



Commodity Futures Trading Commission
Chief FOIA Officer Report
February, 2013

President Obama's FOIA Memorandum

On his first full day in office, President Obama demonstrated his commitment to the ideals of transparency and openness by issuing a Memorandum to the heads of all Executive Branch departments and agencies calling on them to "renew their commitment to the principles embodied in FOIA." The President directed all agencies to administer the FOIA with a clear presumption in favor of disclosure, to ensure that requests are responded to in "a spirit of cooperation," that disclosures are made timely, and that modern technology is used to make information available to the public even before a request is made.

Attorney General Holder's FOIA Guidelines

In accordance with the President's directive, on March 19, 2009, Attorney General Holder issued new FOIA guidelines which called on all agencies to reaffirm the government's "commitment to accountability and transparency." The Attorney General strongly encouraged agencies to make discretionary disclosures of information and to consider making partial disclosures when full disclosures are not possible.

In his FOIA Guidelines the Attorney General also comprehensively addressed the need for each agency to ensure that it has in place an effective system for responding to requests. The Attorney General stressed the importance of proactive disclosures of information and use of technology, as well as the need to respond to requests promptly. Significantly, in his FOIA Guidelines the Attorney General emphasized that "[e]ach agency must be fully accountable for its administration of the FOIA."

Agency Accountability

The Attorney General has highlighted the key role played by each agency's Chief FOIA Officer and emphasized that "[i]mproving FOIA performance requires [their] active participation." Accordingly, the Attorney General directed agency Chief FOIA Officers to review "all aspects of their agencies' FOIA administration" and to report each year to the

Department of Justice on the steps taken "to improve FOIA operations and facilitate information disclosure."

I. Steps Taken to Apply the Presumption of Openness

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

1. FOIA Training. The FOIA Office has provided small group trainings to several divisions within the CFTC. The office has begun preparing materials for a broader training program that will begin in 2013. Two of our FOIA professionals attended the Department of Justice's training seminar.
2. Discretionary releases of otherwise exempt information. The agency completed rolling production of documents responsive to multiple media request for documents involving ongoing investigations. The agency released hundreds of pages of internal documents in the matters, which would otherwise fall under FOIA Exemption 5 and 7(A). The materials released primarily consisted of email communications (both internal and with other regulators) discussing ongoing investigations.
3. Review process to determine whether discretionary releases are possible. The FOIA Office routinely advises program offices that exemptions 5 and 7 must be applied selectively and not automatically. The Office has changed its procedures and the FOIA Office makes initial determinations regarding discretionary releases. The program office has the opportunity to provide written objections to the discretionary release recommendation; however, the final determination is made by Office of General Counsel attorneys, which may include participation by the General Counsel.
4. Other initiatives to insure openness.
 - As was the case last year, the CFTC's most significant openness initiatives relate to rulemakings undertaken pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010) ("Dodd-Frank Act"). The Dodd-Frank Act, which substantially overhauled derivatives regulation, requires the CFTC to promulgate more than 30 new rules. Given the interest in and impact of these rulemakings, the CFTC adopted a transparency policy regarding meetings with outside organizations, which is prominently posted on the Commission's website. Pursuant to the policy, all meetings are listed, together with the topics of the meetings, attendees and any materials presented to the CFTC can be found here.
 - In addition, the CFTC has held public roundtables on major industry issues during the reporting period. Conference call access is provided.

- The CFTC also continues to make available widely watched market data, especially Commitments of Traders (COT) reports, which continue to account for about half of all hits to the CFTC's website.
- The agency has established a new Open Government group to review and assess whether there are other opportunities for more proactive disclosures.

II. Steps Taken to Ensure an Effective System for Responding to Requests

1. IT Support for the FOIA program. The FOIA program continues to work closely with the CFTC's e-Law team. In particular, two IT staff members work on e-Discovery and FOIA matters on a dedicated basis. This year, the FOIA Office used IT support to collect more documents through backend forensic searches to assure a thorough FOIA-compliant search. The FOIA staff has worked closely with IT staff to test and deploy a new collection and review platform that has expanded capabilities and will speed review processing time when fully deployed later this year.
2. Interaction with Open Government Team. The agency's lead FOIA attorney leads the agency's internal Open Government group and is working with members of that group to identify areas for proactive disclosure.
3. Steps take to assure adequate staffing. Working with the Chairman's office to ensure adequate staffing, the CFTC hired a new FOIA specialist attorney (who began in October) and a contract paralegal (who began in July). Also, as described above, the FOIA program is assisted by the e-Law IT team.
4. Other steps undertaken to assure that the FOIA system operates efficiently and effectively. As mentioned above, the FOIA office has worked closely with the IT staff to test and deploy a new document review platform. The new tool has built-in efficiencies (de-duplication, indexing, and tagging) that should streamline review when fully deployed. Following an assessment of the FOIA Operations, staff in the FOIA Office have worked with program staff to identify more efficient means of conducting searches, including electronic collection, and continue to streamline this process. The agency anticipates preparing guidelines for consistent implementation by the end of 2013.

III. Steps Taken to Increase Proactive Disclosures

1. Material posted to the agency website. As was the case last year, the most significant proactive disclosures to the agency website have been made in connection with the Dodd-Frank rulemakings. Links to these are provided on the CFTC's homepage. Pursuant to its transparency policy, the Commission continues to list all meetings with outside stakeholders. The Commission also has posted a list of rulemakings and interpretations it anticipates considering in 2013. Videos added to the Commission's YouTube page include public roundtables, Federal Advisory Commission meetings and media interviews.

2. Other steps taken to make information more useful to the public.

The CFTC most recently upgraded its website in 2010 to improve the presentation and readability of information throughout cftc.gov. The upgrades enhanced the homepage to feature easy access to important information and events at the CFTC; improved site navigation and implemented dynamic dropdown menus for primary and secondary navigation; and provided greater transparency with the implementation of Web pages dedicated to transparency. The CFTC continues to refine its website. Visitors frequently receive automatic prompts to give feedback.

Frequently requested information may be placed on the website. The agency's internal Open government team is working with program offices to ensure that all material appropriate for disclosure is posted on the agency's website

3. Examples of improvements. The CFTC added information on the Whistleblower program that clearly describes the process and enables for efficient filing of Whistleblower complaints. The same pages provides explanatory material for all types of complaints consumers can file with the CFTC and links to easily submit complaints.

The website includes the "CFTC Glossary," which is intended to assist the public in understanding specialized words and phrases used in the futures industry since many of these terms are not found in standard reference works. The Glossary includes a link that allows readers to email the CFTC if they cannot find the term they are looking for.

4. Other steps taken to increase proactive disclosure. The CFTC's program offices routinely provide updated market data, industry filings and information about new regulatory developments. For instance, the Dodd-Frank Act created new entities, Swap Data Repositories ("SDRs"), to provide a central facility for swap data reporting and recordkeeping. The Commission's website includes a page on these entities, including FAQs and instructions on how to apply for SDR status. The Open government team is working with program offices to ensure that all material appropriate for disclosure is posted on the agency's website.

IV. Steps Taken to Greater Utilize Technology

Electronic receipt of FOIA requests

1. Can FOIA requests be made electronically? Yes, more than 90 percent of requests are received electronically.
2. Decentralization. Not applicable. Requests are process on a centralized basis.

Online tracking of FOIA requests

3. Can a requester track the status of a request electronically? No.

4. Is the CFTC taking steps to establish this capability? The agency is exploring options for this capability.

Use of technology to facilitate processing of requests:

5. Is the agency taking steps to utilize more advanced technology. Last year, the FOIA program began using electronic search and collection for a limited number of FOIA requests. The office worked closely with our IT staff and eDiscovery counsel to develop a protocol for efficient and thorough electronic search and collection of documents and. This year, the FOIA staff tested and began deploying a new review platform that has increased capabilities including de-duplication and clustering that should decrease review times and increase efficiency.

V. Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

1. FOIA request response times

- a. Does the agency use a separate track for simple requests? Yes, the CFTC classifies requests by simple and complex.
- b. Was the average number of days to process simple requests in FY2012 20 days or fewer? No. The average processing length was 46 days. The median processing length was 18 days.

2. Backlogged Requests/Appeals

- a. Did the FY2012 backlog decrease compared to FY2011? No. The agency had 41 matters backlogged as of the end of FY 2012, an increase of five matters backlogged as of the end of FY 2011.
- b. Did the backlog of FY2012 administrative appeals increase compared to FY2011? No. The agency had five backlogged administrative appeal at the end of FY2012 and two at the end of FY2011, an increase of three matters backlogged.
- c. In FY2012, did the agency close the ten oldest requests pending at the end of FY2010? No. The agency closed 8 of its 10 oldest such requests.
- d. In FY 2012, did the agency close the ten oldest administrative appeals that were pending as of the end of FY 2011? Yes.

3. If any questions were answered “no,” describe why that occurred.

Request backlog

- a. The increased backlog in FY 2012 resulted from an increase in the number of incoming requests. There were 145 new requests in FY 2011 compared to 170 new requests in FY2012.
- b. The backlog increased as a result of a change in staff. The FOIA office had been staffed primarily with employees who had part-time responsibility for FOIA and insufficient expertise. The new FOIA attorney brought on contract paralegals for assistance and at the end of FY 2012 the agency hired a new junior attorney to review FOIA requests. As mentioned above, the agency has deployed a new review platform and the FOIA office took some months to test and work on deploying the platform. We have begun to reap the benefits of efficiency and thoroughness benefits of electronic search and review, but there was a learning curve where things did not operate as efficiently as we anticipate going forward. We anticipate that these changes will help decrease the agency’s backlog.

- c. Administrative Appeal backlog

The lack of a reduction is attributed to the press of competing assignments connected to the Dodd-Frank rulemakings as well as an increase in the number and complexity of appeals.

4. OIP has issued [guidance](#) encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information. If your agency had a backlog in Fiscal Year 2012, please provide an estimate of the number of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

The CFTC did not make substantive, interim responses in backlogged cases in Fiscal Year 2012.

Use of FOIA’s Law Enforcement “Exclusions”

The agency did not invoke an exclusion.

Spotlight on Success

Our pre-eminent success story deployment of our new review tool for processing FOIA requests. The tool has increased capabilities that allows for de-duplication, clustering

and enhanced review techniques. Using these tools, we have been able to streamline review and efficiently tag responsive and non-responsive records. The tools also provide more consistent applications of exemptions. We are very pleased that the investments in staff and IT resources are beginning to pay off in such a visible way. Our lead FOIA attorney will present the case for the tools and the efficiencies at the upcoming government-wide DOJ FOIA training conference.