

2012 Chief FOIA Officer Report U.S. International Trade Commission

Name and Title of Agency Chief FOIA Officer:

James R. Holbein
Secretary to the Commission

Section I: Steps Taken to Apply the Presumption of Openness

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

Agency-wide training on information security includes FOIA awareness and responsibilities. Agency staff are reminded of their responsibilities when asked to research a FOIA request.

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

During the current reporting period, calendar year 2011, all FOIA staff attended the Department of Justice's training sessions on the new guidelines.

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

Some FOIA requests received by this agency are for information subject to FOIA exemptions, but we rarely deny requests outright and supply as much information as possible in response to FOIA requests. However, during the period covered by the report, we did not make discretionary releases of otherwise exempt information.

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

We have not made discretionary releases of information.

5. Describe your agency's process to review records to determine whether discretionary releases are possible.

A review is conducted by the FOIA Office of all information gathered in response to FOIA requests. When material appears to be exempt, that material is further reviewed by the Office of the General Counsel. If the material can be released, it is. While some information is exempt, it is a small amount compared to the amount released.

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

Based on our records, only two requests were denied in full due to exemptions in the last five fiscal years. The Commission's practice was already consistent with the Administration's openness initiative when it began. During this reporting period, the FOIA Office has reviewed the entire process for receiving, processing, searching for records and disclosing information in order to ensure its rigorous compliance with openness guidelines. This review was conducted in response to an audit by the Commission's Inspector General. Several findings were made and the FOIA Office revised and improved its operating procedures as a consequence.

7. Did your agency have an increase in the number of responses where records were released in full?

In 2011, the percentage of full grants was substantially higher and the number was also higher than in the previous year. A full release was granted in 58% (19 full out of 33 total) of all requests received in 2011. In the previous reporting period, 2010, a full release was granted in 37% (17 full out of 46 total) of all requests received.

8. Did your agency have an increase in the number of responses where records were released in part?

In 2011 the USITC number of partial grants was slightly higher than in the previous year. A partial release was granted in 19% (6 partial out of 33 total) of all requests received in 2011. In FY 2010, a partial release was granted in 13% (6 partial out of 46 total) of all requests received in 2010. No records were available in 19% (6 of 33 cases) and the requests were withdrawn in the remaining 4% (2 of 33 cases).

Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests

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

Yes. The IT staff is very supportive of FOIA staff. We consistently work together regarding web postings, improvements to the FOIA database, and maintenance of the web interface for electronic filing of requests.

2. Is there regular interaction between agency FOIA professionals and the Chief FOIA Officer?

Yes. The FOIA Liaison and Chief FOIA Officer have regular discussions along with staff of our General Counsel sharing our recommendations on processing FOIA requests before they are forwarded to the programming offices for processing. We also discuss input and make recommendations for the FOIA Annual and Chief FOIA officer reports submitted to the Department of Justice.

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

Our FOIA professionals are members of the Open Government Team.

4. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to FOIA administration.

Our response time is analyzed each year to determine that we are meeting the statutory due date. Staff is considered adequate to meet current requirements of FOIA processing. The Commission receives a relatively small number of FOIA requests annually, and the current staff has no difficulty processing requests, coordinating searches with the program offices, and responding within the guidelines that apply. In addition, the audit conducted by the Inspector General during this reporting period did not identify staffing as a problem for the FOIA Program.

5. Describe any other the steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.

The audit by the Inspector General of the FOIA Program yielded five recommendations for improvements to the FOIA program as follows:

- (1) To develop a more extensive quality assurance process to review FOIA requests to comply with recordkeeping and FOIA guidelines;**
- (2) To continue making available FOIA training for staff;**
- (3) To create recordkeeping guidelines for the FOIA program to ensure the official FOIA files have been documented to fully support responses to FOIA requests;**
- (4) To revise an internal form to require offices to identify where they searched for responsive documents; and**
- (5) To develop more in-depth standard operating procedures that fully document the FOIA Program's processes.**

In September 2011, in compliance with the audit findings, the Commission submitted responses to the recommendations mentioned above. The FOIA program:

- (1) Operates under step-by-step processing guidelines for all FOIA requests to standardize the approach to all FOIA requests, and guidance is provided to program offices;**
- (2) Requires that staff attends Annual ASAP training and conference events;**
- (3) Adopted a checklist format for internal recordkeeping guidelines being used with every FOIA request to ensure proper handling, from beginning to the end of the processing of each FOIA request;**
- (4) Developed an extensive and in-depth form requiring programming offices to document where they searched, how they conducted the search, the time taken and grade of staff (for fee calculation) and a listing of all responsive documents;**
- (5) Developed and implemented standard operating procedures in the form of Processing Guidelines.**

Section III: Steps Taken to Increase Proactive Disclosures

1. Has your agency added new material to your website since last year?

During the reporting period, the Commission added substantial new content to its website. This material includes Federal Register notices, Publications, thousands of documents in the Electronic Document Information System (EDIS), numerous press releases, and much more.

2. Provide examples of the records, datasets, videos, etc., that have been posted this past year.

The Commission initiated 71 new Section 337 investigations and 40 Title VII investigations during the last fiscal year, and the website contains information on each new case. More 23,000 documents were posted on the Commission's Electronic Document Information System (EDIS) during the reporting period, of which more than 66 % were public documents available to anyone to review. In addition, 83 publications were published and posted to the website. Over 2,000 older publications are now available online and the full complement of over 4,000 publications will be made available during the next year, if at all possible. The Commission is the official site for the Harmonized Tariff System and responds to approximately 3.5 million requests for tariff information annually. The website overall receives nearly 5 million hits annually.

3. Describe the system your agency uses to routinely identify records that are appropriate for posting.

Some information handled by the Commission is protected either as National Security Information (NSI) or Confidential Business Information (CBI), and is therefore not disclosable. All filings that are public are posted on EDIS and are available to anyone. Generally all final reports and publications are also publically available. There are standard operating procedures in place for identifying records for posting.

4. Beyond posting new material, is your agency taking steps to make the 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, providing explanatory material, etc.?

We perform routine user surveys and respond to inquiries from the public on a regular basis. Commission staff regularly meets with customer groups, such as organizations that practice before the Commission, and solicits feedback from them. Generally the Commission rates well in surveys as to responsiveness and the information provided.

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

The Commission posts many types of documents to our website, such as federal register notices, a calendar of Commission hearings and other meetings, publications, press releases involving publications and notices, the budget justification to Congress, and

many planning and organization related documents. In addition, we provide FAQ's on our major operations. All of these postings are part of the agency's proactive disclosure activities.

Section IV: Steps Taken to Greater Utilize Technology

Electronic receipt of FOIA requests:

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

Yes. Request can be made directly by e-mail or on-line through our web portal.

2. If your agency processes requests on a decentralized basis, do all components of your agency receive requests electronically?

No. Due to the relatively small number of our FOIA requests and a small agency staff, one office processing FOIA requests is an efficient use of resources.

Online tracking of FOIA requests:

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

No. Since, we normally receive a small number of FOIA requests our contacts with requesters are through telephone calls or e-mail regarding the status of their requests. Contact is direct and we find that requestors have commented that the agency is being both responsive and helpful due to the personal interaction with FOIA Office staff.

4. If not, is your agency taking steps to establish this capability?

No, but the Commission is reviewing the feasibility of adding such capability to its FOIA webpage.

Use of technology to facilitate processing of requests:

5. 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.

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

The Commission is regularly upgrading search capabilities in EDIS for investigation records. In particular, search tools for .pdf format documents were enhanced within the reporting period. Looking ahead, the Commission is considering migrating to new

search platforms to improve web-based search and cataloging of documents. This should enhance both transparency and the ability of the public to identify and download documents produced by the staff.

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

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?

The Commission uses separate tracking for simple requests.

- b. If so, for your agency overall, for Fiscal Year 2011, was the average number of days to process simple requests twenty working days or fewer?

The Commission averaged sixteen days for processing FOIA requests, as reported in our 2011 FOIA Annual Report. Simple requests were processed within 5 working days on average.

- 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?

Not applicable.

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 2011 as compared to Fiscal Year 2010. 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 2010 and Fiscal Year 2011 should be used for this section.

- a. If your agency had a backlog of requests at the close of Fiscal Year 2011, did that backlog decrease as compared with Fiscal Year 2010?

The Commission had no backlog of requests for Fiscal Year 2011.

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- b. If your agency had a backlog of administrative appeals in Fiscal Year 2011, did that backlog decrease as compared to Fiscal Year 2010?

The Commission had no backlog of administrative appeals for Fiscal Year 2011.

- c. In Fiscal Year 2011, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2010?

The Commission had no old requests pending from Fiscal Year 2010 at the end of Fiscal Year 2011.

- d. In Fiscal Year 2011, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2010?

The agency had no old administrative appeals pending from Fiscal Year 2010 at the end of Fiscal Year 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?

No. The USITC did not have a backlog of FOIA requests in either FY 2010 or FY 2011.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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?

No. The USITC did not have a backlog of administrative appeals in either FY 2010 or FY 2011.

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

Not applicable.

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

Not applicable.

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

Not applicable.

1. Does your agency routinely set goals and monitor the progress of your FOIA caseload?

Yes. A periodic analysis is conducted to assure that each FOIA request is processed timely and within statutory deadlines.

2. Has your agency increased its FOIA staffing?

No. Our response time is analyzed each year to determine that we are meeting the statutory due date. Currently staff is considered adequate to meet requirements of FOIA processing. The Commission receives a relatively small number of FOIA requests annually, and the current staff has no difficulty processing requests, coordinating searches with the program offices, and responding within the guidelines that apply.

3. Has your agency made IT improvements to increase timeliness?

In response to the audit conducted by the Commission's Inspector General, the Office of the CIO committed to assisting the FOIA program by upgrading the FOIA database. The plan is to upgrade the software to enable the compilation of a comprehensive record of all actions taken, dates and all supporting documentation (in pdf format) in one place, thereby saving time on processing FOIA requests and providing enhanced internal controls of the documents provided and timelines for production.

4. If your agency receives consultations from other agencies, has your agency taken steps to improve the efficiency of the handling of such consultations, such as utilizing IT to share the documents, or establishing guidelines or agreements with other agencies on the handling of particular information to speed up or eliminate the need for consultations?

The agency currently does not receive consultations from other agencies.

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 2011?

No.

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

None.

Spotlight on Success

Out of all the activities undertaken by your agency since March 2011 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.

Success Stories :

1. **During this reporting period the FOIA Program received a request sent to several agencies regarding their FOIA regulations and practices being published in the Federal Register. The FOIA staff had a very lengthy discussion back and forth regarding the agency rules on processing FOIA requests and what the requester thought should be included regarding details of who the Chief FOIA Officer was and how they were appointed. During the discussion, staff came to an understanding with the requestor that his views would be taken into consideration when the Commission next updates its regulations. Requestor was appreciative of the consideration given by the FOIA staff for listening to his point of view and giving time to hear his concerns on behalf of the FOIA community.**
2. **In another instance, requestor made a very broad request for information that would have cost several thousand dollars and hundreds of hours of staff time to perform. The Chief FOIA Officer immediately called the requestor and explained the scope of work required to comply. The requestor narrowed the search considerably in response to the call. The FOIA staff then worked with the program offices and the requestor to identify specifically what types of information would be available and clarify whether that would be helpful to the requestor. After several discussions and clarifications with the requestor, a preliminary production of documents was made. Requestor was satisfied with that rather small document production and withdrew the request, saving time for the agency and money for the requestor, who expressed gratitude for the cooperative and constructive approach taken by the agency.**