



Commodity Futures Trading Commission  
Chief FOIA Officer Report  
February, 2016

**Name and Title of Chief FOIA Officer: Heather Gottry, Deputy General Counsel for General Law**

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

**A. 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?*

Yes.

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

One FOIA professional attended the following training sessions: (1) the DOJ Advanced FOIA Seminar which covered advanced topics in FOIA administration, including an update of current policy developments, an overview of recent FOIA court decisions, and advanced procedural and exemption considerations;(2) DOJ FOIA Training Programs which covered topics, including best practices for FOIA training programs; and (3) the DOJ FOIA Amendments Training which provided agency personnel with an overview of the recent amendments to the FOIA and an opportunity to ask questions to the Office of Information Policy's Director about the new provisions.

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

Substantive FOIA training was attended by half of the CFTC's FOIA professionals during the reporting period.

4. *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.*

The agency FOIA program is very small and consists of two FTEs and one part-time FTE. As discussed above, one FOIA professional attended multiple trainings offered by DOJ and then briefed FOIA staff on the issues and updates discussed in the trainings. The remaining FOIA professionals have previously attended multiple DOJ FOIA trainings in prior years.

### ***B. Outreach***

5. *OPTIONAL: Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA?*

No.

### ***C. Other Initiatives:***

6. *Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA?*

FOIA professionals met with subject matter experts throughout the agency to explain the importance of providing documents in a timely fashion regardless of whether or not they will not be withheld, to explain the foreseeable harm standard that has been codified in the FOIA Improvement Act, to explain that requests have to be interpreted broadly under FOIA, and to explain fee limitations depending upon the requester's fee category. These discussions resulted in greater understanding of agency staff responsibilities under FOIA, more timely searches for records and, increased discussions between FOIA requesters and agency subject matter experts to facilitate clearer understanding of record types and records sought which has led to more efficient FOIA processing.

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

The agency holds open meetings, roundtables, and advisory Committee meetings. In addition to providing access in person and via dial-in, the agency posts statements, documents, and transcripts on-line to improve transparency and openness (<http://www.cftc.gov/PressRoom/Events/CommissionMeetings/index.htm>). In addition, the agency provides notice of external meetings concerning the Dodd-Frank Act and provides information about the date, time, attendees, and topic (<http://www.cftc.gov/LawRegulation/DoddFrankAct/ExternalMeetings/index.htm>).

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

### ***A. Processing Procedures:***

1. *For Fiscal Year 2016, 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.*

The agency did not receive any requests for expedited treatment.

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.*

N/A.

3. *OPTIONAL: 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 data, using active workflows and track management, reviewing and updating processing procedures, etc.*

The agency participated in the OGIS Agency Self-Assessment for FOIA Programs. The agency reviewed its active workflows, track management, and processing procedures to respond to OGIS' assessment. The agency's track management is effective. The FOIA Program professionals implemented a new workflow process to ensure efficient distribution of workload which has streamlined the agency's processes and helped reduce the backlog. As discussed above, the agency has worked with subject matter experts to clarify requests and expedite processing.

4. *Please provide an estimate of how many requests your agency processed in Fiscal Year 2016 that were from commercial use requesters. If your agency is decentralized, please identify any components within your agency that received a majority of their requests from commercial use requesters.*

The agency processed 69 requests from commercial use requesters in 2016.

### ***B. Requester Services***

5. *OPTIONAL: Does your agency provide a mechanism for requesters to provide feedback about their experience with the FOIA process at your agency? If so, please describe the methods used, such as making the FOIA Public Liaison available to receive feedback, using surveys posted on the agency's website, etc.*

The FOIA Liaison contact information is prominently displayed on the website and the liaison is available to receive feedback. Additionally, the liaison, as well as FOIA staff processing requests, provide the FOIA professional's direct contact information to requesters to help resolve issue and receive feedback.

6. *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 how often requesters sought assistance from your agency's FOIA Public Liaison.*

The agency has a very low demand for FOIA requester services. Each requester is given the direct extension and email to contact the FOIA professional who is processing their request, therefore, most questions are handled directly by the FOIA professional with the most knowledge of the request

7. *The FOIA Improvement Act of 2016 requires agencies to make their reference material or guide for requesting records or information from the agency electronically available to the public. Please provide a link to your agency's FOIA reference guide.*

<http://www.cftc.gov/FOI/foiarequests>

### **C. Other Initiatives**

8. *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.*

As noted in last year's report, the FOIA program increasingly used electronic search and collection for complex FOIA requests which resulted in more efficient searches for records requested and more effective reviews of records identified as potentially responsive to requests. Additionally, the agency has completed a self-assessment with OGIS and has identified areas for improvement for 2017. These include increasing the number of proactive disclosures, drafting written guidance for FOIA professionals and agency staff responding to FOIA requests, and ensuring timely responses to fee waiver requests.

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

### **A. Posting Material:**

1. *Describe your agency's process or system for identifying "frequently requested" records required to 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.*

The agency routinely monitors its FOIA logs to determine if records have been frequently requested. However, the agency does not receive a high volume of requests that fall into this category.

2. *Does your agency have a distinct process or system in place to identify records for proactive disclosure? If so, please describe your agency's process or system.*

Yes. The agency continues to make proactive disclosures on the agency's website in connection with the numerous Dodd-Frank Act rulemakings. Pursuant to its transparency policy, the agency continues to list all meetings with outside stakeholders. The agency regularly posts No-Action Letters, Interpretative Letters and Exemptive Letters on the agency website to inform the public on various agency matters. Finally, the agency's press office routinely posts advisory notices,

speeches, testimony, notices of enforcement actions, and other materials of interest on the agency website. Links to these records are provided on the agency's homepage (<http://www.cftc.gov/index.htm>).

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

No

*4. If so, please briefly explain those challenges.*

N/A.

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

In addition to the records described above, the agency proactively released the following:

<http://www.cftc.gov/MarketReports/CommitmentsofTraders/index.htm>

<http://www.cftc.gov/MarketReports/SwapsReports/index.htm>

<http://www.cftc.gov/MarketReports/CottonOnCall/index.htm>

<http://www.cftc.gov/MarketReports/BankParticipationReports/index.htm>

<http://www.cftc.gov/MarketReports/financialfcmdata/index.htm>

<http://www.cftc.gov/MarketReports/NetPositionChangesData/index.htm>

<http://www.cftc.gov/MarketReports/StaffReportonMay6MarketEvents/index.htm>

<http://www.cftc.gov/International/InternationalInitiatives/index.htm>

*6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe those efforts.*

The agency publicizes proactive disclosures through various agency social media platforms (including Facebook and Twitter) as well as offering email subscription services to interested parties.

***B. Other Initiatives:***

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

N/A

**Section IV: Steps Taken to Greater Utilize Technology**

***A. Making Material Posted Online More Useful:***

1. *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.

2. *If yes, please provide examples of such improvements.*

The agency website was completely redesigned in 2016 and features easy access to important information and events at the agency, efficient site navigation, and dynamic dropdown menus for primary and secondary navigation, all of which provide greater transparency of agency actions. In addition to efficient website navigation, the agency has taken other steps to increase proactive disclosure. For example, the agency's program offices routinely provide updated market data (<http://www.cftc.gov/MarketReports/index.htm>), industry filings and information about new regulatory developments (<http://www.cftc.gov/IndustryOversight/IndustryFilings/index.htm>). For instance, the Dodd-Frank Act created new entities, Swap Data Repositories ("SDRs"), to provide central facilities for swap data reporting and recordkeeping. The agency's website includes a page on these entities, including FAQs and instructions on how to apply for SDR status (<http://www.cftc.gov/IndustryOversight/DataRepositories/index.htm>). The agency allows anyone in the world to sign up on the agency's website to receive updates on specific or all information that is posted on the website. For example, more than 25,000 people receive the agency's press releases, 24,000 received federal register notices and 16,000 received any letter the agency posts to the website. Further, all of the agency's releases are instantly tweeted and posted on Facebook. To date, the agency has over 12,000 Facebook followers and over 16,000 Twitter followers.

***B. Other Initiatives:***

3. *Did your agency successfully post all four quarterly reports for Fiscal Year 2016?*

Yes.

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.*

N/A.

**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 so, for your agency overall in Fiscal Year 2016, was the average number of days to process simple requests twenty working days or fewer?

No. The average number of days to process simple perfected requests in Fiscal Year 2016 was 78 days.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2016 that were placed in your simple track.

61%

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:**

**BACKLOGGED REQUESTS**

5. If your agency had a backlog of requests at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015?

The agency's backlog of requests decreased from 59 in FY 2015 to 16 in FY 2016.

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 also indicate if any of the following were contributing factors:

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. If your agency did not receive any requests in Fiscal Year 2016 and/or has no request backlog, please answer with "N/A."

The backlog makes up 10% of the requests received.

**BACKLOGGED APPEALS**

8. If your agency had a backlog of appeals at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015?

Yes.

9. If not, explain why and describe the causes that contributed to your agency not being able to reduce backlog. When doing so, please also indicate if any of the following were contributing factors:

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 2016. If your agency did not receive any appeals in Fiscal Year 2016 and/or has no appeal backlog, please answer with "N/A."*

The agency has no backlogged appeals.

**C. Status of Ten Oldest Requests, Appeals, and Consultations**

**TEN OLDEST REQUESTS**

*11. In Fiscal Year 2016, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2016 Annual FOIA Report?*

No.

*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 2015 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.*

In FY 2016, the agency closed seven of the ten oldest requests pending at the end of FY 2015.

*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?*

Six of the oldest requests pending at the end of FY 2015 were withdrawn after receiving multiple interim responses. One of the oldest requests was withdrawn by the requester.

**TEN OLDEST APPEALS**

*14. In Fiscal Year 2016, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2015 Annual FOIA Report?*

Yes.

*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 2015 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.*

N/A.



## TEN OLDEST CONSULTATIONS

16. *In Fiscal Year 2016, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2015 Annual FOIA Report?*

N/A. The agency did not have any pending consultations at the end of Fiscal Year 2016.

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 2015 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.*

N/A.

### ***E. 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 2016.*

Four of the oldest pending requests that were not closed all pertain to the same topic and involve complex review of over 100,000 pages of records, many of which require consultation with outside submitters. The agency has provided rolling productions of responsive records to the requestors as records are reviewed.

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.*

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.*

The agency continues to provide rolling productions to the requestors. The agency temporarily tasked one attorney to specifically work on the oldest pending requests on a part time basis. The agency has also hired a FOIA contractor who is assisting with processing records for the oldest requests.