

**COMMODITY FUTURES TRADING COMMISSION
FREEDOM OF INFORMATION ACT ANNUAL REPORT
FOR FISCAL YEAR 2008**

(October 1, 2008 to September 30, 2009)

I. Basic Information Regarding Report

1. Name of Person to be contacted with questions about this report:

Stacy J. Easter
Paralegal Specialist
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581
Tel.: 202-418-5105

2. A copy of this report can be found on our website at:

http://www.cftc.gov/ucm/groups/public/@freedomofinformationact/documents/file/foia_annrept09a.pdf

3. To obtain a copy of this report in paper form, please submit the Electronic FOIA Request Form found on our website at: <https://www.cftc.gov/FOI/request/index.htm> or send a written request to:

Mail: FOIA Compliance Office
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

or

<mailto:FOIAsubmissions@cftc.gov>

II. Making a FOIA Request

1. Requests are received by using the CFTC's [FOIA Request Form](#), by fax: 202-418-5124, or by submitting by mail to: FOIA Compliance Office, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Each FOIA request should include a reasonable description of the records sought and an agreement to pay fees.
2. CFTC records are releasable unless they contain information that qualifies for withholding under one or more of the nine FOIA exemptions. Certain categories of information may be considered exempt from disclosure under the FOIA, such as registration applications, trade data, disclosure documents, employee personnel records, financial reports, and trade practice investigative files.

III. Acronyms, Definitions, and Exemptions

1. Agency acronyms or terms:

- a. **“CFTC” or “Commission”** - Commodity Futures Trading Commission

2. Definitions:

- 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 request on a decentralized basis, a “component” is an entity, also sometime 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 separate federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA subsection (b)(3).
- 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 entireties 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-Tracking 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** – an agency decision to disclose portions of the record 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. **Perfect 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 Freedom of Information Act for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a “perfected” FOIA request).

3. 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. Exemption 3 Statutes Relied upon to Withhold Information

Statute	Type of Information Withheld	Case Citation	Number of Times Relied upon per Component	Total Number of Times Relied upon by Agency
Section 8(a) of the Commodity Exchange Act, 7 U.S.C. § 12(a)	Business transactions or market positions of any person and trade secrets or names of customers, and any data or information concerning or obtained in connection with any pending investigation of any person.	The use of Section 8(a) has not been challenged in court.	21	21

V. FOIA REQUESTS

A. Received, Processed and Pending FOIA Requests:

	<u>Number of Requests Pending as of Start of Fiscal Year:</u>	<u>Number of Requests Received in Fiscal Year:</u>	<u>Number of Requests Processed in Fiscal Year:</u>	<u>Number of Requests Pending as of end of Fiscal Year:</u>
CFTC Total	15	199	200	14

B.(1) Disposition of FOIA Requests – All Processed Requests:

	# of Full Grants	# of Partial Grants/ Denials	# of Full Denials Based on Exemptions	# of Full Denials Based on Reasons Other than Exemptions									Total
				No Records	All Records Referred to Another Agency	Withdrawn	Fee-Related Reason	Records not Reasonably Describe	Improper FOIA Request for Other Reasons	Not Agency Records	Duplicate	Other: *Explain in chart below	
CFTC Total	62	30	22	49	0	19	0	0	0	16	0	2	200

B.(2) Disposition of FOIA Requests – “Other” Reasons for “Full Denials Based on Reasons Other than Exemptions” from Sections V, B(1) Chart:

	Description of “Other” Reasons for Denials from Chart B(1) & Number of Times Those Reasons Were Relied Upon	TOTAL
CFTC Total	FOIA does not require agencies to create records to respond to a request	2

B.(3) Disposition of FOIA Requests – Number of Times Exemptions Applied

	Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
CFTC Total	0	1	23	28	22	24	10	1	4	1	8	1	11	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
1	4	5	0

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
2	1	2	0	5

C.(1) Reasons for Denial on Appeal – Number of Times Exemptions Applied:

Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
0	0	1	3	1	2	1	0	2	0	2	0	1	0

C.(2) Reasons for Denial on Appeal – Reasons Other than Exemptions:

No Records	Records Referred at Initial Request Level	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper Request for Other Reasons	Not Agency Records	Duplicate Request or Appeal	Request in Litigation	Appeal Based Solely on Denial of Request for Expedited Processing	Other *Explain in Chart Below
0	0	0	0	0	0	0	0	0	0	0

C.(3) Reasons for Denial on Appeal – “Other” Request from Section VI, C.(2) Chart:

Description of “Other” Reasons for Denial on Appeal from Chart C.(2) & Number of Times Those Reasons Were Relied Upon	TOTAL
n/a	0

C.(4) Response Time for Administrative Appeals:

Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
38	46.2	26	74

C.(5) Ten Oldest Pending Administrative Appeals:

	10 th Oldest Appeal	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Appeal
Date of Receipt of Ten Oldest Appeals	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
# of Days Pending	0	0	0	0	0	0	0	0	0	0

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

A. Processed Requests – Response Time for all Processed Perfected Requests:

	Simple				Expedited Processing			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
CFTC Total	9.5	15.26	1	119	0	0	0	0

B. Processed Requests – Response Time for Perfected Request in Which Information Was Granted:

	Simple				Expedited Processing			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
CFTC Total	11	17.66	1	119	0	0	0	0

C. Processed Requests – Response Time in Day Increments:

Simple Request														
Days	1-20	21-40	41-60	61-80	81-100	101-120	121-140	141-160	161-180	181-200	201-300	301-400	401+	TOTAL
CFTC Total	147	38	8	3	3	1	0	0	0	0	0	0	0	200

Request Granted Expedited Processing														
Days	1-20	21-40	41-60	61-80	81-100	101-120	121-140	141-160	161-180	181-200	201-300	301-400	401+	TOTAL
CFTC Total	0	0	0	0	0	0	0	0	0	0	0	0	0	0

D. Pending Requests – All Pending Perfected Requests:

	Simple				Expedited Processing			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
CFTC Total	11	24.07	2	80	0	0	0	0

E. Pending Requests – Ten Oldest Pending Perfected Requests:

	10 th Oldest Request and Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Request and Number of Days Pending
CFTC Total	<u>Date rec'd:</u> 9/21/09	9/19/09	9/16/09	9/14/09	8/31/09	8/24/09	8/13/08	7/28/09	6/16/09	6/8/09
	<u># of days:</u> 7	9	10	17	21	26	33	45	74	80

*The CFTC did not receive any requests for expedited processing.

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
CFTC Total	0	0	0	0	0

B. Requests for Fee Waiver:

	Granted	Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
CFTC Total	0	0	0	0

*The CFTC did not receive any requests for fee waiver.

IX. FOIA PERSONNEL AND COSTS

	A. PERSONNEL			B. COSTS		
	Number of "Full-Time FOIA Staff"	Number of "Equivalent Full-Time FOIA Staff"	Total Number of "Full-Time FOIA Staff"	Processing Cost	Litigation-Related Cost	Total Cost
CFTC Total	1	.325%	1.325%	\$148,270.76	\$16,536.54	\$164,807.30

X. FEES COLLECTED FOR PROCESSING REQUESTS

	Total amount of fees collected by agency for processing requests:	Percentage of total costs:
CFTC Total	\$1,378.65	.836%

XI. FOIA REGULATIONS (Including Fee Schedule)

The Commission’s FOIA regulations, 17 C.F.R. § 145, can be found on the Commission’s web site at: <http://www.cftc.gov/foi/foiareference/cftcfoiaguide.html>

XII. BACKLOGS, CONSULTATIONS, AND COMPARISONS

A. 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
CFTC Total	6	0

B. Consultations on FOIA Requests – Received, Processed, and Pending Consultations:

	Number of Consultations Received from Other Agencies that Were <u>Pending</u> at Your Agency as of <u>Start</u> of the Fiscal Year	Number of Consultations <u>Received</u> from Other Agencies During the Fiscal Year	Number of Consultations Received from Other Agencies that Were <u>Processed</u> by Your Agency During the Fiscal Year	Number of Consultations Received from Other Agencies that Were <u>Pending</u> at Your Agency as of <u>End</u> of the Fiscal Year
CFTC Total	0	0	0	0

C. Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency:

	10 th Oldest Consultation and Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Consultation and Number of Days Pending
CFTC Total	0	0	0	0	0	0	0	0	0	<u>Rec'd:</u> <u># of Days:</u> 0

D. Comparison of Number of Request from Previous and Current Annual Report – Reports Received, Processed, and Backlogged:

	NUMBER OF REQUEST RECEIVED		NUMBER OF REQUEST PROCESSED	
	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
CFTC Total	147	199	151	200

	NUMBER OF BACKLOGGED REQUESTS AS OF END OF THE FISCAL YEAR FROM PREVIOUS ANNUAL REPORT	NUMBER OF BACKLOGGED REQUEST AS OF END OF THE FISCAL YEAR FROM CURRENT ANNUAL REPORT
CFTC Total	6	6

E. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report – Appeals Received, Processed, and Backlogged:

	NUMBER OF APPEALS RECEIVED		NUMBER OF APPEALS PROCESSED	
	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
CFTC Total	5	4	4	5

	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
CFTC Total	0	0

F. Discussion of Other FOIA Activities (Optional):

1. The Commission continues to work on updating its FOIA tracking system.