



Commodity Futures Trading Commission 2019 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 least at the Assistant Secretary or equivalent level. Is your agency's Chief FOIA Officer at or above 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. *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.

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

One person with FOIA responsibilities attended the Department of Justice's Introduction to the Freedom of Information Act. The course covered topics including an overview of the FOIA's procedural requirements and exemptions, basic principles for processing FOIA requests, communicating with requesters, searching for and reviewing documents, and preparing final determinations and responses.

5. *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 one third of the CFTC's FOIA professionals during the reporting period.

6. *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 staff was very small and consisted of two FTE's and one contractor. Over the course of the year, all three of these professionals left the agency. The agency has been using a small percentage of the time of three FTE's who work in other areas in the interim, one of whom attended the training discussed above. An additional FTE applied for the training, but the course was full. The agency has loaded the Department of Justice FOIA e-Learning Modules for FOIA into the CFTC Learning Management System, and we expect that the professionals assisting with FOIA will take this training in the upcoming year.

C. Outreach

7. *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.

D. Other Initiatives

8. *Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In 2016, the Department publicized FOIA-related performance standards for employees that have any role in administering the FOIA, including non-FOIA professionals. Please also indicate whether your agency has considered including FOIA-related performance standards in employee work plans for employees who have any role in administering the FOIA.*

Agency Counsel trained two new Commissioners on FOIA processing and their FOIA obligations. As noted above, the agency lost all members of its FOIA team in Fiscal Year 2018. The agency hired one FOIA professional who started in mid-April, and we expect that individual to train non-FOIA professionals on their obligations under the FOIA. If the agency is able to fill the remaining FOIA positions, we will also focus on working with Human Resources to consider whether it is feasible to include FOIA-related performance standards in employee work plans for employees who have any role in administering the FOIA.

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>). The agency also 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>). Also, the agency uses social media platforms such as Twitter to share information with the public (<https://twitter.com/cftc>).

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

1. *For Fiscal Year 2018, 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 2018 Annual FOIA Report.*

The average number of days for adjudicating requests for expedited processing was 4.25.

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. *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.*

No.

4. *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 2018 (please provide a total number or an estimate of the number).*

The agency has a very low demand for FOIA requester services. Each requester is given the direct extension 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. We estimate that the FOIA Public Liaison received less than ten requests for assistance.

5. *Please describe the best practices used to ensure that your FOIA system operates efficiently and effectively and any challenges your agency faces in this area.*

As noted above, the agency lost its entire FOIA staff over the reporting period. Although this has been our greatest challenge, we have hired a new staff member who started in mid-April, and that individual will be tasked with making improvements to the program.

Section III: Steps Taken to Increase Proactive Disclosures

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

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>).

In addition, the agency routinely proactively discloses materials to assist the public including:

<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>

2. *Please describe how your agency identifies records that have been requested and released three or more times (and are therefore required to be proactively disclosed pursuant to 5 U.S.C. §552(a)(2)(D)).*

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.

3. *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.

4. *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 15,000 Facebook followers and over 37,000 Twitter followers.

The Office of External Affairs is the Commission's primary public-facing office that provides honest, timely and useful information across all communication platforms in order to serve internal and external stakeholders in all sectors to accomplish and facilitate the Commission's mission. OPA proactively conducts outreach and creates messages designed to raise awareness of the CFTC brand in order to promote public trust. OEA also works to ensure that public meetings are accessible online via webcast or through a dial-in number.

LabCFTC is the focal point for the CFTC's efforts to promote responsible FinTech innovation and fair competition for the benefit of the American public. LabCFTC is designed to make the CFTC more accessible to FinTech innovators, and serves as a platform to inform the Commission's understanding of new technologies.

Consumers, farmers, ranchers as well as investors have benefited from the technological innovation of the markets overseen by the CFTC, and LabCFTC works with these parties to help. LabCFTC also engages with academia, students and professionals on applications of FinTech relevant in the CFTC space.

The GuidePoint program is an integral part of LabCFTC, which offers an additional, dedicated point of contact to the FinTech innovator community. GuidePoint provides FinTech innovators with a simple, direct channel to obtain feedback on inquiries in support of responsible innovation. GuidePoint also provides an opportunity to inform Commission

staff of relevant issues and suggestions to enhance FinTech development. There is no fee to use GuidePoint.

Inquiries to GuidePoint may come from potential CFTC registrants, current CFTC registrants, or other businesses that may impact CFTC-regulated markets or market participants. Like LabCFTC, GuidePoint is technology neutral. Our mission is to engage with innovators with good ideas. In our view, all responsible innovators should have an equal opportunity to demonstrate their value, gain acceptance, and make our markets better. GuidePoint is also entity neutral. We recognize that the next big idea may originate with an established market participant or with a new start up. To that end, we endeavor to provide entities with an understanding of CFTC regulated markets, rules, and processes equivalent to that of a well-informed market participant.

GuidePoint is intended to serve the needs of those meeting the following criteria:

- A business entity or other organization engaged with FinTech or RegTech.
- U.S.-based companies and business entities.
- Foreign-country based companies looking to do business in the United States.
- Trade groups and other organizations engaged with FinTech or RegTech businesses.
- Representatives of any of the above.

5. *Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.*

The CFTC takes a proactive response in coordinating media relations. The Commission ensures that the information is made public as soon as it is possible to do so, and adheres to legal requirements for disclosures for rulemaking and legal matters. This process requires several layers of approval to ensure that information is not disseminated before it is legally proper to do so.

The Office of Customer Education and Outreach develops and implements customer education initiatives designed to help customers protect themselves against fraud and other violations of the commodities laws.

Section IV: Steps Taken to Greater Utilize Technology

1. *Is your agency leveraging technology to facilitate efficiency in conducting searches, including searches for emails? If so, please describe the type of technology used. If not, please explain why and please describe the typical search process used instead.*

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.

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?

No.

3. *Did your agency successfully post all four quarterly reports for Fiscal Year 2018?*

No. As noted above, the FOIA staff all departed the agency over the course of the year, and the interim staff assisting have focused on processing FOIA requests. However, we were able to successfully post one quarterly report in Fiscal Year 2018.

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 2019.*

The agency has hired a new FOIA professional who started in mid-April. This individual will be tasked with ensuring that the reports are posted.

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 2017 Annual FOIA Report and, if available, for your agency's Fiscal Year 2018 Annual FOIA Report.*

The link to the raw data for Fiscal Year 2017 can be found here:

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

6. *Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.*

The agency continues to further its best practices in utilizing technology, particularly through the increased use of forensics tools. 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, was the agency overall average number of days to process simple requests twenty days or fewer in Fiscal Year 2018?*

No. The average number of days to process simple perfected requests in Fiscal Year 2018 was 34 days.

3. *Please provide the percentage of requests processed by your agency in Fiscal Year 2018 that were placed in your simple track.*

65%

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 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?*

No, the backlog increased from 15 in FY 17 to 33 in FY 18.

6. *If not, did your agency process more requests during Fiscal Year 2018 than it did during Fiscal Year 2017?*

No.

7. *If your agency's request backlog increased during Fiscal Year 2018, please 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:*

- *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.*

As discussed above, the entire FOIA staff left during the Fiscal Year. Despite the loss of staff, the backlog only increased by 6 requests. We anticipate that with additional staff, we will be able to decrease the backlog.

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 2018. If your agency has no request backlog, please answer with "N/A."*

The backlog makes up 24.6% of the requests received.

BACKLOGGED APPEALS

9. *If your agency had a backlog of appeals at the close of Fiscal Year 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?*

The agency did not have backlogged appeals in Fiscal Year 2017 or 2018.

10. *If not, did your agency process more appeals during Fiscal Year 2018 than it did during Fiscal Year 2017?*

N/A.

11. *If your agency's appeal backlog increased during Fiscal Year 2018, 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.

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 2018. If your agency did not receive any appeals in Fiscal Year 2018 and/or has no appeal backlog, please answer with "N/A."*

The agency has no backlogged appeals.

C. Backlog Reduction Plans

13. *In the 2018 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2017 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 2018?*

N/A.

14. *If your agency had a backlog of more than 1,000 requests in Fiscal Year 2018, what is your agency's plan to reduce this backlog during Fiscal Year 2019?*

N/A.

D. Status of Oldest Requests, Appeals, and Consultations

OLDEST REQUESTS

15. *In Fiscal Year 2018, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2017 Annual FOIA Report?*

Yes.

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 2018 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.*

N/A.

17. *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?*

18. *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.

TEN OLDEST APPEALS

19. *In Fiscal Year 2018, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2017 Annual FOIA Report?*

Yes.

20. *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 2017 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.*

N/A.

21. *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

22. *In Fiscal Year 2018, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2017 Annual FOIA Report?*

N/A. The agency did not have any pending consultations at the end of Fiscal Year 2017.

23. *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 2017 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

24. *Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2018.*

We closed our ten oldest requests.

25. *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.

26. *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 2018.*

The agency was unable to close one consult during the fiscal year. We expect our new staff member to focus on completing the backlogged consult.

F. Success Stories

Out of all the activities undertaken by your agency since March 2018 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, OIP will highlight these agency success stories during Sunshine Week. 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.

Through LabCFTC, mentioned above, the Commission continues to support increased interest in and awareness of the CFTC's dedication to FinTech innovation. We would like to further highlight LabCFTC's GuidePoint program, which facilitates transparency and innovation in three principal ways:

- **Additional point of contact.** GuidePoint provides an additional, dedicated point of contact within the CFTC, who can help ensure your inquiry is properly directed and receives a timely response. In this capacity, through GuidePoint, the LabCFTC Team can serve as a facilitator helping innovators to frame questions so that Commission staff responses are on point.
- **General information.** GuidePoint will provide entities with generalized information consisting of publicly available material regarding registration requirements, processes, and compliance; the CFTC's regulatory framework and relevant Commission and staff actions; and other public resources which may be useful to innovators in developing and implementing their ideas. Information provided may include previously published materials, including rulemaking documents, Commission and staff letters, and FAQs.
- **Individual feedback.** The scope of feedback offered will depend on the needs of each firm and be tailored to the inquiry. Feedback may address the application of the CFTC regulatory framework to a new business model or service, for example, or an explanation of the factors set forth in a particular regulation that staff consider when making an assessment. Such feedback may include information that, particularly at an early stage, could help innovators/entities save time and money by helping them understand relevant regulations and the CFTC's approach to oversight.