



Commodity Futures Trading Commission

2021 Chief FOIA Officer Report

Section I: Steps Taken to Apply the Presumption of Openness

A. FOIA Leadership

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at the Assistant Secretary or equivalent level. See 5 U.S.C. § 552(j)(1) (2018). Is your agency's Chief FOIA Officer at this level?

Yes

2. Please provide the name and title of your agency's Chief FOIA Officer.

John Einstman, Deputy General Counsel for General Law

B. FOIA Training

3. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

The Chief FOIA Officer strongly encouraged that FOIA staff attend training by forwarding any emails and notifications received from OIP regarding training to FOIA staff. He made sure that FOIA staff was always aware of the trainings being offered. In particular, he made sure that new staff members received FOIA training internally upon starting at the agency by discussing training plans with current FOIA staff. He also helped facilitate the approval process as quickly as possible so that new FOIA staff were able to attend the first OIP training available after the staff member's start date.

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

Yes, all FOIA staff attended substantive training.

5. *If yes, please provide a brief description of the type of training attended or conducted and the topics covered.*

All FOIA paralegals attended Introduction to the Freedom of Information Act training offered by OIP. Our FOIA attorney attended the Annual FOIA Report Refresher training and the Chief FOIA Officer Report Refresher training.

6. *Please provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.*

100%

7. *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.*

N/A

C. Outreach

8. *Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency’s FOIA administration.*

Yes – We engaged in a dialogue with a frequent requester to better understand our search capabilities. There was a search we thought we did not have the capability to run, but after gaining information from the requester about what other agencies have done, we were able to figure out that we could complete the search as requested, and now know this going forward for any similar requests.

D. Other Initiatives

9. *Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff.*

Each time a new division or office director starts at the Commission, we include FOIA training as part of their onboarding process. This is to ensure that leadership for every office/division throughout the Commission understands the FOIA process and the associated obligations. We have conducted this training approximately every few months. The format of the training is a one-on-one training with our FOIA attorney. The training is usually done in person, but has been conducted virtually for this reporting period due to the COVID-19 pandemic.

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

Yes – When consulting with record custodians, the FOIA Office makes a point to proactively stress that we need to be as open as possible and segregate any information that can be released.

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

1. For Fiscal Year 2020, 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 2020 Annual FOIA Report.

6 Days

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2020 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

N/A

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report or raw data, using active workflows and track management, reviewing and updating processing procedures, etc.

Yes. We completely re-did our FOIA search response form used to obtain search responses and to guide record custodians in their searches. We also drafted new guidance documents to assist our divisions and offices in completing searches and responses to FOIA requests.

4. Standard Operating Procedures (SOPs): Having SOPs can improve the consistency and quality of an agency's FOIA process. In addition, describing an agency's standard practices for handling FOIA requests on agency FOIA websites can help requesters better understand how their request will be handled.

a) Does your agency have SOPs that outline general processes for handling FOIA requests and appeals?

Yes, we have SOPs outlining general FOIA processes.

b) If not, does your agency have plans to create FOIA SOPs?

N/A

c) If yes, how often are they reviewed/updated to account for changes in law, best practices, and technology?

They are updated approximately every several years.

d) In addition to having SOPs, does your agency post or otherwise describe your standard processes for handling requests on your website?

Yes, our website describes our standard processes for handling requests, although we plan to add more detailed descriptions.

5. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2020 (please provide a total number or an estimate of the number).

Most questions are handled directly by the FOIA professional processing the request, since that person has the most knowledge of the request. We estimate that the FOIA Public Liaison received less than ten requests for assistance.

6. Does your agency frequently receive common categories of first-party requests? If so, please describe the types of requests and if your agency has explored establishing alternative means of access to these records outside of the FOIA process?

We do not frequently receive common categories of first-party requests. Due to the nature of our work, we regularly receive a very wide variety of requests.

7. The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within 180 days. Has your agency updated its FOIA regulations in accordance with the FOIA Improvement Act of 2016? If not, what is your agency's plan to update your regulations?

Yes, our FOIA regulations have been updated since 2016.

8. Please explain how your agency worked to mitigate the impact of the COVID-19 pandemic on FOIA processing. Examples could include, but are not limited to: altering workflows, implementing new technology, providing notices and instructions or otherwise communicating directly with requesters.

To help mitigate the impact of the COVID-19 pandemic on FOIA processing, we provided notice to requesters on our website and also frequently communicated directly with requesters to explain challenges and delays in processing due to the pandemic. We also altered some workflows in response to our FOIA team working remotely and not having direct access to certain systems.

9. Optional -- Please describe:

•Best practices used to ensure that your FOIA system operates efficiently and effectively

A major challenge has been a lack of sufficient FOIA staff and FOIA staff turnover. To address this, we have made a push for an additional full-time FOIA attorney position to help ensure that we have enough permanent staff to efficiently and effectively process our growing number of requests received. This position has been posted for, and we plan to hire a new FTE within the next couple months.

•Any challenges your agency faces in this area

As stated above, a major challenge has been a lack of sufficient FOIA staff and FOIA staff turnover.

Section III: Steps Taken to Increase Proactive Disclosures

1. Provide examples of any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

Although the agency does not often receive multiple requests for the same information, we did during this reporting period. We received multiple requests for information regarding Kelly Loeffler, and accordingly, we posted the responsive records here: https://www.cftc.gov/FOI/foia_freqrequestinfo.html

We also continued to proactively disclose information in connection with our numerous Dodd-Frank Act rulemakings: <https://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/index.htm>

Pursuant to its transparency policy, the agency continues to list all rulemaking meetings with outside stakeholders: <https://www.cftc.gov/LawRegulation/DoddFrankAct/ExternalMeetings>

The agency regularly posts No-Action Letters, Interpretative Letters and Exemptive Letters on the agency website to inform the public on various agency matters: <https://www.cftc.gov/LawRegulation/CFTCStaffLetters/index.htm>

The agency's press office routinely posts advisory notices, speeches, testimony, notices of enforcement actions, and other materials of interest on the agency website: <https://www.cftc.gov/PressRoom/PressReleases>

In addition, the agency routinely proactively discloses many market-related materials to assist the public, including: <https://www.cftc.gov/MarketReports/index.htm>

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?

Yes

3. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

We have completely revamped our public website to make it more useful, clear, and organized, so that visitors can locate information more efficiently and to ensure access to a broader range of information. We are also in the process of working on a further organizational update to our FOIA webpages, specifically. In addition, we follow requirements for posting information in machine-readable formats, such as the posting of the FOIA Annual Report.

4. Optional -- Please describe:

•*Best practices used to improve proactive disclosures*

The agency regularly evaluates the information we are proactively disclosing and the processes for doing so. This includes market-related data that we anticipate to be of great interest to the public. We routinely consider our disclosure efforts and if there is anything new we can be releasing.

•Any challenges your agency faces in this area

A challenge is that we must always balance the goal of making proactive disclosures with the often sensitive and proprietary nature of our data.

Section IV: Steps Taken to Greater Utilize Technology

1. Please briefly describe the types of technology your agency uses to support your FOIA program. In addition, please highlight if your agency is leveraging or exploring any new technology that you have not previously reported. If so, please describe the type of technology.

The FOIA staff work with our forensics team to use technology to conduct efficient searching for FOIA requests, including searches for email. The forensic team captures the data and provides it to FOIA staff for review in Relativity. We use FOIAXpress to track requests, but have been looking into alternative tracking systems that utilize more advanced technology to organize and review records.

2. OIP issued guidance in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources, and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

Yes, we have recently reviewed our FOIA website and are in the process of updating and reorganizing it. For example, we noticed that we need to change references to our Electronic Reading Room to FOIA Library.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2020?

Yes, we posted all four quarterly reports on time, with the information appearing on FOIA.gov as well.

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 2021.

N/A

5. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2019 Annual FOIA Report and, if available, for your agency's Fiscal Year 2020 Annual FOIA Report.

The raw data for Fiscal Year 2019 and Fiscal Year 2020 is available here:

<https://www.cftc.gov/FOI/foiareadingrooms.html>

6. Optional -- Please describe:

•Best practices used in greater utilizing technology

The agency continues to further its best practices in utilizing technology, particularly through the increased use of forensics tools.

•Any challenges your agency faces in this area

Our greatest challenge is centered on a lack of resources.

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

A. Simple Track

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

Yes

2. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2020?

Yes, it was 12 days.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2020 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100.

63.04%

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?

N/A

B. Backlogs

5. If your agency had a backlog of requests at the close of Fiscal Year 2020, according to Annual FOIA Report Section XII.A, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

Yes, it decreased from 8 to 6.

6. If not, according to Annual FOIA Report Section V.A, did your agency process more requests during Fiscal Year 2020 than it did during Fiscal Year 2019?

N/A

7. If your agency's request backlog increased during Fiscal Year 2020, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

•An increase in the number of incoming requests.

•A loss of staff.

•An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.

•Any other reasons – please briefly describe or provide examples when possible.

N/A

8. 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 2020. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. If your agency has no request backlog, please answer with "N/A."

3.37%

9. If your agency had a backlog of appeals at the close of Fiscal Year 2020, according to Section XII.A of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

N/A

10. If not, according to section VI.A of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2020 than it did during Fiscal Year 2019?

N/A – We did not have a backlog of appeals at the close of Fiscal Year 2019 or Fiscal Year 2020. We did process more appeals in Fiscal Year 2020 than in Fiscal Year 2019.

11. If your agency's appeal backlog increased during Fiscal Year 2020, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

•An increase in the number of incoming appeals.

•A loss of staff.

•An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.

•Any other reasons – please briefly describe or provide examples when possible.

N/A

12. 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 2020. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. If your agency did not receive any appeals in Fiscal Year 2020 and/or has no appeal backlog, please answer with "N/A."

N/A

C. Backlog Reduction Plans

13. In the 2020 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2019 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2020?

N/A

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2020, please explain your agency's plan to reduce this backlog during Fiscal Year 2021.

N/A

D. Status of Oldest Requests, Appeals, and Consultations

15. In Fiscal Year 2020, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2019 Annual FOIA Report?

No

16. 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 2019 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

We were able to close nine out of the ten oldest requests.

17. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

The agency engaged in more outreach to requesters to narrow the scope of large requests. Also, we sometimes included division staff in these calls when it made sense, since division staff have first-hand knowledge of the scope of the responsive records. We found this strategy to be very efficient.

TEN OLDEST APPEALS

18. In Fiscal Year 2020, did your agency close the ten oldest appeals that were reported pending in Section VII.C.5. of your Fiscal Year 2019 Annual FOIA Report?

N/A – We did not have any pending appeals at the end of Fiscal Year 2019.

19. 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 2019 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

N/A

20. *Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.*

N/A

TEN OLDEST CONSULTATIONS

21. *In Fiscal Year 2020, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2019 Annual FOIA Report?*

N/A – We did not have any consultations pending at the end of Fiscal Year 2019.

22. *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 2019 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.*

N/A

E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans

23. *Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2019.*

We had several FOIA staff turnovers during Fiscal Year 2020. This caused delays in closing our ten oldest requests because new FOIA staff had to be trained. They then had to familiarize themselves with the old requests and learn how to pick up where the last person left off.

24. *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.*

N/A

25. *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 2021.*

We have one more to close, and we have finished our initial review. We are now in the process of consulting with the record custodians prior to release. Because we have reached this later stage in the process, we should hopefully have no problem closing the request this fiscal year.

F. Success Stories

- During Fiscal Year 2020, we made a diligent effort to process requests more efficiently.
- While this was challenging with limited FOIA staff, we were able to increase efficiency through strategies such as increased communication with requesters, increased follow-up and relationship building with CFTC staff, and utilization of technology to conduct electronic searches.
- As a result, our average number of days for processing complex requests decreased from 138 days in FY2019 to 63 days in FY2020.
- In addition, our average number of days for processing simple requests decreased from 78 days in FY2019 to just 12 days in FY2020.