



Commodity Futures Trading Commission
Chief FOIA Officer Report
February, 2016

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

Section I: Steps Taken 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?*

One FOIA professional in the Office of the General Counsel attended a formal training course in 2015: DOJ The Freedom of Information Act for Attorneys and Access Professionals. In addition to the formal training attended, FOIA professionals receive in-house training during formal and informal meetings as issues arise. Finally, ten agency employees, who have occasional FOIA responsibilities, took the on-line training course offered by the Department of Justice.

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.*

Substantive FOIA training was attended by all of our FOIA professionals during the reporting 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.*

The agency FOIA staff is very small (two FTE's) and one individual has taken the DOJ FOIA trainings more than once and the other professional attended the training this year. This year, our

training office procured the online training from DOJ and both FOIA professionals will take that training this year.

Discretionary Disclosures:

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

Yes. The FOIA Office routinely advises agency program and administrative offices that Exemption 5 must be applied selectively and not automatically. The FOIA Office makes the initial determinations to claim exemptions for any record and each record is reviewed to determine if discretionary release is possible. The program office then has the opportunity to provide written objections to the discretionary release recommendation; however, the final determination is made by FOIA professionals in the Office of General Counsel, which may include participation of the General Counsel.

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

Yes.

6. *What exemption(s) would have covered the material released as a matter of discretion?*

The discretionary disclosures consisted of records documenting internal deliberations where the materials were covered by FOIA Exemption 5.

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.*

During the reporting year, the agency completed rolling productions of records responsive to multiple requests for records involving ongoing investigations. As part of these productions, the agency released hundreds of pages of internal documents in the matters, which would otherwise fall under FOIA Exemption 5. The released materials were primarily email communications (both internal and with other regulators) discussing ongoing matters and draft documents.

8. *If your agency was not able to make any discretionary releases of information, please explain why.*

N/A

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.*

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

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 2014 Annual FOIA Report.*

The agency adjudicated requests for expedited processing in an average of 6.25 days.

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. *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.*

The agency makes "still interested" inquiries both in writing and over the phone, however, the agency has not done so in accordance with the new guidelines. Generally, when the requests are made over the phone, the responses are provided immediately. When in writing, the agency was inconsistent in affording the requester thirty working days to respond. We have made alterations to our standard templates to reflect DOJ guidance and that language is being incorporated this year.

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.*

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.

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.

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 and has identified areas for improvement for 2016. Finally, the agency has hired a new senior-level attorney who will continue to work with the FOIA professionals to make the necessary improvements for more efficient operations.

Section III: Steps Taken to Increase Proactive Disclosures

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 Commission 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 Commission's homepage (<http://www.cftc.gov/index.htm>).

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.

The FOIA professionals send the records to the Web content managers for posting and are not responsible or involved in loading the records in the web content platform or making the releasable documents accessible in compliance with Section 508 of the Rehabilitation Act. The agency's 508 compliance program manager ensures that the documents are posted in compliance with Section 508 of the Rehabilitation Act.

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

No

5. *If so, please briefly explain those challenges.*
N/A

6. *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/idc/groups/public/@aboutcftc/documents/file/oig_ipera061815.pdf

http://www.cftc.gov/idc/groups/public/@aboutcftc/documents/file/oig_rny061815.pdf

http://www.cftc.gov/idc/groups/public/@aboutcftc/documents/file/oig_rkcr042715.pdf

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

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

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

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

<http://www.cftc.gov/idc/groups/public/@internationalaffairs/documents/file/cftc-apra-supervisorymou041320.pdf>

<http://www.cftc.gov/idc/groups/public/@internationalaffairs/documents/file/cftc-kfsc-kfss-clearingmou0925.pdf>

7. *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 social media (including Facebook and Twitter) as well as offering email subscription services.

Other Initiatives:

8. *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

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 homepage 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.

The agency continues to look to ways to increase public awareness. For example, the agency maintains a broad database of local news outlets to make sure people in the area of suspected fraudster will be better able to hear about the case and be watchful. Further, the agency continues to redesign the agency's website, and one of the top priorities will be to increase public awareness of and access to the information on CFTC.gov.

Other Initiatives:

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

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 2015.*

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 that are utilized by your agency to communicate with requesters?

Agency FOIA professionals almost exclusively use email to communicate with requesters, which has proven to be the most efficient and effective means of communication. Whenever feasible, processed records are sent via email to ensure timely delivery and reduce costs to the requester and the agency.

6. If your agency does not communicate electronically with requesters 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? See *id.*

N/A

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

Simple Track:

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

Yes.

2. If so, for your agency overall in Fiscal Year 2015, 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 2015 was 43 days. The average number of days to process simple perfected requests in which information was granted was 51 days.

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

55%

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

Backlogs:

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?

The agency's backlog of requests increased by 24 in Fiscal Year 2015

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

The number of FOIA requests at the agency increased by over 33% (following a similar increase in 2014) during the reporting period and the agency lost one FOIA Professional. In addition, the requests received by the agency were increasingly complex and voluminous. These combined factors resulted in the increase in the backlog in Fiscal Year 2015.

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 2014. If your agency did not receive any requests in Fiscal Year 2015 and/or has no request backlog, please answer with "N/A."*

The backlog makes up 23.25% of the requests received.

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?*

Yes.

9. *If not, explain why and describe the causes that contributed to your agency not being able 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 2015. If your agency did not receive any appeals in Fiscal Year 2015 and/or has no appeal backlog, please answer with "N/A."*

The backlog makes up 11% of the appeals received.

Status of Ten Oldest Requests, Appeals, and Consultations:

TEN OLDEST REQUESTS

11. *In Fiscal Year 2015, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2015 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 2014 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.*

The agency closed five of the oldest requests.

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?*

None of the oldest requests were closed because the request was withdrawn.

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?*

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

N/A. The agency did not have any pending consultations at the end of Fiscal Year 2015.

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.*

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 2015.*

As noted above, the agency experienced a significant spike in FOIA requests received and a decrease in staff. In addition, the 5 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 to the request 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 2015.

The agency continues to provide rolling productions to the request. In addition, we have fired an attorney to replace one of the FOIA FTE's that left during the year. Finally, the agency has detailed one additional attorney on a part time basis to specifically work on the oldest requests.

Use of the FOIA's Law Enforcement Exclusions

Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2015?

No.