

2024 Chief FOIA Officer Report
Commodity Futures Trading Commission

Section I: FOIA Leadership and Applying the Presumption of Openness

The guiding principle underlying the Attorney General’s 2022 [FOIA Guidelines](#) is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

A. Leadership Support for FOIA

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. See 5 U.S.C. § 552(j)(1) (2018). 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 (General Law).

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

This year, our agency officially added FOIA training to the onboarding process for ALL new employees. We now require FOIA training for all new employees, appointees, contractors, and interns, regardless of their division, office, or level. Previously, only CFTC senior executive leadership – *i.e.*, the Chair, Commissioners, and heads of divisions and offices – received FOIA onboarding training. It is our core mission for all CFTC staff to understand that FOIA is everyone’s responsibility, and we all play a role in ensuring that we respond to FOIA requests fully and efficiently. Through FOIA onboarding training, it is our hope that all CFTC staff will connect with the FOIA Program from their very first week.

B. Presumption of Openness

4. The Attorney General’s 2022 FOIA Guidelines provides that “agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.” Does your agency provide such confirmation in its response letters?

Yes.

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interest protected by a FOIA exemption. This is commonly referred to as a *Glomar* response. If your agency tracks *Glomar* responses, please provide:

- the number of times your agency issued a full or partial *Glomar* response (separate full and partial if possible);

Two full *Glomar* responses. No partial *Glomar* responses.

- the number of times a *Glomar* response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).

Exemption 6 – Two times. Exemption 7(C) – Two times.

6. If your agency does not track the use of *Glomar* responses, are you planning to track this information in the future?

We do track *Glomar* responses.

7. 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.

When consulting with records custodians regarding responsive records, instead of just asking whether there is any unredacted information of concern, we now also ask whether there is any redacted information that can actually be released. Framing the question in this way helps to prevent any over-redaction of records.

Section II: Ensuring Fair and Effective FOIA Administration

The Attorney General’s 2022 [FOIA Guidelines](#) provide that “[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of FOIA obligations by the entire agency workforce.” The Guidelines reinforce longstanding guidance to “work with FOIA requesters in a spirit of cooperation.” The Attorney General also “urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency’s FOIA administration” as part of ensuring fair and effective FOIA administration.

A. FOIA Training

1. 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.

As discussed above, during this past year, we implemented FOIA onboarding training for all new employees. This FOIA training is required of every new employee, regardless of type of position, level, or office (this includes appointees, full-time and part-time employees, contractors, and interns). The training is required to be completed during each employee’s first week at the agency.

2. 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.

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

Our FOIA professionals attended (or will attend) the following FOIA trainings provided by the Department of Justice: Processing a Request from Start to Finish Workshop; Administrative Appeals, FOIA Compliance, and Customer Service; Advanced Freedom of Information Act Training; Annual/Quarterly FOIA Report Training; Chief FOIA Officer Report Training; and Introduction to the Freedom of Information Act Training. In addition, we had a new FOIA paralegal start in August, and we conducted over ten internal FOIA trainings for her on various topics, including: FOIA Processing, Logging in New Requests, FOIAXpress Document Management, Requests for Confidential Treatment, FOIA Exemptions, Requests for Documents, and FOIA Appeals.

4. 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%

5. 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.

6. 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; and if senior leaders at your agency received a briefing on your agency’s FOIA resources, obligations and expectations during the FOIA process?

As discussed above, we now require FOIA onboarding training for all new employees during each employee’s first week at the agency. This training teaches non-FOIA professionals about their role in the FOIA process and associated obligations. We have also begun planning to implement an annual FOIA training refresher for all employees. Currently, our FOIA onboarding training is generally the FOIA virtual module. Those in senior leadership positions (such as Commissioners, Chiefs of Staff, and Office Directors) receive one-on-one, in-person FOIA briefings. In addition, this year, we created a new internal FOIA Resource Page on our SharePoint intranet, which consists of FOIA guidance that any employee can access and reference throughout the year.

B. Outreach

7. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue and, if applicable, any specific examples.

Yes, it is our standard practice to reach out to requesters right away concerning any complex or voluminous requests to clarify what the requester is really looking for and attempt to limit the scope of the request. Clarifying and limiting the scope allows us to search and review records more efficiently and to therefore send a response to the requester more quickly. For example, we receive many requests asking for “any and all” records; we always contact requesters regarding these requests to explain how broad the request is and provide suggestions for limiting the scope. Common suggestions we make are to limit the timeframe, to provide specific individuals or offices to search, or to provide details on a specific context or subject matter. These suggestions have been helpful in allowing us to move forward with a reasonable search for records and crafting requests to target what a requester is actually seeking.

8. Outside of the standard request process or routine FOIA Liaison or FOIA Requester Service Center interactions, did your FOIA professionals engage in any outreach or dialogue, with the requester community or open government groups regarding your administration of the FOIA? For example, did you proactively contact frequent requesters, host FOIA-related conference calls with open government groups, or provide FOIA training to members of the public? 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 several conference calls with news media requesters to answer questions about the many partial responses we had issued while continuing to process the request. One FOIA request was a particularly large one involving the records of many different custodians, and the conference calls provided a good opportunity to provide further details (such as whose records they had received so far and which custodians were remaining) and explain the records outside of our standard response letters in a more informal way. It was also helpful to speak directly and ensure that the records the requesters were receiving in the partial responses were indeed what the requesters were looking for so that we could make any adjustments to the remaining partial responses if necessary.

9. 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 Fiscal Year 2023 (please provide a total number or an estimate of the number for the agency overall).

We estimate that requesters sought assistance from our FOIA Public Liaison 5-10 times this past year.

C. Other Initiatives

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

Yes, we determined this year that we needed an additional FOIA staff member, as the number of requests we receive each year is continuing to increase (we received almost 100 more FOIA requests this year than the previous year). In response, we hired a new FOIA paralegal, taking us from two full-time FOIA staff members to three.

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

We run a report of our case management data every Monday to produce a Weekly FOIA Report summarizing data from the previous week. This data helps to keep everyone on our team aware of the status of each FOIA request and any upcoming deadlines so that we keep every request moving along and prioritize our processing tasks efficiently and effectively.

12. Optional -- If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.

Our FOIA lead began attending weekly meetings with our Privacy and Records teams. This weekly meeting provides the opportunity to consult on any FOIA issues efficiently and helps to keep our requests on track to beat upcoming deadlines.

Section III: Proactive Disclosures

The Attorney General's 2022 [FOIA Guidelines](#) emphasize that "proactive disclosure of information is . . . fundamental to the faithful application of the FOIA." The Guidelines direct agencies to post "records online quickly and systematically in advance of any public request" and reiterate that agencies should post records "in the most useful, searchable, and open formats possible."

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

This year, we started holding quarterly meetings specifically to discuss proactive disclosures. At those meetings, we identify recent FOIA requests that would be good candidates for posting as proactive disclosures (and make sure we are posting any that are required to be posted). By meeting regularly, recent requests stay fresh in our minds, and we will therefore not forget about any good candidates for posting due to the passage of time. These meetings ensure that proper attention is devoted to proactive disclosures so that we can track our disclosures and increase them each year.

2. How long after identifying a record for proactive disclosure does it take your agency to post it?

After identifying a record for proactive disclosure, it usually takes less than one week for our agency to post it.

3. Does your agency post logs of its FOIA requests?

Yes, we post our FOIA logs.

- If so, what information is contained in the logs?

The logs typically include the Request ID, Received Date, Request Description, and Final Disposition.

- Are they posted in CSV format? If not, what format are they posted in?

They are posted as charts in PDF format.

4. 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.

Examples of materials with have proactively disclosed this past reporting year include Chairman Behnam’s Calendars, Records Management Self-Assessment Reports, FOIA Logs, 1-FR-IB Information, and Records about “Ethereum.”

All are available here: https://www.cftc.gov/FOI/foia_freqrequestinfo.html

5. 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.

6. 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 do post records in open formats. All of the records we post are searchable, and we provide information in Excel format whenever it is data-related. Also, we spent a great deal of time this past year reformatting calendar records so that they were not so cumbersome to review. We reproduced them in a format to make the information easier for the public to review and locate specific dates and meetings. We also posted public Commissioner calendars that are broken down by month. In addition, we provide a brief description of the records posted for proactive disclosure to make it easier for the public to locate records they are interested in.

7. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

Yes – we collaborate with the Office of Public Affairs to proactively disclose records on our website and to ensure that materials are posted in the correct format. We have also collaborated to post information in a way that is user-friendly, and we are both always open to changes and improvements. We also collaborate with the appropriate divisions and offices – which generally are the subject-matter experts – on any questions that arise about the posting of substantive information.

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

As mentioned, we have placed a standing meeting on our calendars to specifically discuss proactive disclosures. Meeting quarterly has increased our proactive disclosures this year, but considering how important proactive disclosures have become, we are also considering meeting even more frequently, such as monthly, to evaluate our proactive disclosure progress.

Section IV: Steps Take to Greater Utilize Technology

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's 2022 [FOIA Guidelines](#) emphasize the importance of making FOIA websites easily navigable and complying with the [FOIA.gov](#) interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

Yes.

2. Please briefly describe any new types of technology your agency uses to support your FOIA program.

We began using new types of technology this year that are not necessarily new to the world but were new to us. We began utilizing certain previously unused features in FOIAXpress, such as the ability to set reminders for sending acknowledgement letters, expedited processing determinations, extension letters, and for following up on Requests for Documents. We also began using a SharePoint site to help track incoming requests, in addition to FOIAXpress. In addition, we met with a FOIA management system company to consider their new technology offerings, which included many automation features to increase efficiency.

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.

Yes, we work with our eLaw team to automate the removal of news articles from responsive records when a requester agrees to exclude news articles. eLaw can automatically remove articles from our search results. The articles can often be quite voluminous in number, and are almost always not what the requester is seeking, so being able to automatically exclude these saves a significant amount of review time. We also use Relativity to remove or reduce duplicate records and to identify the longest email chain in a series.

4. 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.

5. Did all four of your agency's [quarterly reports](#) for Fiscal Year 2023 appear on FOIA.gov?

Yes.

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2024.

N/A.

7. 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 2022 Annual FOIA Report and, if available, for your agency's Fiscal Year 2023 Annual FOIA Report.

Raw Data for Fiscal Year 2022 and Fiscal Year 2023 Annual FOIA Reports:

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

8. In February 2019, DOJ and OMB issued joint [Guidance](#) establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

Yes.

9. Optional -- Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

A best practice used is to continue to explore new options for FOIA processing technology and related assistance technology. For example, as discussed above, this year we met with a new FOIA case management company to learn about their product. We also hold meetings with our eLaw (IT) team to ensure that, based on our available technological capabilities, we are searching for and collecting records in the most thorough yet efficient way possible. Regarding challenges, our greatest challenge is a lack of resources.

Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness in Responding to Requests, and Reduce Backlogs

The Attorney General's 2022 [FOIA Guidelines](#) instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

A. Remove Barriers to Access

1. Has your agency established alternative means of access to first-party requested records, outside of the typical FOIA or Privacy Act process?

Yes.

2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.

Our Whistleblower Office works directly with individuals who have submitted a Tip, Complaint, or Referral to access copies of information they have submitted. In addition, our Reparations Program works directly with individuals to provide status updates and information about individuals' cases.

3. Please describe any other steps your agency has taken to remove barriers to accessing government information.

We are currently in the process of reviewing our regulations regarding first-party information access to determine whether any requirements for individuals can be removed or lessened to make it easier for those individuals to access information about themselves.

B. Timeliness

4. For Fiscal Year 2023, 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 2023 Annual FOIA Report.

8.29 days.

5. 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 2023 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.

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

Yes.

7. 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 2023?

Yes.

8. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?

N/A.

9. Please provide the percentage of requests processed by your agency in Fiscal Year 2023 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.

94/291 = 32.3%

10. 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.

C. Backlogs

Backlogged Requests

11. If your agency had a backlog of requests at the close of Fiscal Year 2023, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2022?

No, we had one more backlogged request at the close of this year compared with last year.

12. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2023 than it did during Fiscal Year 2022?

Yes.

13. If your agency's request backlog increased during Fiscal Year 2023, 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)
- Litigation
- Any other reasons – please briefly describe or provide examples when possible

Our backlog increased this year, but only by one request. The main contributing factor was an increase in the number of incoming requests, as we received almost 100 more requests this year compared with last year. Once you get down to backlogs in the single-digits, it is very difficult to beat the backlog number from the previous year.

14. 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 2023. 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. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A."

4/290 = 1.38%

Backlogged Appeals

15. If your agency had a backlog of appeals at the close of Fiscal Year 2023, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2022?

We had no backlogged appeals at the close of last year or this year.

16. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2023 than it did during Fiscal Year 2022?

N/A.

17. If your agency's appeal backlog increased during Fiscal Year 2023, 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)
- Litigation
- Any other reasons – please briefly describe or provide examples when possible

N/A.

18. 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 2023. 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. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2023 and/or has no appeal backlog, please answer with "N/A."

N/A.

D. Backlog Reduction Plans

19. In the 2023 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2022 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 2023?

N/A.

20. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2023, please explain your agency's plan to reduce this backlog during Fiscal Year 2024.

N/A.

E. Reducing the Age of Requests, Appeals, and Consultations

Ten Oldest Requests

21. In Fiscal Year 2023, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2022 Annual FOIA Report?

Yes.

22. 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 2022 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

N/A.

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

We added to our FOIA Team by hiring a new full-time FOIA paralegal to increase our processing efficiency.

Ten Oldest Appeals

24. In Fiscal Year 2023, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2022 Annual FOIA Report?

N/A – we did not have any pending appeals.

25. 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 2022 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A.

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

We added additional staff to the group that handles FOIA appeals.

Ten Oldest Consultations

27. In Fiscal Year 2023, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2022 Annual FOIA Report?

N/A – We did not have any pending consults.

28. 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 2022 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

N/A.

Additional Information Regarding Ten Oldest

29. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2024.

N/A.

F. Additional Information about FOIA Processing

30. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency's overall FOIA request processing and backlog. If possible, please indicate:

- The number and nature of requests subject to litigation
- Common causes leading to litigation
- Any other information to illustrate the impact of litigation on your overall FOIA administration

We did not have any FOIA litigation during this reporting period.