U.S. International Trade Commission

Audit of the FOIA Program

OIG-AR-11-08

March 14, 2011

UNITED STATES INTERNATIONAL TRADE COMMISSION

Office of Inspector General

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OFFICE OF INSPECTOR GENERAL

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

March 14, 2011 OIG-JJ-003

Chairman Okun:

This memorandum transmits the Office of Inspector General's final report *Audit of FOIA Program, OIG-AR-11-08*. In finalizing the report, we analyzed management's comments on our draft report and have included those comments in their entirety as Appendix A.

This report contains five recommendations for corrective action. In the next 30 days, please provide me with your management decisions describing the specific actions that you will take to implement each recommendation.

Thank you for the courtesies extended to my staff during this audit.

Philip M. Heneghan
Inspector General, USITC

Table of Contents

Results of Audit **1**

Problem Areas & Recommendations **1**

Problem Area 1: The FOIA Office Did Not Always Provide a Complete Response to FOIA Requests 1

Recommendation 1: *2*

The Chief FOIA Officer develop a quality assurance process to review FOIA responses for completeness. *2*

Recommendation 2: *2*

The FOIA Office staff attend training to enhance knowledge of the FOIA requirements. *2*

Problem Area 2: The FOIA Office Did Not Always Maintain Adequate Files to Support the Response Provided to the Requestors 2

Recommendation 3: *That the Chief FOIA Officer create recordkeeping guidelines for the FOIA Program to ensure the official FOIA files have the documentation necessary to fully support responses to FOIA requests.* *3*

Recommendation 4: *3*

That the Chief FOIA Officer revise the internal FOIA form to require offices to identify where they searched for responsive documents. *3*

Problem Area 3: The FOIA Office Did Not Have a Well Documented Process for Responding to FOIA Requests 4

Recommendation 5: *The Chief FOIA Officer develop standard operating procedures that fully document the FOIA Program's processes.* *4*

Management Comments and Our Analysis **5**

Objective, Scope, and Methodology **5**

Appendix A: Management Comments on Draft Report ..... **A**

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Results of Audit

The objective of this audit was to answer the question; does the Commission have an effective Freedom of Information Act (FOIA) Program? The FOIA Program is not effective.

For purposes of this audit, an effective FOIA Program was defined as one in which a full and complete response was provided within the statutory timeframes.

In fiscal year 2010, the FOIA Office received 46 FOIA requests. A review of these 46 FOIA requests found:

- 13% of the documented responses (6 of 46) did not fully address the information being requested;
- 28% of the responses (13 of 46) were not completed within the mandated 20 day deadline, however, all responses were completed within 41 days;
- 35% of the FOIA files (16 of 46) did not have adequate documentation to support the response provided to the requestor; and
- 17% of the FOIA requests (8 of 46) were not accurately categorized on the 2010 FOIA Report to Congress.

The FOIA Program was ineffective because the FOIA Office did not always provide a complete response, the FOIA Office did not maintain adequate documentation in the FOIA files to support responses, and the FOIA Office did not have a well documented procedure to process FOIA requests in a consistent manner. Each of these three problem areas will be discussed in the rest of this report.

Problem Areas & Recommendations

Problem Area 1:
The FOIA Office Did Not Always Provide a Complete Response to FOIA Requests

One aspect of an effective FOIA Program is to provide a complete response to each request for information. Our review and analysis of the official FOIA files found six instances (13%) where the FOIA Office did not provide a complete response to the FOIA request. In addition, of these six responses:

- Two withheld information from the requestor without disclosing that the information was being withheld, as required by FOIA.

- One response stated no responsive document existed, even though the file contained clear information that suggested responsive documents existed. (Follow-up with the responding office, confirmed the Commission had the documents.)

Some of the reasons for not always providing a complete response to FOIA requests could have been caused by not having a formal quality assurance process in place to review responses for completeness or a lack of knowledge regarding FOIA exemption requirements. However, there was not a quality assurance process in place designed to ensure all responses were complete and fully addressed the request for information.

By not always providing a complete response, not properly disclosing to requestors that information was being withheld, and not providing responsive documents, the FOIA Office did not effectively meet their responsibilities under the law or achieve the goals of transparency and openness.

Recommendation 1:

The Chief FOIA Officer develop a quality assurance process to review FOIA responses for completeness.

Recommendation 2:

The FOIA Office staff attend training to enhance knowledge of the FOIA requirements.

Problem Area 2:
The FOIA Office Did Not Always Maintain Adequate Files to Support the Response Provided to the Requestors

Good recordkeeping practices ensure that adequate documentation is maintained in official files to support the decision making process, provide for management review, and maintain an institutional knowledge. Our analysis identified 16 files (35%) that did not have adequate documentation to support the response provided by the FOIA Office.

Examples of inadequate supporting documents include:

- An individual requested all documents, correspondence, e-mail and other material relating to a specific individual and company. The ITC response provided a link to EDIS along with generic instructions. There is no evidence in the file on what other types of searches were conducted to find responsive information and, as a

result, there was no evidence to determine whether the response fully answered the question.

- One response stated a document was found but was being withheld in its entirety. The FOIA Office did not maintain a copy of that document in the file. As a result, there was no evidence to support the FOIA Office's decision to withhold the entire document.
- An individual requested information on voluntary restraint agreements. The response indicates that the information was provided in its entirety to the requestor on a diskette; however, a copy of the diskette was not in the file, so the FOIA Office did not have a record of what was actually provided to the individual.
- In many other instances the response memo simply stated a search was performed and no responsive records were found. While the response may have been correct, there was nothing in the file to identify what systems were actually searched or where offices looked to support the response.

The reason some of the files had insufficient documentation, was because the FOIA Office did not have standard recordkeeping guidelines to identify the necessary documentation required for the official files. In addition, the FOIA Office did not require responding offices to provide documentation of their efforts to find responsive documents, such as identifying the systems or files that were searched.

The FOIA files did not always contain adequate documentation to support the response provided by the FOIA Office. As a result, the FOIA Office did not have documentation to rationalize or support their responses and did not have historical knowledge to assist the FOIA Office with processing similar requests in the future.

Recommendation 3:

That the Chief FOIA Officer create recordkeeping guidelines for the FOIA Program to ensure the official FOIA files have the documentation necessary to fully support responses to FOIA requests.

Recommendation 4:

That the Chief FOIA Officer revise the internal FOIA form to require offices to identify where they searched for responsive documents.

Problem Area 3:
The FOIA Office Did Not Have a Well Documented Process for Responding to FOIA Requests

Documenting processes by having well-written procedures is essential for creating an internal control system to promote compliance with laws, to meet the operational needs of the office, and to effectively manage risk. The FOIA Office did not have a well documented process for responding to FOIA requests. We found that 13 of the responses (28%) were not completed within the mandated 20 day deadline.

At the entrance conference, the Chief FOIA Officer openly acknowledged the FOIA Office did not have any formal standard operating procedures for processing FOIA requests.

We were later provided with a document titled "*FOIA REQUESTS PROCESSING*." We found that the document only described how to assign a FOIA tracking number and how to push the FOIA request to and from the responsive office within the Commission. The document did not include detailed information critical to effectively processing the FOIA requests such as, using exemptions, calculating fees, referring requests to another agency, processing appeals, or annual reporting.

Since the FOIA Office did not have well documented procedures, organizational and historical knowledge on processing requests was not captured, the responses were not always completed within the statutory deadlines, the responses did not always include proper disclosures, and similar requests were responded to inconsistently. As a result, 17% of the FOIA requests were not reported accurately on the 2010 Annual FOIA Report..

Recommendation 5:

The Chief FOIA Officer develop standard operating procedures that fully document the FOIA Program's processes.

Management Comments and Our Analysis

On March 9, 2011, Chairman Deanna Tanner Okun provided management comments to the draft audit report. The Chairman agreed with our assessment that the FOIA Program is not effective and recognized the need to resolve the three problem areas. The Chairman's response is provided in its entirety as Appendix A.

Objective, Scope, and Methodology

Objective

The objective of the audit was to answer the question:

Is the Commission's FOIA Program effective?

For purposes of this audit, an effective FOIA Program was defined as one in which a full and complete response was provided to all requests within the statutory timeframes.

Scope

The scope of this audit covered all FOIA requests received during fiscal year 2010 and was measured against requirements found in the Freedom of Information Act, 5 U.S.C. 552, as amended, 19 CFR 201.17 through 201.21, and the FOIA Office's FY 2010 Annual Report. FOIA requests responded to by the Office of Inspector General were included in this review.

Methodology

- We conducted interviews with the FOIA Staff.
- We obtained a copy of the Excel spreadsheet used internally to track FOIA requests.
- We reviewed each FOIA file individually and recorded the following information:
  - Tracking number;
  - Date received;
  - Date responded;
  - Summary of information requested;
  - Summary of information provided;
  - A note to identify when information was redacted or withheld along with any exemptions cited; and
  - A determination as to whether appropriate documentation was in the file to support the response.

- We analyzed the data collected to determine whether:
  - The responses adequately answered the questions;
  - The files supported the responses; and
  - The use of exemptions for withholding and redacting information was correct.

This audit was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A: Management Comments on Draft Report

Chairman

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

CO76-JJ-009

March 9, 2011

MEMORANDUM

TO: Philip M. Heneghan, Inspector General

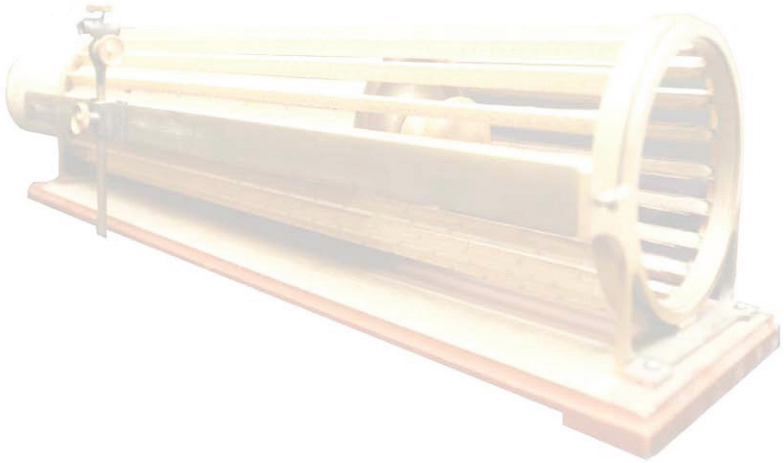
FROM: Deanna Tanner Okun, Chairman

SUBJECT: Management Response to the Inspector General's Draft Audit Report, "Audit of the Freedom of Information Act (FOIA) Program"

I am in receipt of the Inspector General's draft report, *Audit of the Freedom of Information Act (FOIA) Program*, dated February 15, 2011. I appreciate the opportunity to review the draft report and to provide comments.

The Inspector General's draft report identified three problem areas related to the effectiveness of the FOIA Program. I concur with your assessment and appreciate that your office identified 1) the FOIA Office did not always provide a complete response to FOIA requests; 2) the FOIA Office did not always maintain adequate files to support the response provided to the requestors; and 3) the FOIA Office did not have a well-documented process for responding to FOIA requests. It is an important goal of the Commission to have an effective FOIA Program. As you found, the agency has several deficiencies in its program that must be corrected.

Thank you for reviewing the FOIA Program and making recommendations to strengthen its effectiveness.



"Thacher's Calculating Instrument" developed by Edwin Thacher in the late 1870s. It is a cylindrical, rotating slide rule able to quickly perform complex mathematical calculations involving roots and powers quickly. The instrument was used by architects, engineers, and actuaries as a measuring device.

To Promote and Preserve the Efficiency, Effectiveness, and Integrity of the U.S. International Trade Commission

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