



United States International Trade Commission

2016 CHIEF FOIA OFFICER REPORT



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Introduction

The United States International Trade Commission (USITC or Commission) was established in 1916. It is an independent, quasi-judicial federal agency whose mission is consistent with its statutory mandate, to make determinations in proceedings involving imports claimed to injure a domestic injury or violate U.S. intellectual property rights; provide independent tariff, trade and competitiveness-related analysis and information; and maintain the U.S. tariff schedule.

The Commission has identified two mission-related strategic goals. First, the agency will produce sound, objective, and timely determinations in investigative proceedings. Second, the Commission will produce objective, high-quality and responsive tariff, trade, and competitiveness-related analysis and information. These goals reflect the interests of its principal customers: the President, the USTR, and Congress, and thereby also serve U.S. industry, workers, and the general public. In order to deliver greater impact through increasing effectiveness and efficiency, the Commission also has established a management goal to achieve agency-wide efficiency and effectiveness to advance the agency's mission.

The USITC's Freedom of Information Act (FOIA) program is administered by the Chief FOIA Officer with the assistance of the FOIA Liaison. As a small agency, the USITC maintains staff commensurate with the agency's needs to effectively implement its FOIA program.

Section I: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

FOIA TRAINING:

1. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any FOIA training or conference during the reporting period such as that provided by the Department of Justice?

Answer: The agency places a high priority on training and education. During calendar year 2015, FOIA staff attended the Department of Justice's (DOJ) training session covering updates to the Chief FOIA Officer's report and FOIA reporting (October) regarding continued requirements pursuant to the Open Government Act. In addition, FOIA staff participated in FOIA training online and at other sites. Finally, personnel from this agency that have FOIA responsibilities attended the FOIA for Attorneys and Access Professionals and the FOIA Litigation Seminar provided by the DOJ/OIP.

2. Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

Answer: 100% of agency FOIA professionals received substantive FOIA training this period.

3. OIP has directed agencies to "take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year. "If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

Answer: N/A

DISCRETIONARY RELEASES:

4. Does your agency have a distinct process or system in place to review records for discretionary release?

Answer: The agency has an informal process in place to review records for discretionary

release and consideration is given with each FOIA request on a case-by-case basis to determine what is appropriate for discretionary release and to assure the requester receives the requested information that may be releasable without compromising personal privacy or privileged records.

5. During the reporting period, did your agency make any discretionary releases of information?

Answer: No.

6. What exemption(s) would have covered the material released as a matter of discretion? For a discussion of the exemptions that allow for discretionary releases, please see OIP's guidance on implementing the President's and Attorney General's 2009 FOIA Memoranda.

Answer: N/A

7. Provide a narrative description, as well as some specific examples, of the types of information that your agency released as a matter of discretion during the reporting year.

Answer: N/A

8. If your agency was not able to make any discretionary releases of information, please explain why or example you should note here if your agency did not have an opportunity to make discretionary disclosures because you provided full releases in response to all request or the only exemptions that were applied were those that do not lend themselves to discretionary release (i.e. Exemptions 1, 3, 4, 6, 7A, 7B, 7D, 7F).

Answer: The only information withheld during this time period was subject to FOIA exemptions, and discretionary release was not appropriate because disclosure was prohibited by statute or there was a reasonable and foreseeable harm that required the information to be withheld to protect a legitimate interest identified by one of the exemptions when considering the sensitivity of its content, the nature of the decision at issue, the status of the decision, or the personal privacy of the personnel involved.

OTHER INITIATIVES:

9. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

Answer: The agency strongly supports increased transparency in government. For this reason, in May 2015, the agency provided three (3) days of free training to the public regarding the Commission's public interface for section 337 investigative data (337Info repository). These training opportunities allowed the public to learn more about the features of the repository, how to quickly search and obtain section 337 data and helped further the agency's goals to

ensure the presumption of openness.

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

The Attorney General's 2009 FOIA Guidelines emphasized that "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." It is essential that agencies effectively manage their FOIA program.

Please answer the following questions to describe the steps your agency has taken to ensure that the management of your FOIA program is effective and efficient. You should also include any additional information that describes your agency's efforts in this area.

PROCESSING PROCEDURES:

1. For Fiscal Year 2015, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2015 Annual FOIA Report.

Answer: The average number of days to adjudicate requests for expedited processing was one calendar day.

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Answer: N/A

3. On July 2, 2015, OIP issued new guidance to agencies on the proper procedures to be used in the event an agency has a reason to inquire whether a requester is still interested in the processing of his or her request. Please confirm here that to the extent your agency may have had occasion to send a "still interested" inquiry, it has done so in accordance with the new guidelines for doing so, including affording requesters thirty working days to respond.

Answer: Due to the low volume of FOIA requests received annually, and also maintaining almost no backlog, the Commission has not had the need to use the process.

REQUESTER SERVICES:

4. Agency FOIA Requester Service Centers and FOIA Public Liaisons serve as the face and voice of an agency. In this capacity they provide a very important service for requesters, informing them about how the FOIA process works and providing specific details on the handling of their individual requests. The FOIA also calls on agency FOIA Requester Service Centers and FOIA Public Liaisons to assist requesters in resolving disputes. Please explain here any steps your agency has taken to strengthen these services to better inform requesters about their requests and to prevent or resolve FOIA disputes.

Answer: The Commission has not taken any steps to strengthen these services because there has been no need due to low demand.

If your agency has not taken any steps recently to strengthen these services, either because there has been no need to due to low demand or because these services are already robust, please briefly explain that here.

Answer: Due to the low volume of FOIA requests received, the FOIA Liaison is able to address and resolve questions regarding the handling of requests.

OTHER INITIATIVES:

5. If there are 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, eliminating redundancy, etc., please describe them here.

Answer: Agency FOIA staff meet at least quarterly to review the current year FOIA files and to continually evaluate the efficiency and effectiveness of the FOIA program. We review our FOIA checklist to ensure that the all appropriate documents are contained within each file, as well as recorded accurately, and check to make sure that all internal procedures have been followed. This approach enables the FOIA Office to continually improve and streamline the FOIA process to ensure that our FOIA system operates efficiently and effectively.

Section III: Steps Taken to Increase Proactive Disclosures

Both the President and Attorney General’s FOIA memoranda focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

POSTED MATERIAL:

1. Describe your agency’s process or system for identifying “frequently requested” records that should be posted online under Subsection (a)(2) of the FOIA. For example, does your agency monitor its FOIA logs or is there some other system in place to identify these records for posting.

Answer: The Commission process for identifying “frequently requested” records is to analyze the records to see if records have been requested at least three times. Once those requests are identified and categorized, the relevant records are posted on the agency’s FOIA webpage.

2. Does your agency have a distinct process or system in place to identify other records for proactive disclosure?

Answer: The Commission has an informal but extensive practice for identifying records for proactive disclosure. Staff working in each function area reviews their applicable section(s) of the agency’s website to determine what information is available and what information is needed to address the interests of the public. Notably, the Commission maintains the Electronic Document Information System (EDIS). EDIS is a repository for documents filed in import injury investigations, intellectual property-based import investigations, and other proceedings before the Commission. Any member of the public may register for access to this system without charge. EDIS contains public documents of interest to the general public and lessens the need to formally request such documents through FOIA.

If so, please describe your agency’s process or system.

Answer: The USITC website contains links to the resources noted below.

- (1) Federal Register notices (since March 2015, published over 900 columns notices in the Federal Register and posted over 300 notices on the agency website),
- (2) Publications (since March 2015, made over 190 additional publications available online),
- (3) Statistical data regarding investigations before the Commission (for example, insti-

tuted 36 new section 337 investigations and commenced 11 ancillary proceedings related to section 337),

- (4) Electronic Document Information System (EDIS) (since March 2015, posted over 10,000 public documents),
- (5) Press releases (over 120 press releases issued and posted during the 2015 calendar year), and
- (6) The Harmonized Tariff System (HTS) (received approximately 5.84 million requests for tariff information annually, which represents about 86% of the 6.79 million visits to the USITC website annually).

3. When making proactive disclosures of records, are your agency's FOIA professionals involved in coding the records for Section 508 compliance or otherwise preparing them for posting? If so, provide an estimate of how much time is involved for each of your FOIA professionals and your agency overall.

Answer: Yes. The FOIA Liaison codes the agency's older publication and reports for Section 508 compliance; the Liaison then prepares and sends them for posting into the agency web posting system. Also, agency operational offices prepare current publications and reports for Section 508 compliance, once finalized these documents are forwarded to the FOIA Liaison for posting through the agency's web portal. The estimate amount of time for the agency FOIA professionals is approximately one (1) hour. Agency operation staff spends a considerable amount of time to prepare agency publications and reports for Section 508 compliance. They spend approximately seven (7) to ten (10) business days per publication/report.

4. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?

Answer: No.

5. If so, please briefly explain those challenges.

Answer: N/A

6. Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.

The section 337 investigative data (337Info repository) is accessible on the agency website; it is free and does not require a user account. Section 337 investigations conducted by the Commission most often involve claims regarding intellectual property rights, including allegations of patent infringement and trademark infringement by imported goods. The primary remedy available in section 337 investigations is an exclusion order that directs U.S. Customs and Border Protection to stop infringing imports from entering the United States. In addi-

tion, the Commission may issue cease and desist orders against named importers and other persons engaged in unfair acts that violate section 337. 337Info contains investigative data from FY 2009 to the present. It provides a list of recent complaints filed, and comprehensive investigative data including: complainant/respondent(s) information (i.e. country of origin); unfair act(s) at issue (i.e. list of specific patent numbers alleged); procedural history information (i.e. evidentiary hearing dates, target date, etc.); appeal information; and the assigned administrative law judge. Users may utilize the search engine to obtain a wealth of detailed information regarding 337 investigations.

The 337Info repository is available at <http://pubapps2.usitc.gov/337external>.

7. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe those efforts. For example, this can be done through social media or with the offering of e-mail subscription services.

Answer: The USITC offers free email updates via *eSubscribe*. Users may select multiple topic areas of interest to receive email notifications.

OTHER INITIATIVES:

8. If there are any other steps your agency has taken to increase proactive disclosures, please describe them here.

Answer: In May 2015, the agency provided three (3) days of free training to the public regarding the Commission's public interface for section 337 investigative data (337Info repository). These training opportunities allowed the public to learn more about the features of the repository, how to quickly search and obtain section 337 data and helped further the agency's goals to ensure the presumption of openness.

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.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that describes your agency's efforts in this area.

MAKING MATERIAL POSTED ONLINE MORE USABLE:

1. Beyond posting new material, is your agency taking steps to make the posted information more usable to the public, especially to the community of individuals who regularly access your agency's website?

Answer: Yes.

2. If yes, please provide examples of such improvements. If your agency is already posting material in its most useful format, please describe these efforts.

Answer: The Commission utilizes an online survey tool to solicit feedback regarding the agency website. During FY 2015, the agency released a survey specifically tailored to obtain feedback regarding EDIS. Also, in the new 337Info repository, users may provide comments and concerns to the Commission via e-mail.

OTHER INITIATIVES:

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2015?

Answer: Yes, all of the reports for each quarter were submitted to our agency's web team for transmittal to the DOJ to post to their website location. In addition, all reports were submitted timely in accordance with DOJ's deadline.

4. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2016.

Answer: N/A

5. Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? See OIP Guidance, "The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications." (Nov. 22, 2013) If yes, what are the different types of electronic means utilized by your agency to communicate with requesters?

Answer: Yes, when requesters provide their e-mail information we provide a receipt via e-mail indicating receipt of their request. We also use e-mail as an opportunity to communicate with requesters during the course of processing the FOIA request and to respond to any general concerns or feedback relating to the request.

6. If your agency does not communicate electronically with requests as a default, are there any limitations or restrictions for the use of such means? If yes, does your agency inform requesters about such limitations?

Answer: N/A

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

The President's FOIA Memorandum and the Attorney General's 2009 FOIA Guidelines emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report 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, appeals, and consultations. For the figures required in this Section, please use the numbers contained in the specified sections of your agency's *2015 Annual FOIA Report* and, when applicable, your agency's *2014 Annual FOIA Report*.

SIMPLE TRACK:

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.

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

Answer: Yes, the Commission uses separate tracking for simple requests.

2. If so, for your agency overall in Fiscal Year 2015, was the average number of days to process simple requests twenty days or fewer?

Answer: In FY 2015, the average number of days to process simple requests was fifteen (15) days.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2015 that were placed in your simple track.

Answer: 77% of the requests processed were placed in the simple track.

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

Answer: N/A

BACKLOGS:

Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Years 2014 and Fiscal Year 2015 when completing this section of your Chief FOIA Officer Report.

BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

Answer: There was no backlog of requests in FY 2014 or 2015.

6. If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please indicate if any of the following were contributing factors: (1) an increase in the number of incoming requests (2) a loss of staff (3) an increase in the complexity of the requests received, and (4) any other reason.

Answer: N/A

7. If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2015.

Answer: N/A

BACKLOGGED APPEALS

8. If your agency had a backlog of appeals at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

Answer: There was not a backlog of appeals at the close of FY 2014 or FY 2015.

9. If not, explain why and describe the causes that contributed to your agency not being able to reduce the backlog. When doing so, please also indicate if any of the following were contributing factors: (1) an increase in the number of incoming appeals (2) a loss of staff (3) an increase in the complexity of the appeals received and; (4) any other reason.

Answer: N/A

10. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2015. If your agency did not receive any appeals in Fiscal Year 2015 and/or has no appeal backlog, please answer with "N/A".

Answer: The agency processed and completed four (4) appeals in FY 2015. There was no backlog.

STATUS OF TEN OLDEST REQUESTS, APPEALS, AND CONSULTATIONS:

Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2014 and Fiscal Year 2015 when completing this section of your Chief FOIA Officer Report.

TEN OLDEST REQUESTS

11. In Fiscal Year 2015, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2014 Annual Report?

Answer: Yes. There was one request pending at the end of FY 2014 and completed in early FY 2015.

12. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2014 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

Answer: N/A

13. Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?

Answer: N/A

TEN OLDEST APPEALS

14. In Fiscal Year 2015, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

Answer: There were no appeals reported pending in the FY 2014 report.

15. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C(5) of your Fiscal Year 2014 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

Answer: N/A

TEN OLDEST CONSULTATIONS

16. In Fiscal Year 2015, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

Answer: There were no consultations reported pending in the FY 2014 report.

17. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C of your Fiscal Year 2014 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Answer: N/A

ADDITIONAL INFORMATION ON TEN OLDEST REQUESTS, APPEALS, AND CONSULTATIONS & PLANS:

18. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2014.

Answer: There were no foreseeable obstacles faced in closing our ten oldest requests, appeals, and consultations.

19. If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

Answer: N/A

20. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2016.

Answer: N/A

USE OF THE FOIA’S LAW ENFORCEMENT EXCLUSIONS

21. Did your agency invoke a statutory exclusion, 5 U.S.C. 552(c)(1), (2), (3), during Fiscal Year 2015? If so, please provide the total number of times the exclusions were invoked

Answer: During FY 2015 our agency did not invoke the law enforcement exclusions.

SPOTLIGHT ON SUCCESS

Out of all the activities undertaken by your agency since March 2014 to increase transparency and improve FOIA administration, please briefly describe here at least 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. As noted above, these agency success stories will be highlighted during Sunshine Week by OIP. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

In FY 2014, the agency implemented its new public interface for section 337 investigative data (337Info repository) on its website. This repository reflects a significant investment by the Commission to provide more detailed data relating to section 337 investigations. A user guide was developed and posted online to instruct the public regarding the features and search capabilities of the system. The guide has step-by-step graphics to walk users through the process of obtaining 337 data. Additionally, in May 2015, the agency provided three (3) days of free training to the public regarding the Commission's public interface for section 337 investigative data (337Info repository). These training opportunities allowed the public to learn more details about the features of the repository, how to quickly search and obtain section 337 data and helped further the agency's goals to ensure the presumption of openness.



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