



Commodity Futures Trading Commission  
Chief FOIA Officer Report  
February, 2014

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

**I. Steps Taken to Apply the Presumption of Openness**

1. FOIA Training:

The FOIA Office has provided small individualized trainings at agency headquarters. The agency is preparing a new training curriculum for all Commission staff and FOIA training will be a mandatory component of the training program slated to be implemented by the end of FY 2014. None of the FOIA professionals attended FOIA training during the last reporting period; however, two of our FOIA professionals are registered to attend upcoming DOJ FOIA trainings.

2. Outreach:

The agency has not conducted any outreach with the requester community.

3. Discretionary Disclosures:

The FOIA Office routinely advises Commission program offices that Exemption 5 must be applied selectively and not automatically. The Office has changed its procedures, and the FOIA Office now makes the initial determinations regarding discretionary releases. The program office then 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 of the General Counsel.

The agency completed rolling productions of records responsive to multiple media request for records involving ongoing investigations. The agency released hundreds of pages of internal documents in the matters, which would otherwise fall under FOIA Exemption 5. The released materials were primarily email communications (both internal and with other regulators) discussing ongoing matters. In addition, the agency released agendas and minutes from internal agency group meetings, which

would otherwise fall under FOIA Exemption 5, as well as thousands of emails from the Chairman to both internal and external parties discussing agency business.

4. Other Initiatives:

- The agency did not post all required quarterly FOIA reports for FY 2013. This was largely due to the increased workload of the Office. At the close of the second quarter, the agency has posted the first and second quarterly reports. Further, the Lead FOIA attorney has presented the Chief FOIA Officer with a timeline to ensure the reports are completed and posted on time going forward.
- The Commission has held public roundtables on major industry issues during the reporting period, in which conference call access was provided. The agency 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 on the Commission’s website, at <http://www.cftc.gov/MarketReports/CommitmentsofTraders/index.htm>.

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

1. Personnel:

The agency has not converted its FOIA Professionals to the new Government Information Specialist Job series. The FOIA staff is small, consisting of one lead attorney, one staff attorney, one FTE paralegal, and one contract paralegal. Each of these positions performs other non-information related functions in the office, and therefore, they are properly categorized in other professional series. The agency has not consulted with Chief Human Capital Officer to determine whether the agency has staff eligible for conversion.

2. Processing Procedures:

The agency did not maintain an average of ten calendar days or less to adjudicate requests for expedited processing. At the beginning of FY 2014, the lead attorney retrained all FOIA staff on the requirements for responding to requests for expedited treatment. This training has led to a decrease in response times in FY 2014 for expedited treatment, and the agency continues to explore additional ways to ensure all requests for expedited treatment are responded to within ten calendar days. The agency does not receive many requests for consultations or referrals and has found the process in place to be effective when required.

3. Requester Services:

The agency almost exclusively uses email to communicate with requesters, which has proven to be the most efficient and effective means of communication. The agency appeal letters notify requesters of the mediation services offered by OGIS. The agency deployed new technology to perform electronic search and review. The agency has also created a requirements document to determine whether more efficient tracking and software applications are available and will work with the current review platform to eliminate redundancy.

### III. Steps Taken to Increase Proactive Disclosures

#### 1. Posting Material:

Yes, the FOIA staff have a system in place to identify proactive disclosures. The FOIA staff links all cases that have related records to determine whether the agency is receiving multiple requests for the same records. In FY 2013, the agency did not have many frequently requested records; however, we have seen an increase in FY 2014 and have already implemented a flagging system to ensure the records are posted as they are processed. The agency identified one record to proactively disclose in advance of receiving any FOIA requests, at <http://www.cftc.gov/ucm/groups/public/@freedomofinformationact/documents/file/letterto dberkovitz.pdf>, and the agency continues to make proactive disclosures on the agency's website in connection with the numerous Dodd-Frank Act rulemakings. Pursuant to its transparency policy, the Commission continues to list all meetings with outside stakeholders. The agency regularly posts No-Action Letters, Interpretative Letters and Exemptive Letters on the agency website to inform the public on various agency matters. Finally, the agency press office routinely posts advisory notices, speeches, testimony, notices of enforcement actions, and other materials of interest on the agency website. Links to these records are provided on the Commission's homepage (<http://www.cftc.gov/index.htm>).

#### 2. Making Posted Material More Useful:

The enhanced Commission homepage features easy access to important information and events at the agency, efficient site navigation, and dynamic dropdown menus for primary and secondary navigation, all of which provide greater transparency of agency actions. As the Commission continues to refine its website, visitors are frequently prompted to provide feedback to make the website more accessible.

In addition to efficient website navigation, the Commission has taken other steps to increase proactive disclosure. For example, the Commission'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 Commission'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 Commission's website to receive updates on specific or all information that is posted on the website. For example, up more than 21 thousand people receive the agency's press releases, 20 thousand received federal register notices and over 16 thousand received any letter the Commission posts to the website. Further, all of the agency's releases are instantly tweeted and posted on Facebook. To date, the Commission has over nine thousand Facebook followers and over 6 thousand Twitter followers.

The Commission continues to look to ways to increase public awareness. For example, the agency maintains a broad database of local news outlets to make sure people in the area of suspected fraudster will be better able to hear about the case and be watchful.

Further, the agency is beginning to redesign the Commission's website, and one of the top priorities will be to increase public awareness of and access to the information on CFTC.gov.

#### **IV. Steps Taken to Greater Utilize Technology**

##### **1. Online Tracking of FOIA requests:**

The agency does not currently have the ability for requesters to track their requests online. The FOIA Office and our IT staff are in the process of creating a requirements document for a new FOIA tracking system and online tracking is one required component for the system.

##### **2. Use of technology to facilitate processing of requests:**

Last year, the FOIA program increasingly used electronic search and collection for complex FOIA requests. The office worked closely with our IT staff to develop a protocol for efficient and thorough electronic search and collection of documents, which includes sorting and de-duplication capabilities. This year, the entire FOIA staff was trained on the new review platform that has increased capabilities including de-duplication and clustering. Increasing familiarity with the program should decrease review times and increase efficiency.

#### **V. Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs**

##### **1. Simple Track Requests:**

- i. Does the agency use a separate track for simple requests? Yes, the CFTC classifies requests by simple and complex.
- ii. Was the average number of days to process simple requests in FY 2013 20 days or fewer? No. The average processing length was 65 days. The median processing length was 40 days.

##### **2. Backlogs and "Ten Oldest" Requests, Appeals and Consultations:**

###### **i. Backlogs**

- a. Did the FY 2013 backlog decrease compared to FY2012? Yes. The agency had 15 matters backlogged as of the end of FY 2013, a decrease of 27 (more than 60%) matters backlogged as of the end of FY 2012 (42 backlogged matters at the end of FY 2012).

b. Did the backlog of FY2013 administrative appeals increase compared to FY2012? No. The agency had four backlogged administrative appeals at the end of FY 2012 and four at the end of FY 2013.

ii. Ten Oldest Requests

In FY 2013, did the agency close the ten oldest requests pending at the end of FY 2012? Yes.

iii. Ten Oldest Appeals

In FY 2013, did the agency close the ten oldest administrative appeals that were pending as of the end of FY 2012? No. The agency closed two (out of five) of the oldest administrative appeals pending at the end of FY 2012.

iv. Ten Oldest Consultations

The agency does not currently track the consultations from other agencies separately. We have implemented procedures to track this in FY 2014.

3. Reasons for Any Backlogs:

*“Ten oldest” Not Closed*

In FY 2013, the agency closed two of its ten oldest pending appeals and all appeals are now closed. The agency experienced an increase in the complexity of requests received. In addition, the office lost staff in the appeals section which led to a delay in closing the oldest appeals.

4. Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:

The agency has closed all outstanding appeals.

5. Interim Responses:

The agency has a system to provide interim responses to requesters when appropriate. With the new document review platform, the agency is better able to provide interim responses and rolling productions.

In FY 2013, we made substantive interim responses in at least two cases they are part of the FY 2013 backlog.

**VI. Use of FOIA’s Law Enforcement “Exclusions”**

The agency did not invoke any exclusions.

**VII. Spotlight on Success**

Our pre-eminent success story is closing the ten oldest pending FOIA requests from FY 2012. Our FOIA staff worked diligently to ensure the ten oldest requests, including a pending request received in FY 2010, were closed before the end of FY 2013 by

communicating with the requester and by working with Commission staff to obtain responsive records.