



Commodity Futures Trading Commission
2018 Chief FOIA Officer Report

Name and Title of Chief FOIA Officer: Candace Ambrose, Attorney Advisor, Office of the General Counsel, General Law Division

Section I: Steps Taken to Apply the Presumption of Openness

A. FOIA Training

1. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any substantive FOIA training or conference during the reporting period such as that provided by the Department of Justice?

Yes.

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

One FOIA professional attended the following training sessions: (1) American Society of Access Professionals' (ASAP) Training on FOIA in Transition which covered navigating changes created by a Presidential transition from officials who have had influential roles during the handover of power; (2) ASAP's 10th Annual National Training Conference which included classes on recent developments in FOIA case law, statutory exemptions, fee categories, and fee waivers; (3) DOJ's Annual FOIA Report Refresher Training which highlighted any updates to the report based on new requirements from the FOIA Improvement Act of 2016; (4) DOJ's Chief FOIA Officer Report Refresher Training which also highlighted any updates to the report based on new requirements from the FOIA Improvement Act of 2016; and (5) DOJ's Advanced FOIA Seminar which discussed policy developments impacting FOIA administration, an overview of recent FOIA court decisions, and advanced procedural and exemption considerations.

The second FOIA professional attended in-house training sessions on the application of Exemptions 4, 5, and 6.

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

One hundred percent of CFTC's FOIA professionals attended substantive training during this reporting period.

4. *OIP has directed agencies to "take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year." If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.*

N/A.

B. Outreach

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

The CFTC has dialogued with requester community groups to explain the agency's FOIA processing practices and record systems. For example, one FOIA professional had a teleconference with a news media requester who was seeking copies of records from hundreds of dockets. The FOIA professional explained certain limitations regarding search capabilities and agency resources. As a result, the requester was better informed about the best way to tailor the requests to receive the records more efficiently. Another example involved a frequent requester who was seeking agency management reports. After talking to a FOIA professional, the requester was informed that the reports were retrievable from CFTC's website.

C. Other Initiatives

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

As part of their onboarding process, all CFTC senior leadership receives FOIA training so that they are informed about their responsibilities under FOIA. One FOIA professional met with the chief counsel from all of CFTC's divisions to discuss substantive changes mandated by the FOIA Improvement Act of 2016, such as the sunset provision of the deliberative process privilege, the foreseeable harm standard, and the limitations on charging fees. Additionally, FOIA professionals met with subject matter experts throughout CFTC to explain the importance of conducting timely searches for responsive records, to explain exemption application, and to explain that requests have to be interpreted broadly. These discussions resulted in greater understanding of agency staff responsibilities under FOIA and increased efficiency in agency FOIA processing.

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

The CFTC holds open meetings, roundtables, and advisory Committee meetings. In addition to providing access in person and via dial-in, the CFTC posts statements, documents, and transcripts online to improve transparency and openness (<http://www.cftc.gov/PressRoom/Events/CommissionMeetings/index.htm>). Moreover, the CFTC 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

1. *For Fiscal Year 2017, 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 2017 Annual FOIA Report.*

The CFTC reported an average of 8 days to adjudicate requests for expedited processing.

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.*

The CFTC assessed its FOIA program using DOJ's FOIA Self-Assessment Toolkit. The CFTC reviewed its intake processes, active workflows, expedited processing procedures, fee waivers, search processes, record processing procedures, response letters, training opportunities, requester services, and track management. As a result of the assessment, the CFTC has determined that its track management is effective. The CFTC has implemented measures to improve its search processes, record processing procedures, response letters, and requester services. These measures have streamlined the FOIA program so that requests can be processed more efficiently.

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 2017 (please provide a total number or an estimate of the number).*

Requesters sought assistance from CFTC's FOIA Public Liaison approximately ten times.

5. *Optional Survey Question: If possible, please provide an estimate of the average number of pages that your agency processes for each request. You may provide estimates for each track.*

6. *If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as improving search processes, eliminating redundancy, etc., please describe them here.*

The CFTC has undertaken several steps to ensure that the FOIA program operates more efficiently and effectively. The FOIA program implemented standard operating procedures so that the FOIA professionals can apply the same methodology for processing different types of requests. These procedures increased the quality and consistency of the CFTC's FOIA processing. Moreover, the FOIA program created a user guide for e-discovery software used to process records retrieved by remote electronic searches. The user guide serves as a reference for technical questions that may arise while redacting and coding the records. Additionally, the FOIA program created a FOIA Remote Search Request Form to streamline the information provided to the data and technology staff when remote electronic searches are needed. The FOIA program revised its FOIA Search Response Form so that record custodians could provide greater information regarding the scope of the search and search parameters. This information can assist the FOIA professionals in determining whether the search was reasonable. The FOIA program also established a standard process for requesting records from a division that receives a disproportionate number of search requests.

Section III: Steps Taken to Increase Proactive Disclosures

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

The CFTC proactively discloses No-Action Letters, Interpretative Letters, and Exemptive Letters on the agency website to inform the public on various agency matters. The CFTC's press office routinely posts advisory notices, speeches, testimony, notices of enforcement actions, and other materials of interest on the agency website. The CFTC also lists all meetings with outside stakeholders. Links to these records are provided on the CFTC's homepage (<http://www.cftc.gov/index.htm>).

Links to material that the CFTC has proactively disclosed are as follows:

<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/StaffReportonMay6MarketEvents/index.htm>

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

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

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 CFTC's website was completely redesigned 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>) and 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>). Additionally, the CFTC allows anyone 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 34,000 people receive the agency's press releases, 33,000 people received federal register notices, and 17,000 people received any letter the agency posts to the website. Further, all of the CFTC's releases are instantly tweeted and posted on Facebook. To date, the CFTC has over 14,000 Facebook followers and over 24,000 Twitter followers.

5. *If there are any other steps your agency has taken to improve proactive disclosures, please describe them here. For example, has your agency engaged requesters in determining how and what to post? Has your agency used web analytics to inform your proactive disclosures?*

N/A.

Section IV: Steps Taken to Greater Utilize Technology

1. *Has your agency identified any best practices to leverage technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents? If yes, please describe the best practices, the types of technology used and the impact on your agency's processing.*

The CFTC uses e-discovery software to facilitate overall FOIA efficiency for voluminous records requests. The software enables CFTC to search for records remotely, sort and de-duplicate records, and bulk code and redact records. The software has decreased the time required to process voluminous requests which has helped reduce the backlog of requests.

2. *Did your agency successfully post all four quarterly reports for Fiscal Year 2017?*

No.

3. *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 2018.*

The CFTC posted all four quarterly reports for Fiscal Year 2017, but quarters 3 and 4 do not appear on FOIA.gov. The CFTC will ensure successful posting to FOIA.gov for Fiscal Year 2018 by continuing to post the quarterly reports in the same manner as quarter 1 for Fiscal Year 2018.

4. *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 2016 Annual FOIA Report and, if available, for your agency's Fiscal Year 2017 Annual FOIA Report.*

The link to the raw statistical data for CFTC's Fiscal Year 2016 Annual FOIA Report is not posted.

5. *If there are any other steps your agency has taken to improve use of technology in FOIA, please describe them here.*

N/A.

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

A. Simple Track

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

Yes.

2. *If so, for your agency overall in Fiscal Year 2017, was the average number of days to process simple requests twenty working days or fewer?*

No. The average number of days to process simple requests in Fiscal Year 2017 was 25 days.

3. *Please provide the percentage of requests processed by your agency in Fiscal Year 2017 that were placed in your simple track.*

The percentage of requests processed in Fiscal Year 2017 that were placed in the simple track was 91%.

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 2017, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2016?*

The CFTC's backlog of requests decreased from 16 in Fiscal Year 2016 to 15 in Fiscal Year 2017.

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

- *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.

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 2017.*

The backlog makes up 8% of the requests received.

BACKLOGGED APPEALS

8. *If your agency had a backlog of appeals at the close of Fiscal Year 2017, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2016?*

N/A. The CFTC did not have a backlog of appeals at the close of Fiscal Year 2017.

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

- *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.

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 2017. If your agency did not receive any appeals in Fiscal Year 2017 and/or has no appeal backlog, please answer with "N/A."*

N/A. The CFTC has no appeal backlog.

C. Backlog Reduction Plans

11. *In the 2017 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2016 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 2017?*

N/A. The CFTC did not have a backlog of over 1000 requests in Fiscal Year 2016.

12. *If your agency had a backlog of more than 1000 requests in Fiscal Year 2017, what is your agency's plan to reduce this backlog during Fiscal Year 2018?*

N/A.

D. Status of Ten Oldest Requests, Appeals, and Consultations

TEN OLDEST REQUESTS

13. *In Fiscal Year 2017, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2016 Annual FOIA Report?*

No.

14. *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 2016 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.*

The CFTC closed eight of the ten oldest requests pending at the end of Fiscal Year 2016.

15. *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?*

Three of the oldest requests pending at the end of Fiscal Year 2016 were withdrawn by the requester. One of the three requests was withdrawn after the requester received numerous interim responses.

TEN OLDEST APPEALS

16. *In Fiscal Year 2017, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2016 Annual FOIA Report?*

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

17. *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 2016 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.*

N/A.

TEN OLDEST CONSULTATIONS

18. *In Fiscal Year 2017, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2016 Annual FOIA Report?*

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

19. *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 2016 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.*

N/A.

E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans

20. *Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2017.*

The two oldest pending requests that were not closed pertain to the same topic and involve complex review of over 60,000 records, many of which require consultation with outside submitters. The CFTC has provided a rolling production of responsive records to both requestors.

21. *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.

22. *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 2017.*

The CFTC will continue to provide rolling productions to the requestors of the oldest requests. The CFTC also hired a FOIA contractor to assist with processing records for the oldest requests.

F. Success Stories

In Fiscal Year 2017, the CFTC reduced its backlogged requests although there was a 48% increase in the number of requests received. One notable closure during Fiscal Year 2017 involved the CFTC closing its oldest FOIA request. The request was submitted in October 2013 and contained over 14,500 pages of responsive records. The CFTC provided the requester with 19 productions totaling almost 11,000 pages of responsive records. The majority of the productions required submitter notices. After four years of rolling productions, the requester agreed to withdraw the request.