



U. S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

FREEDOM OF INFORMATION ACT (FOIA)
Report for Fiscal Year 2009
(October 1, 2008 through September 30, 2009)

I. BASIC INFORMATION REGARDING REPORT

1. Questions concerning this report may be directed to:

Celia Winter
Freedom of Information/Privacy Act Officer
U. S. Securities and Exchange Commission (SEC)
100 F Street, NE
Washington, DC 20549
2. This report is available on the SEC's Web site: <http://www.sec.gov/foia/arfoia09.pdf>
3. To obtain a paper copy of this report, send a letter to the FOIA/PA Officer at the address above or via e-mail to foiapa@sec.gov.

II. MAKING A FOIA REQUEST

A copy of our publication "How to make a FOIA Request" is available on the SEC web site:
<http://www.sec.gov/foia/howfo2.htm>

1. Address of office that receives FOIA requests:

The Commission's FOIA/Privacy Act Office is centralized. FOIA requests are considered received by the SEC only when they reach the Office of FOIA and Privacy Act Operations (see 17 CFR 200.80(d)(1) and (9)).

Written requests should be submitted to the FOIA/PA Officer at:

E-mail: foiapa@sec.gov
Fax: 202-772-9336 or 9337
Mail: Office of FOIA and Privacy Act Operations
Securities and Exchange Commission
U. S. 100 F Street, NE
Room 2736
Washington, DC 20549

2. Description of why some requests are not granted: Many requests received by the SEC are for investigatory records, consumer complaints, and non-public correspondence. Some of these requests are denied because the records are related to on-going investigations (Exemption 7(A)), personal privacy (Exemptions 6 and 7(C)), and protected intra and inter-agency records (Exemption 5). The majority of FOIA requests to the Commission are from entities providing investor-related services such as due diligence and background checks on companies, investment advisers and broker-dealers, or providing services that offer registration-related filings, or evidence of investigative proceedings. These requests often result in a finding of no records or "no information found" which is the most common disposition for requests to the Commission.

III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

1. Agency-specific acronyms or terms used in this Report: **HQ** means SEC headquarters office.

2. Definitions of terms used in this Report:
 - a. **Administrative Appeal** - a request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.

 - b. **Average Number** - the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.

 - c. **Backlog** - the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.

 - d. **Component** - for agencies that process requests on a decentralized basis, a "component" is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in their Annual FOIA Report data for both the agency overall and for each principal component of the agency.

 - e. **Consultation** - the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.

 - f. **Exemption 3 Statute** - a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.

 - g. **FOIA Request** - a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., "first-party" requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act "systems of records" or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require the agency to utilize the FOIA in responding to the requester are included in this Report. Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this Report.)

 - h. **Full Grant** - an agency decision to disclose all records in full in response to a FOIA request.

 - i. **Full Denial** - an agency decision not to release any records in response to a FOIA request because the records are exempt in their entirety under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.

 - j. **Median Number** - the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.

 - k. **Multi-Track Processing** - a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.
 - i. **Expedited Processing** - an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.

- ii. **Simple Request** - a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.
 - iii. **Complex Request** - a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.
- l. **Partial Grant/Partial Denial** - in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.
 - m. **Pending Request or Pending Administrative Appeal** - a request or administrative appeal for which an agency has not taken final action in all respects.
 - n. **Perfected Request** - a request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.
 - o. **Processed Request or Processed Administrative Appeal** - a request or administrative appeal for which an agency has taken final action in all respects.
 - p. **Range in Number of Days** - the lowest and highest number of days to process requests or administrative appeals.
 - q. **Time Limits** - the time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).
3. Concise descriptions of the nine FOIA exemptions:
- a. **Exemption 1:** classified national defense and foreign relations information;
 - b. **Exemption 2:** internal agency rules and practices;
 - c. **Exemption 3:** information that is prohibited from disclosure by another federal law;
 - d. **Exemption 4:** trade secrets and other confidential business information;
 - e. **Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges;
 - f. **Exemption 6:** information involving matters of personal privacy;
 - g. **Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
 - h. **Exemption 8:** information relating to the supervision of financial institutions;
 - i. **Exemption 9:** geological information on wells.

IV. EXEMPTION 3 STATUTES

A. For Initial Requests			
Statute	Type of Information Withheld	Case Citation	Total Number of Times Relied upon by Agency
41 U.S.C. §253b(m)(1)	Proprietary or source selecting information about ongoing Federal Procurements	<i>Hornbostel v. US Dept of the Interior, 305 F. Supp. 2nd 21,30 (D.D.C.2003)</i>	3
B. For Appeals			
Statute	Type of Information Withheld	Case Citation	Total Number of Times Relied upon by Agency
15 U.S.C. § 80a-30(c)	Investment Company Examination	N	1
15 U.S.C. § 80b-10(b)	Investment Advisors examinations or investigations	N	1

V. FOIA REQUESTS

A. Received, Processed and Pending FOIA Requests				
	Number of Requests Pending as of Start of Fiscal Year	Number of Requests Received in Fiscal Year	Number of Requests Processed in Fiscal Year	Number of Requests Pending as of End of Fiscal Year
HQ	899	7878	8285	492

B.(1) Disposition of FOIA Requests – All Processed Requests					
	Number of Full Grants	Number of Partial Grants/ Partial Denials	Number of Full Denials Based on Exemptions	Number of Full Denials Based on Reasons Other than Exemptions Other - *Explain in chart below	TOTAL
HQ	1278	374	544	6089	8285

B.(2) Disposition of FOIA Requests – “Other” Reasons for “Full Denials Based on Reasons Other than Exemptions”	
HQ	<ul style="list-style-type: none"> Cancelled 257 Fee-related issues 105 Not an agency record 26 No information found (appeal rights) 26 Records lost or destroyed 530718 Referred to the web 276 Total 6089

B.(3) Disposition of FOIA Requests – Number of Times Exemptions Applied														
	(b)(1)	(b)(2)	(b)(3)	(b)(4)	(b)(5)	(b)(6)	(b)(7)(A)	(b)(7)(B)	(b)(7)(C)	(b)(7)(D)	(b)(7)(E)	(b)(7)(F)	(b)(8)	(b)(9)
HQ	0	22	3	174	179	111	487	2	189	6	1	0	117	0

VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS

A. Received, Processed and Pending Administrative Appeals														
	Number of Appeals Pending as of Start of Fiscal Year			Number of Appeals Received in Fiscal Year			Number of Appeals Processed in Fiscal Year			Number of Appeals Pending as of End of Fiscal Year				
HQ	45			247			267			25				
B. Disposition of Administrative Appeals – All Processed Appeals														
	Number Affirmed on Appeal			Number Partially Affirmed & Partially Reversed/Remanded on Appeal			Number Completely Reversed/Remanded on Appeal			Number of Appeals Closed for Other* Reasons		TOTAL		
HQ	156			13			83			15		267		
C.(1) Reasons for Denial on Appeal – Number of Times Exemptions Applied														
	(b)(1)	(b)(2)	(b)(3)	(b)(4)	(b)(5)	(b)(6)	(b)(7)(A)	(b)(7)(B)	(b)(7)(C)	(b)(7)(D)	(b)(7)(E)	(b)(7)(F)	(b)(8)	(b)(9)
HQ	0	0	1	1	4	6	155	0	2	0	0	0	1	0
C.(2) Reasons for Denial on Appeal – Reasons Other than Exemptions -Explain in chart below														
HQ	15													
C.(3) Reasons for Denial on Appeal – “Other” Reasons														
	Description of “Other” Reasons for Denials from Chart C (2) & Number of Times Those Reasons Were Relied upon													
HQ	Moot 4 No information found (appeal rights) 8 Withdrawn 1 Cancelled 1 Referred to Another Office 1 Total 15													
C.(4) Response Time for Administrative Appeals														
	Median	Average	Lowest	Highest										
HQ	12	33	1	315										
C.(5) Ten Oldest Pending Administrative Appeals														
	10th Oldest and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Appeal and Number of Days Pending				
HQ	5/28/2009 127	5/27/2009 128	5/04/2009 144	12/23/2008 234	10/30/2008 270	10/06/2008 287	7/01/2008 354	5/22/2008 381	11/21/2007 507	03/28/2005 1174				

VII. FOIA REQUESTS: RESPONSE TIME FOR PROCESSED AND PENDING REQUESTS

A. Processed Requests – Response Time for All Processed Perfected Requests (By median, average, lowest and highest number of days)														
	SIMPLE				COMPLEX				EXPEDITED PROCESSING					
	Median	Average	Lowest	Highest	Median	Average	Lowest	Highest	Median	Average	Lowest	Highest		
HQ	6	27	1	769	445	424	1	941	31	44	4	132		
B. Processed Requests – Response Time for Perfected Requests in Which Information Was Granted (By median, average, lowest and highest number of days)														
	SIMPLE				COMPLEX				EXPEDITED PROCESSING					
	Median	Average	Lowest	Highest	Median	Average	Lowest	Highest	Median	Average	Lowest	Highest		
HQ	39	68	1	769	914	626	24	941	37	53	6	132		
C. Processed Requests – Response Time in Day Increments														
Simple Requests														
	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
HQ	6151	603	395	308	152	117	90	68	46	59	245	18	5	8257
Complex Requests														
	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
HQ	3	1	1	0	0	0	1	0	0	0	0	2	10	18
Requests Granted Expedited Processing														
	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
HQ	4	2	1	1	1	1	0	0	0	0	0	0	0	10
D. Pending Requests – All Pending Perfected Requests														
	SIMPLE			COMPLEX			EXPEDITED PROCESSING							
	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days					
HQ	470	12	31	22	135	201	NA	NA	NA					

E. Pending Requests – Ten Oldest Pending Perfected Requests

	10th Oldest Request and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Request and Number of Days Pending
HQ	08/20/2008 330	08/09/2008 331	06/05/2008 383	03/07/2008 446	02/04/2008 469	01/25/2008 475	07/20/2007 603	01/03/2007 741	07/12/2006 860	06/01/2006 888

VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER

A. Requests for Expedited Processing

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
HQ	10	63	1	7	65

B. Requests for Fee Waiver

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
HQ	45	7	1	3

IX. FOIA PERSONNEL AND COSTS

PERSONNEL			COSTS		TOTAL COSTS
Number of "Full-Time FOIA Employees"	Number of "Equivalent Full-Time FOIA employees"	Total Number of "Full-Time FOIA Staff"	Processing Costs	Litigation Related Costs	
26.25	4	30.25	\$3,053,486	\$369,425	\$3,422,911

X. FEES COLLECTED FOR PROCESSING REQUESTS

	Total Amount of Fees Collected	Percentage of Total Costs
TOTALS	\$54,540	1.78%

XI. FOIA Regulations (Including Fee Schedule)

FOIA Regulations: [17 CFR 200.80](#); [17 CFR 200.83](#); Fee Regulation: [17 CFR 200.80\(e\)](#) and Schedule: www.sec.gov/foia/feesche.htm

XII. BACKLOGS, CONSULTATIONS, AND COMPARISONS

Backlogs of FOIA Requests and Administrative Appeals											
Number of Backlogged Requests as of End of Fiscal Year						Number of Backlogged Appeals as of End of Fiscal Year					
HQ	196						21				
B. Consultations on FOIA Requests – Received, Processed, and Pending Consultations											
Number of Consultations Received from Other Agencies that were Pending at Your Agency as of <u>Start</u> of the FY			Number of Consultations <u>Received</u> from Other Agencies During the FY			Number of Consultations Received from Other Agencies that Were <u>Processed</u> by Your Agency During the FY			Number of Consultations Received from Other Agencies that Were <u>Pending</u> at Your Agency as of <u>End</u> of the FY		
HQ	0			0			0			0	
C. Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency											
10th Oldest Consultation and Number of Days Pending		9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Consultation and Number of Days Pending	
HQ	NA		NA	NA	NA	NA	NA	NA	NA	NA	
D. Comparison of Numbers of Requests from Previous and Current Annual Report – Requests Received, Processed, and Backlogged											
NUMBER OF REQUESTS <u>RECEIVED</u>						NUMBER OF REQUESTS <u>PROCESSED</u>					
Number Received During Fiscal Year from Last Year's Annual Report			Number Received During Fiscal Year from Current Annual Report			Number Processed During Fiscal Year from Last Year's Annual Report			Number Processed During Fiscal Year from Current Annual Report		
HQ	9586			7878			15596			8285	
Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report						Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report					
HQ	770 ¹						196				
E. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report – Appeals Received, Processed, and Backlogged											
NUMBER OF APPEALS <u>RECEIVED</u>						NUMBER OF APPEALS <u>PROCESSED</u>					
Number Received During Fiscal Year from Last Year's Annual Report			Number Received During Fiscal Year from Current Annual Report			Number Processed During Fiscal Year from Last Year's Annual Report			Number Processed During Fiscal Year from Current Annual Report		
HQ	196			247			187			267	
Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report						Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report					
	40 ²						21				

¹ The FOIA backlog number reported in FY 08 was erroneously reported as 899. The number of pending requests was 899; the number of backlogged requests (beyond the statutory time frame for response) was 770.

² The Appeal backlog number reported in FY 08 was erroneously reported as 45. The number of pending appeals was 45; the number of backlogged appeals was 40.