



# **FEDERAL ELECTION COMMISSION**

**2013 CHIEF FOIA OFFICER REPORT**

# 2013 Chief FOIA Officer Report Federal Election Commission

## Section I: Steps Taken to Apply the Presumption of Openness

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.

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

*No.*

Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?

*Yes.*

2. Did your agency make any discretionary releases of otherwise exempt information?

*Yes. The FEC makes discretionary releases of technically exempt information on a case-by-case basis in our FOIA releases.*

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

*Exemption 5*

4. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.

*The FEC may discretionarily release internal emails between FEC staff regarding enforcement matters, where those emails do not reveal attorney work product or do not provide a legal analysis of issues in a case. An example may be emails regarding case administration (e.g., providing tracking numbers or attaching a document for informational purposes). In its public disclosure of closed enforcement records, the FEC regularly releases redacted General Counsel's Reports (which are Exemption 5 protected) in connection with its Interim Disclosure Policy.*

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

*The FEC provides most of its closed enforcement files on its website under the Enforcement Query System, as well as advisory opinions, and political committee reports that are required to be disclosed under the Federal Election Campaign Act. The FEC's FOIA webpage also provides clear information regarding how to submit a FOIA request to the Commission, as well an example FOIA request letter.*

## **Section 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 its system for responding to requests is effective and efficient. 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.

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

*No.*

2. Do your FOIA professionals work with your agency's Open Government Team?

*Our FOIA attorneys have provided legal advice to the agency regarding Open Government matters, but FOIA staff are not typically directly involved in substantive Open Government projects. The agency has delegated Open Government responsibilities to its Office of the Chief Information Officer (OCIO), in concert with its Public Information Division. FOIA professionals interact frequently with OCIO professionals about IT and privacy issues.*

3. Has your agency assessed whether adequate staffing is being devoted to FOIA administration?

*The FEC made significant changes in the supervisory structure of the FOIA Office during fiscal year 2012 in order to ensure adequate staffing. The Chief FOIA Officer position was moved to the Deputy General Counsel – Administration's area of responsibilities, and the Assistant General Counsel for Administrative Law position (who is also the FOIA Public Liaison) was filled. These positions make up the supervisory hierarchy of the FEC's FOIA Program. Additionally, two attorney positions in the FOIA Office were filled by the end of 2012.*

4. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, streamlining consultations, eliminating redundancy, etc.

*In fiscal year 2012, the FEC FOIA Requester Service Center (FOIA Office) began heavily using email notifications to requesters for both providing acknowledgment letters of requests, and providing final agency decision letters and documents to requesters. The*

*Commission has purchased and is in the process of implementing upgrades to its Law Manager system that will include a FOIA page to be used for internal electronic tracking of all FOIA requests and appeals. Additionally in its public disclosure of closed enforcement records, the FEC regularly releases General Counsel's Reports (which are Exemption 5 protected) in connection with its Interim Disclosure Policy, 68 Fed. Reg. 70426 (Dec. 18, 2003).*

### **Section III: Steps Taken to Increase Proactive Disclosures**

Describe here the steps your agency has taken both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2012 to March 2013). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

1. Provide examples of material that your agency has posted this past year.

*This past year, the agency released a lot of materials related to its enforcement and compliance processes – thresholds, manuals, etc. – in order to be more transparent. We believe a lot of this information is now available on our web site.*

2. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities on the site, creating mobile applications, providing explanatory material, etc.?

*Yes.*

3. If so, provide examples of such improvements.

*Since 2009, the agency has had an ongoing initiative that has taken a number of steps to solicit user feedback on the web site, including public hearings. A public forum in which users were invited to come to the Commission and speak directly with Commissioners, ITD personnel and Information Division personnel was held February 15, 2012.*

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

*N/A*

### **Section 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 and 2011, agencies reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2013, as we did in 2012, the questions have been further refined and now also address different, more innovative aspects of technology use.

*Electronic receipt of FOIA requests:*

1. Can FOIA requests be made electronically to your agency?

*Yes via email.*

2. If your agency is decentralized, can FOIA requests be made electronically to *all* components of your agency?

*N/A.*

*Online tracking of FOIA requests:*

3. Can a FOIA requester track the status of his/her request electronically?

*No.*

4. If so, describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review. " List the specific types of information that are available through your agency's tracking system.

*N/A.*

5. In particular, does your agency tracking system provide the requester with an estimated date of completion for his or her request?

*N/A.*

6. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability?

*The Commission recently committed to a complete overhaul of its case tracking and case management infrastructure. This effort will encompass the FOIA materials as well. By 2014, our online tracking capabilities will be greatly enhanced.*

*Use of technology to facilitate processing of requests:*

7. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

*Yes.*

8. If so, describe the technological improvements being made.

*Please see the answer to Section II.1.*

### **Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs**

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests and appeals. *For the figures required in this Section, please use those contained in the specified sections of your agency's 2012 Annual FOIA Report.*

1. Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.

- a. Does your agency utilize a separate track for simple requests?

*Yes, our agency uses a separate track for processing simple requests.*

- b. If so, for your agency overall, for Fiscal Year 2012, was the average number of days to process simple requests twenty working days or fewer?

*No, for FY 2012 our average number of days to process simple requests was forty-nine working days.*

- c. If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?

N/A.

2. Sections XII.D.(2) and XII.E.(2) of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report – Backlogged Requests/Appeals," show the numbers of any backlog of pending requests or pending appeals from Fiscal Year 2012 as compared to Fiscal Year 2011. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition, Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," and Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," from both Fiscal Year 2011 and Fiscal Year 2012 should be used for this section.

- a. If your agency had a backlog of requests at the close of Fiscal Year 2012, did that backlog decrease as compared with Fiscal Year 2011?

*Yes, our backlog of requests decreased from 13 in FY 2011 to 5 in FY 2012. This is a 61.5% improvement over FY 2011.*

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011?

*No, our backlog of administrative appeals remained the same between FY 2011 and FY 2012. We had one backlogged appeal in FY 2011 and one backlogged appeal in FY 2012. These were two different appeals.*

- c. In Fiscal Year 2012, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2011?

*Our agency closed nine of the ten oldest requests that were pending as of the end of FY 2011.*

- d. In Fiscal Year 2012, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2011?

*Yes, our agency closed the one administrative appeal that was pending as of the end of FY 2011.*

3. If you answered "no" to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation:

Request Backlog:

- a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?

N/A.

b. Was the lack of a reduction in the request backlog caused by a loss of staff?

*N/A.*

c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?

*N/A.*

d. What other causes, if any, contributed to the lack of a decrease in the request backlog?

*N/A.*

Administrative Appeal Backlog:

a. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?

*Yes, during FY 2012 the number of incoming appeals grew from 1 received in FY 2011 to 4 received in FY 2012.*

b. Was the lack of a reduction in the appeal backlog caused by a loss of staff?

*No.*

c. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received?

*No.*

d. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?

*None.*

4. OIP has issued guidance encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information. If your agency had a backlog in Fiscal Year 2012, please provide an estimate of the number of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

*All five FOIA requests that were backlogged in FY 2012 received interim responses.*

### **Use of FOIA's Law Enforcement "Exclusions"**

In order to increase transparency regarding the use of the FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to "treat the records as not subject to the requirements of [the FOIA]," 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. Did your agency invoke a statutory exclusion during Fiscal Year 2012?

*No. Readers may wish to be aware that the question posed above is not the same as an inquiry about invocation of the exemption at 5 U.S.C. § 552(b)(3) for material required to be kept confidential by statute.*

2. If so, what was the total number of times exclusions were invoked?

*N/A.*

### **Spotlight on Success**

Out of all the activities undertaken by your agency since March 2012 to increase transparency and improve FOIA administration, describe here one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas.

*Our FOIA resources were focused this year on responding to several highly complex requests. We were proud that through the cooperation of client offices, the work of our FOIA team, and the lending of resources from other parts of the General Counsel's office, we were able to produce thousands of pages of documents in the most sensitive of these requests in a very short turnaround time. Additionally, several initiatives by the FOIA Office significantly improved FOIA operations, which resulted in a large decrease in the FOIA backlog, and improved FOIA response times. For example, the filling of vacant FOIA staff positions, and increased efforts by the FOIA staff to increase customer service efforts (by providing frequent updates to requesters and timely responding to requester inquiries), largely contributed to the FOIA Office's success in FY 2012. We look forward in the coming year to improvements resulting from new technology and new efficiencies in our FOIA operations.*