

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Chief FOIA Officer Report



**Office of Freedom of Information Act
and Records Management Services**

March 8, 2011

I. Steps Taken to Apply the Presumption of Openness

1. Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.
 - a. Describe how the President's FOIA Memorandum and the Attorney General's FOIA Guidelines have been publicized throughout your agency.

Securities and Exchange Commission (SEC) Chairman Mary Schapiro sent a memorandum to all staff members highlighting the Freedom of Information Act (FOIA) memoranda issued by President Obama and Attorney General Holder. The Chairman expressed her commitment to "improving our FOIA program so that we respond to requests in a timely manner, treat all requesters equally, and provide as much information as possible without adversely affecting our mission." All personnel in the SEC's FOIA Office have been briefed on the meaning and importance of the memoranda and the Chairman's message. Further, the messages of the President and the Attorney General are posted on the FOIA page at www.sec.gov.

- b. What training has been attended and/or conducted on the new FOIA Guidelines?

In May and September of 2010, training was provided for all FOIA staff and those involved in FOIA processing from all agency offices. The Commission contracted with a recognized FOIA expert to provide two 3-day sessions, which covered all aspects of the FOIA and the Privacy Act, including an overview of the President's FOIA Memorandum and the Attorney General's FOIA Guidelines.

- c. How has your agency created or modified your internal guidance to reflect the presumption of openness?

The internal FOIA webpage has been revised to include a broad range of information for all Commission staff. The webpage includes the Chairman's memo (as described above), access to all staff members of the FOIA Office, and links to training both in-house and government-wide. Further, the FOIA Office issued new guidance to all FOIA liaisons in Commission offices to assist in the interpretation, and the search, review and delivery of documents responsive to FOIA requests. This Liaison Guidance, as well as instructions on using the FOIA tracking system, is also linked to the internal FOIA webpage.

- d. To what extent has your agency made discretionary releases of otherwise exempt information?

Each FOIA request is unique, and decisions to release or withhold records or portions thereof are made on a case-by-case basis after reviewing the records. Based on a

comparison of the FY2009 and FY2010 Annual FOIA reports, discretionary withholding has decreased:

Withheld pursuant to:	FY2009	FY2010
Exemption 2	22	17
Exemption 5	179	159

- e. What exemptions would have covered the information that was released as a matter of discretion?

Primarily, exemption (b)(5) would be used in cases of discretionary withholding.

- f. How does your agency review records to determine whether discretionary releases are possible?

Each FOIA request is unique, and decisions to release or withhold records or portions thereof are made on a case-by-case basis after reviewing the records. Documents are reviewed in light of the memoranda issued by the President and the Attorney General, and whether or not the release of documents would adversely affect the mission of the SEC.

- g. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

During FY 2010, the Commission was immersed in initiatives to restore financial stability and to revise oversight capabilities. To foster public and industry awareness and involvement in reform efforts, the SEC posted information related to its rulemaking efforts to protect the investing public under the Dodd-Frank Wall Street Reform legislation. Featured at the top of SEC's homepage is a large area devoted to the SEC's initiatives under the sweeping reform legislation, which includes a section where all public comments are invited and posted.

As the Chairman of the SEC notes, "This law creates a new, more effective regulatory structure, fills a host of regulatory gaps, brings greater public transparency and market accountability to the financial system and gives investors important protections and greater input into corporate governance."

2. Report the extent to which the numbers of requests where records have been released in full and the numbers of requests where records have been released in part has changed from those numbers as reported in your previous year's Annual FOIA Report.

The Commission realized an 11% increase in the number of FOIA requests where records were released in full, and a 6% increase where records were released in part.

	FY2009	FY2010
Full Grants	1278	1418
Partial Grants	374	395

II. Steps Taken to Ensure that Your Agency has an Effective System In Place for Responding to Requests

Describe here the steps your agency has taken to ensure that your system for responding to requests is effective and efficient. This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

- a. Do FOIA professionals within your agency have sufficient IT support?

The SEC's FOIA operations are centralized at Headquarters under the Chief FOIA Officer. The Office of FOIA Services has strong support from the Office of Information and Technology.

- b. Describe how your agency's FOIA professionals interact with your Open Government Team.

The Office of FOIA Services follows the protocol developed by the Open Government Team, located in the Office of the Secretary of the Commission. This protocol is posted on the Commission's website and serves to provide all Commission components with defined dissemination criteria along with data quality assurance guidelines. Due to the high volume of information posted daily by the Commission, there is also guidance on prioritization of requests for public posting. The FOIA Office generally obtains top-level posting priority – meaning that requests for posting to the FOIA web page receive a same day or 1-day priority.

- c. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to responding to FOIA requests.

After undergoing a self-evaluation, the Office of FOIA Services implemented changes to its organizational structure which provided greater management oversight of staff processing requests; greater communication with those offices requested to provide records; increased training; and added review layers to requests and responses resulting in more consistency and quality of responses.

Further, in 2010, the new Office of FOIA and Records Management Services (OFRMS) was formed to combine the offices responsible for FOIA processing and records management. Combining these offices under one organizational component allows focused effort on issues unique to FOIA responses, such as locating records and providing resources and advocacy to improve records management practices.

- d. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.

The Annual FOIA Report provides an opportunity to audit the program for any unique or systemic issues. Each year the FOIA Officer reviews the results and underlying data in the Annual Report. Subsequently, findings may indicate that staff need focused training, policies or procedures may need to be revised or reinforced, and/or that changes to system configuration are needed. Additionally, new or revised software enhancements may be indicated.

III. Steps Taken To Increase Proactive Disclosures

Describe here the steps your agency has taken to increase the amount of material that is available on your agency website, including providing examples of proactive disclosures that have been made since issuance of the new FOIA Guidelines. In doing so, answer the questions listed below and describe any additional steps taken by your agency to make proactive disclosures of information.

- a. Has your agency added new material to your agency website since last year?

In connection with regulatory reform activities, the SEC has developed a process whereby the public is able to comment before the agency even proposes its regulatory reform rules and amendments and petition for certain rulemaking. Additionally, the SEC now provides greater public disclosure of meetings with SEC staff. The new process goes well beyond what is legally required and will provide expanded opportunity for public comment and greater transparency and accountability. The SEC also expects to hold public hearings on selected topics.

Further, the SEC has launched investor.gov, an investor-focused Web site to help the general public invest wisely and avoid fraud.

- b. What types of records have been posted?

In connection to regulatory reform, the following types of records are being published: rulemaking records and public comment letters; municipal advisor electronic registration; press releases; a variety of information for investors (see Investor.gov); all Divisions and Offices have increased content on their web pages and the information is also accessible by subject-matter link; and the types of

regulatory actions posted have increased to include SRO (Self-Regulatory Organization) and NMS (National Market Systems) Plans for public comment.

- c. Give examples of the types of records your agency now posts that used to be available only by making a FOIA request for them.

In addition to the postings described in b., above, in 2010 the Commission posted additional or enhanced records to the Frequently Requested FOIA documents page including Office of Inspector General reports; data on Alternative Trading Systems; Fails to Deliver Data; and Company Information about Registered Investment Advisors and Active Broker Dealers.

- d. What system do you have in place to routinely identify records that are appropriate for posting?

Proactive disclosures under the FOIA (5 USC 552(a)(2)) are the responsibility of all Commission offices. The Commission requires electronic filing and disclosure of an immense amount of registration and registration-related filings based on various provisions of the Securities and Exchange Acts. When public access appears limited to public filings, the FOIA Office is contacted via a Public Information Request to assist in locating the records which should be publicly available. The FOIA Office will contact the appropriate division or office to determine when or where the records will be made available and relay that information to the requestor.

- e. How do you utilize social media in disseminating information?

The commission provides several options for disseminating information at the discretion of the user. On the SEC homepage, www.sec.gov, individuals may sign up for an RSS Feed for SEC news, or subscribe to receive SEC updates by e-mail. Public registrations are accessible via the EDGAR system on the SEC homepage. Investor alerts and bulletins can be linked to Social web sites such as Twitter and Facebook via www.investor.gov.

- f. Describe any other steps taken to increase proactive disclosures at your agency.

If multiple requests are received for a particular record, or a type of record, the FOIA Office will recommend the public posting of the records to facilitate public access without use of the FOIA.

Certain records of significant interest to the public are posted to the Commission's homepage for a period of time, and then linked to the Frequently Requested FOIA documents page. The Commission determined to post the Office of Inspector General reports relating to the Ponzi schemes of Bernard L. Madoff and Robert Allen Stanford. Additional Inspector General reports have been posted to the FOIA page for public access.

IV. Steps Taken To Greater Utilize Technology

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. In 2010 agencies reported widespread use of technology in handling FOIA requests. For this section of your Chief FOIA Officer Report for 2011, please answer the following more targeted questions:

1. Electronic receipt of FOIA requests:

- a. What proportion of the components within your agency which receive FOIA requests have the capability to receive such requests electronically?

The SEC's FOIA operations are centralized in one office which has the capability to receive all requests electronically.

- b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

The SEC's FOIA operations were centralized at the time of last year's Chief FOIA Officer Report, thus there has been no change.

- c. What methods does your agency use to receive requests electronically?

Via e-mail and facsimile.

2. Electronic tracking of FOIA requests:

- a. What proportion of the components within your agency which receive FOIA requests have the capability to track such requests electronically?

The SEC's FOIA operations are centralized in one office which has the capability to track all requests electronically.

- b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

The SEC's FOIA operations were centralized at the time of last year's Chief FOIA Officer Report, thus there has been no change.

- c. What methods does your agency use to track requests electronically?

The SEC uses a commercial product specifically designed to track FOIA requests.

3. Electronic processing of FOIA requests:

- a. What proportion of components within your agency which receive FOIA requests have the capability to process such requests electronically?

The SEC's FOIA operations are centralized in one office which processes requests electronically to the maximum extent possible.

- b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

The SEC's FOIA operations were centralized at the time of last year's Chief FOIA Officer Report, thus there has been no change.

- c. What methods does your agency use to process requests electronically?

All the hardware and software typically found in a modern office, including Internet and facsimile capabilities. Additionally, the commercial product used by the Commission allows for scanning and redacting records on a document management platform as well as maintaining electronic case files.

4. Electronic preparation of your Annual FOIA Report:

- a. What type of technology does your agency use to prepare your agency Annual FOIA Report, i.e., specify whether the technology is FOIA-specific or a generic data-processing system.

The SEC uses a commercial FOIA application that generates the Annual Report.

- b. If you are not satisfied with your existing system to prepare your Annual FOIA Report, describe the steps you have taken to increase your use of technology for next year. N/A

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

Improvements to timeliness in responding to pending FOIA requests and reductions in backlogs are both ongoing agency efforts. The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. Section XII of your Annual FOIA Report includes figures that show your agency's backlog of pending requests and administrative appeals for the past two fiscal years. You should refer to those

numbers when completing this section of your Chief FOIA Officer Report. In this section you should address the following elements.

1. If your agency has a backlog, report here whether that backlog is decreasing. That reduction should be measured in two ways. First, report whether the number of backlogged requests and backlogged administrative appeals that remain pending at the end of the fiscal year decreased or increased, and by how many, when compared with last fiscal year.

The number of backlogged requests decreased from 196 in FY 2009 to 159 in FY 2010. This decrease is partly attributed to the SEC's successful backlog reduction efforts. The chart below reflects the SEC's backlog in terms of requests and administrative appeals, and in terms of the date the request was received:

	Initial Requests		Appeals	
	FY09	FY10	FY09	FY10
Pending Backlog	196	159	21	6
Date of Oldest Request	6/1/2006	7/12/2006	3/28/2005	5/11/2010

Second, report whether your agency closed in Fiscal Year 2010 the ten oldest of those pending requests and appeals from Fiscal Year 2009, and if not, report how many of them your agency did close.

In FY2010, the SEC closed all but one of its ten oldest pending requests from FY2009. All the FY2009 ten oldest appeals were closed in FY2010.

2. If there has not been a reduction in the backlog as measured by either of these metrics, describe why that has occurred. In doing so, answer the following questions and then include any other additional explanation: N/A
 - a. Is the backlog increase a result of an increase in the number of incoming requests or appeals? N/A
 - b. Is the backlog increase caused by a loss of staff? N/A
 - c. Is the backlog increase caused by an increase in the complexity of the requests received? N/A
 - d. What other causes, if any, contributed to the increase in backlog? N/A
3. Describe the steps your agency is taking to reduce any backlogs and to improve timeliness in responding to requests and administrative appeals. In doing so answer the

following questions and then also include any other steps being taken to improve timeliness.

- a. Does your agency routinely set goals and monitor the progress of your FOIA caseload?

The goal is to process within the time frame of the FOIA. FOIA workload progress is constantly monitored and measured via daily workload and case reports as well as meetings with staff members.

- b. Has your agency increased its FOIA staffing?

Two additional personnel were assigned to the FOIA Office in FY2010.

- c. Has your agency made IT improvements to increase timeliness?

Yes. The commercial product used by the Commission (see section IV) is routinely updated. The product has been instrumental in organizing workload for efficiency and timeliness. Hardware improvements, such as faster, high-resolution scanners, are routinely procured as technology improves.

- d. Has your agency Chief FOIA Officer been involved in overseeing your agency's capacity to process requests?

Yes. The Chief FOIA Officer has oversight of the Office of FOIA Services as well as the Office of Records Management Services. Changes in both offices have resulted in improved timeliness in responding to FOIA requests and have been instrumental in reducing backlogs despite a record number of requests in FY2010. For example, the Office of FOIA Services underwent a reorganization to provide more management oversight of FOIA staff. Changes in the Office of Records Management Services improved the location and timely delivery of records to FOIA staff, enabling faster response times. The SEC anticipates that these changes will continue to improve timeliness in responding to requests and reducing the current backlog.

Spotlight on Success

Out of all the activities undertaken by your agency in this last year to increase transparency, describe here one success story that you would like to highlight as emblematic of your efforts.

Despite the record number of requests received by the SEC in FY2010, the agency's backlog continued to decrease, and the number of requests pending at the end of the fiscal year was the lowest it has been in 8 years.