



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the General Counsel

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Direct Dial
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To: Attorney General Eric Holder

From: Christian S. White
Deputy General Counsel
Chief FOIA Officer

Re: Chief FOIA Officer Report

In response to your FOIA Guidelines, this is the Federal Trade Commission's report on implementing the Freedom of Information Act during 2010.

I. Steps Taken to Apply the Presumption of Openness

1. The Federal Trade Commission discloses information in response to Freedom of Information Act requests and on its own initiative. The FTC routinely places a large volume of records on the agency's website to foster knowledge of the FTC's programs and activities. In addition, the agency's FOIA office applies the presumption of openness to the extent possible in the law enforcement context.

Shortly after the President's FOIA memorandum and the Attorney General's FOIA Guidelines were published, the Chief FOIA officer circulated the materials to all agency senior managers and to each division designee responsible for coordinating that FOIA responses. Also, the Assistant General Counsel responsible for the FTC FOIA program conducted several formal training sessions on all aspects of FOIA, including training for the agency's new Commissioners and a presentation for all new attorneys and economists. The President's FOIA memorandum and Attorney General's FOIA Guidelines were discussed at each session. In addition to formal training sessions, FTC FOIA staff routinely provide advice and guidance to agency staff, stressing the agency's commitment to openness.

The agency has a long standing commitment to discretionary releases and reviews every

record to determine if any portion of the material can be released. Generally, the records discretionarily released are covered by Exemption 5 and consist of deliberative process and attorney work product. FOIA staff reviews all records with a presumption of openness and recommends for release records, or portions of records, that can be released without harming the agency's mission. Senior level staff at the agency have attended training on FOIA and support the administration's presumption of openness.

2. The FTC processed 1280 FOIA requests in FY '10, with slightly over 50% of all requests granted in full, 25% were partially granted, and only 2% of requests were denied in full. In FY '09 nearly 50% of all requests were granted in full, 29% were granted in part, and 1% were denied in full. The requests that were denied in full were denied based on statutory prohibitions on disclosure, because the subject documents contained personal information implicating privacy concerns, because they concerned active law enforcement matters, or were privileged deliberations. These percentages demonstrate the agency's commitment to openness, while protecting the agency's critical interest in conducting non-public law enforcement investigations. These numbers are consistent with FY '09 with a slight increase in the number of full grants.

II. Steps Taken to Ensure that the agency has an Effective system for Responding to Requests

The Federal Trade Commission's FOIA branch is located within the Office of General Counsel. The operations are overseen by the Assistant General Counsel for Information and Legal Support. The branch is staffed by one lead paralegal, and nine paralegals. All paralegals attend the Office of Legal Education's 3-day FOIA training program and are provided in-house training on FOIA procedures and policies. In addition, managers in each division of the agency have designated a FOIA access officer who coordinates the search for records of that division. The FOIA access officer receives additional FOIA training in searching for records and identifying record storage locations. When the agency receives a FOIA request, the FOIA staff member reviews the request and searches the agency's electronic record keeping system to identify which divisions may have responsive records. The FOIA staff then sends a request for documents to the relevant FOIA access officers, who search for responsive records.

In addition to engaging managers at all levels, the FOIA office works closely with the agency IT specialists. The FTC FOIA office operates in a wholly electronic environment. When staff identifies record locations, IT staff ensures that the FOIA staff receives access to the appropriate drives, folders, or databases to download the responsive records. IT supports the commercial off-the-shelf FOIA software used to process all FOIA requests. FOIA staff also work with the agency's web team to post materials on the agency's website, <http://www.ftc.gov>, when applicable.

The agency is always evaluating staffing levels. Currently, due to resignations, the FOIA office is understaffed. We believe we need to increase the staffing of the FOIA office and are looking at ways to do that under the continuing resolution and proposed budget cuts.

As discussed earlier, the FOIA office has conducted numerous FOIA trainings throughout the agency. A new round of training in the divisions is scheduled to begin in March 2011. Each

year, new attorneys receive an introduction to the FOIA as part of a required off-site training program for all new FTC attorneys.

FOIA staff participated in the activities of the Open government team.

III. Steps Taken to Increase Proactive Disclosures

As discussed earlier, the agency maintains a robust website and discloses a large volume of material on its website at its own initiative. The agency routinely identifies records that are appropriate for posting, including all adjudicative decisions, rulemaking materials and comments, workshop information, speeches, and a wide range of other documents. The FOIA reading room is updated when the agency receives multiple requests for the same records. With further training, we expect staff will identify additional records appropriate for proactive disclosure.

In addition to the website, the agency maintains a Facebook page and a twitter account. Both are used to ensure that information is broadcast to the widest audience possible in a timely fashion. The agency discloses material daily to best serve the public.

IV. Steps Taken to Use Technology More Effectively

1. Electronic Receipt of FOIA requests

- a. Centralized FOIA receives requests electronically
- b. No increase, agency has been at 100% since 2001
- c. Dedicated email address and on-line request form

2. Electronic tracking of FOIA requests

- a. Centralized FOIA tracks 100% of requests electronically
- b. No increase, agency has been at 100%
- c. COTS product

3. Electronic Processing of FOIA requests

- a. Centralized FOIA processes 100% of requests electronically
- b. No increase, agency has been at 100% since 2003
- c. COTS product

4. Electronic Preparation of Annual Report

- a. Agency processes report annually from the COTS FOIA product
- b. N/A

The agency receives requests electronically via a dedicated email account (FOIA@ftc.gov) as well as an on-line request form (<https://www.ftc.gov/ftc/foia.htm>). The agency has used both of these methods since 2001 and receives the majority of requests electronically.

The agency tracks all requests electronically in the FOIA Xpress application (a commercial FOIA application). All FOIA requests are processed in FOIA Xpress. All new FOIA requests are entered into the database and assigned a tracking number. Once they are assigned to FOIA staff, the staff uses the application to send out requests for documents, track the status, import the responsive records for review and redaction, generate response letters and send the records in the format requested. Paper records are scanned and then electronically imported into the system. Because all portions of the request are performed in FOIA Xpress, the agency uses the system to generate the Annual Report.

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

The agency makes every effort to respond to request in a timely manner. Most complex requests and many the simple requests require the agency to locate and review thousands of pages of records.

1. This year, the agency's backlog increased from 18 in FY '09 to 32 in FY '10. In FY '09 the agency had one pending FOIA appeal and did not have any pending in FY '10. The agency closed the 10 oldest FOIA's pending from FY '09 and the one pending appeal.

2. The increase in the backlog is attributed to the number of FOIA requests received, lower staffing levels, and the complexity of the requests. The majority of the backlog requests are complex requests involving tens of thousands of pages of records. In those instances, the agency provides responses on a rolling basis. Because the FTC makes rolling releases in order to provide requesters as many records as possible in a timely fashion, some FOIA requests remain open despite the agency having substantially responded. The backlog of requests to which no response has yet been made is significantly below 1%. There is no appeal backlog.

3. Despite the low backlog, the FOIA branch continues to train agency staff to reduce the processing time further. In addition, the agency has acquired software that should enable faster searching and review of electronic records. When that software becomes operational, it should further reduce the backlog. The agency, and Chief FOIA Officer, set goals for backlog reduction and monitor the caseload. The Chief FOIA Officer engages IT, senior level officials, and HR in discussion about improving staffing levels, and using technology and existing staff to improve response times and reduce the backlog.

V. Spotlight on Success

The agency was involved in a no-public inquiry into the practices of Google. After much investigation and meetings with Google, the agency closed the inquiry and immediately made public the letter describing the inquiry and the conclusions. Immediately afterwards, the agency received several FOIA requests for all records related to the inquiry. The records were voluminous, over 15,000 pages and consisted primarily of internal deliberations and attorney work-product. Working with senior staff at the agency, the FOIA Office released a large volume of the material, most of it discretionarily, to the requesters. The materials included the discretionary release of internal deliberations at the highest level, demonstrating the agency's commitment to openness.