



U.S. TRADE AND DEVELOPMENT AGENCY

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Freedom of Information Act (FOIA) Report for Fiscal Year 2012 (October 1, 2011 through September 30, 2012)

I. BASIC INFORMATION REGARDING REPORT

1. Questions concerning this report may be addressed to:

Ms. Anna T. Katselas
Assistant General Counsel and FOIA Public Liaison
U.S. Trade and Development Agency
1000 Wilson Boulevard, Suite 1600
Arlington, VA 22209-3901
Tel. No. (703) 875-4357
Fax No. (703) 875-4009

2. The World Wide Web address for the U.S. Trade and Development Agency (USTDA) is: www.ustda.gov. This site provides general information about USTDA. The FOIA Report for Fiscal Year 2012 is posted at: http://www.ustda.gov/pubs/foia/USTDA_FOIAReport_FY2012.pdf.

3. Paper copies of this FOIA report may be obtained by contacting Anna T. Katselas at the address in I.1 above.

II. MAKING A FOIA REQUEST

1. Names, addresses, and telephone numbers of all individual agency components and offices that receive FOIA requests:

Ms. Anna T. Katselas
Assistant General Counsel and FOIA Public Liaison
U.S. Trade and Development Agency
1000 Wilson Boulevard, Suite 1600
Arlington, VA 22209-3901
Tel. No. (703) 875-4357
Fax No. (703) 875-4009

2. Brief description of why some requests may not be granted:

USTDA is a commercially-oriented agency. As a result, some of its records contain confidential or financial information obtained from a person that is privileged or confidential (5 U.S.C. § 552(b)(4)). In addition, some USTDA records are contractor proposals submitted in response to solicitations for competitive proposals but not included in or incorporated by reference into contracts (5 U.S.C. § 552(b)(3); 41 U.S.C. § 4702(b)).

III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

1. Agency-specific acronyms or other terms.
 - a. U.S. Trade and Development Agency is referred to as “USTDA.”
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.
- 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:** information that is related solely to the internal personnel rules and practices of an agency
 - 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

Statute	Type of Information Withheld	Case Citation	Number of Times Relied upon per Component	Total Number of Times Relied upon by Agency
26 U.S.C. §§ 6103, 6105	Certain tax return information and certain tax convention information	<u>Church of Scientology v. IRS</u> , 484 U.S. 9, 15 (1987) (26 U.S.C. § 6103); <u>Pac Fisheries, Inc. v. IRS</u> , No. 09-35618, 2010 WL 3611645, at *2 (9 th Cir. Sept. 15, 2010) (unpublished disposition); <u>Tax Analysts v. IRS</u> , 217 F.Supp.2d 23, 27-29 (D.D.C. 2002) (26 U.S.C. § 6105)	1	1
41 U.S.C. § 4702(b)	Contractor proposals that are in the possession or control of an executive agency and that have not been set forth or incorporated by reference into contracts	<u>Sinkfield v. HUD</u> , No. 10-885, 2012 U.S. District LEXIS 35233, at *13-15 (S.D. Ohio Mar. 15, 2012); <u>Hornbostel v. U.S. Dep't of the Interior</u> , 305 F. Supp. 2d 21, 30 (D.D.C. 2003), <u>summary affirmance granted</u> , No. 03-5257, 2004 WL 1900562 (D.C. Cir. Aug. 25, 2004)	1	1

V. FOIA REQUESTS

A. Received, Processed and Pending FOIA Requests

	Number of Pending Requests 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
USTDA	1	14	14	1

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									TOTAL	
				No Records	All Records Referred to Another Component or Agency	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper FOIA Request for Other Reason	Not Agency Record	Duplicate Request	Other		
USTDA	6	2	0	5	0	1	0	0	0	0	0	0	0	14

B. (2) Disposition of FOIA Requests – “Other” Reasons for “Full Denial Based on Reasons Other than Exemptions”

Component	Description of “Other” Reasons for Denials from Chart B(1) & Number of Times Those Reasons Were Relied Upon	TOTAL
USTDA	N/A	0

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
USTDA	0	0	1	1	0	1	0	0	0	0	0	0	0	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
0	1	0	1

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
0	0	0	0	0

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	0	0	0	0	0	0	0	0	0	0	0	0

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

No Records	All Records Referred to Another Component or Agency	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper FOIA Request for Other Reason	Not Agency Record	Duplicate Request	Other
0	0	0	0	0	0	0	0	0

C. (3) Reasons for Denial on Appeal – “Other” Reasons 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
0	0	0	0

C. (5) Ten Oldest Pending Administrative Appeals

	10th Oldest Appeal	9th	8th	7th	6th	5th	4th	3rd	2nd	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	09/4/12
Number of Days Pending	0	0	0	0	0	0	0	0	0	19

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

A. Processed Requests – Response Time for All Processed Perfected Requests

	SIMPLE				COMPLEX				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	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
USTDA	0	0	0	0	13	20.6	7	84	0	0	0	0

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

	SIMPLE				COMPLEX				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	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
USTDA	0	0	0	0	13.5	15.1	7	29	0	0	0	0

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
USTDA	0	0	0	0	0	0	0	0	0	0	0	0	0	0

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
USTDA	11	1	1	0	1	0	0	0	0	0	0	0	0	14

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
USTDA	0	0	0	0	0	0	0	0	0	0	0	0	0	0

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
USTDA	0	0	0	0	0	0	1	605	605

E. Pending Requests – Ten Oldest Pending Perfected Requests

		10 th Oldest Request	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Request and Number of Days Pending
USTDA	Date	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	06/05/10
	Number of Days Pending	0	0	0	0	0	0	0	0	0	605

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
USTDA	0	1	13	13	0

B. Requests for Fee Waiver

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
USTDA	0	0	0	0

IX. FOIA PERSONNEL AND COSTS

	PERSONNEL			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	Total Costs
USTDA	0	0.10	0.10	\$12,000.00	\$0.00	\$12,000.00

X. FEES COLLECTED FOR PROCESSING REQUESTS

	Total Amount of Fees Collected	Percentage of Total Costs
USTDA	0	0

XI. FOIA REGULATIONS

USTDA’s FOIA rules and procedures¹ can be accessed at the following link: www.ustda.gov/pubs/FOIA.

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
USTDA	1	0

¹ USTDA’s FOIA rules and procedures are not presently codified but can be accessed at the link above.

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

	Number of Consultations Received from Other Agencies that Were <u>Pending</u> at USTDA as of Start of 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 USTDA During the Fiscal Year	Number of Consultations Received from Other Agencies that Were <u>Pending</u> at USTDA as of <u>End</u> of the Fiscal Year
USTDA	0	0	0	0

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

		10th Oldest Consultation and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Consultation and Number of Days Pending
USTDA	Date	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Number of Days	0	0	0	0	0	0	0	0	0	0

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

	NUMBER OF REQUESTS RECEIVED		NUMBER OF REQUESTS 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
USTDA	28	14	46	14

	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
USTDA	1	1

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
USTDA	2	1	2	0

	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
USTDA	0	0