency Act (FFATA) transactions.

This year, Ex-Im Bank’s Chief FOIA Officer instituted a policy by which the FOIA Team will meet at least quarterly to review recent disclosures, identify request and disclosure trends and discuss placing them 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

All members of the FOIA Team possess 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) or through a fillable form on the Bank's web site at www.exim.gov. The Bank also receives several requests per year via U.S. Mail or facsimile.

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 are working 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

1. Backlog Status

In FY 2010, Ex-Im Bank did close the "Ten Oldest Pending FOIA Requests" discussed in the Bank's FY 2009 Annual FOIA Report; in fact, *all* requests pending at the end of FY 2009 were closed during FY 2010. Turnaround time decreased for complex FOIA requests: at the end of FY 2009 there were 16 backlogged FOIA requests, the oldest of which was received July 25, 2008, and was processed in 316 days. At the end of FY 2010, there were 22 backlogged requests, the oldest of which was received on February 16, 2010 and which we processed in 171 days. There were no backlogged or pending appeals at the end of FY 2009 or 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 FOIA requests whose responsive documents were exceptionally voluminous, E-Mails in particular. Additionally, because the E-Mails contain a great deal of material that the Bank would have previously withheld under Exemption (b)(5), the FOIA Team has spent significantly more time reviewing and discussing these documents to determine if additional material may be released on a discretionary basis.

2. Backlog Reduction Steps

Ex-Im Bank employs one full-time FOIA Specialist. Generally, when a backlog trend is identified, the Bank hires temporary staff to help clear the backlog. In FY 2010, Ex-Im Bank received several FOIA requests which involved review of a larger than usual volume of documents, particularly E-Mails; this created a backlog. Ex-Im Bank has

addressed the matter of adequate FOIA staffing: After the FOIA Team reviewed backlogged as well as newly-received FOIA requests, the Bank hired one temporary employee for two months in FY 2010 to assist with processing backlogged FOIA requests. And, Ex-Im Bank is, as of this report, employing one temporary employee to work on one FOIA request whose responsive documents are exceptionally voluminous; this allows the FOIA Team to keep other requests in the queue moving. 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.

3. Steps to Improve Timeliness

In addition to hiring temporary assistance as described above, Ex-Im Bank has in the past year hired a staff attorney with extensive Federal FOIA experience to serve with the legal arm of the Bank’s FOIA Team. This has resulted in significantly less time spent reviewing FOIA responses and the Bank’s more rapid response. The FOIA Team is also discussing providing training to Bank staff on, among other FOIA-related topics, the significance of timely searches for and production of responsive documents. And, the Team continues to place particular emphasis on personal contact with FOIA requesters to make sure that requests are as clearly defined as possible. Additionally, as discussed in Part II, the FOIA Team meets regularly to review the status of all outstanding requests and discuss issues as they arise, and set and adjust goals if necessary.

Ex-Im Bank’s Chief FOIA Officer continues to be an active participant in the Bank’s FOIA process. As discussed in Part III, the Chief FOIA Officer this year instituted a policy by which the FOIA Team will meet at least quarterly to review recent disclosures, identify request and disclosure trends and discuss placing them on our FOIA Web site. In these meetings, we will also review public feedback in response to these disclosures, and look closely at individual turnaround times and backlogs with an eye toward minimizing both. The Chief FOIA Officer has also secured temporary staff to assist with reducing backlogs, and reviews a Weekly FOIA Report prepared by the FOIA Public Liaison.

Part VI - Spotlight on Success

In 2010, Ex-Im Bank received a FOIA request for a copy of a specific seven-year-old Framework Agreement to which Ex-Im Bank was a signatory. The FOIA Team located the document and released it in full to the requester. Two months later, the Team unexpectedly discovered a revised copy of this Agreement and provided it to the requester in its entirety as a courtesy. The requester sent us a gracious note expressing his appreciation.

Also in 2010, Ex-Im Bank staff continued to demonstrate willingness to go “above and beyond” the letter and technical requirements of the FOIA when conducting searches for responsive documents. In one particular instance, a requester sought documents related to Ex-Im Bank transactions that were over 50 years old. Despite the likelihood that any responsive records would have been destroyed in accordance with Federal records retention schedules, Ex-Im Bank searched for but did not locate the files for these

transactions. An employee then searched further and located responsive information in Ex-Im Bank Annual Reports from the years in question, and we released that information in its entirety. Again, the requester graciously expressed her appreciation.