

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Chief FOIA Officer Report



Office of Support Operations

March 6, 2019

High-Volume Agencies Receiving More Than 50 Requests in FY17

Content of 2019 Chief FOIA Officer Reports

Section I: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying DOJ's [FOIA Guidelines](#) is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working 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.

Barry Walters, Director of the Office of Support Operations.

B. FOIA Training

3. 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.

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

Within the reporting period, FOIA professionals attended in-house training that included, but was not limited to, the following topics: the FOIA Improvement Act of 2016, foreseeable harm and discretionary releases, review and redaction of SEC specific records, referrals and consultations, FOIA fees, and use of the (c)(1) exclusion.

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.

100% of the SEC's full-time FOIA staff attended substantive FOIA training.

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.

N/A

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? 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.

The Office of FOIA Services (OFS) met with two of its largest FOIA requesters. These interactions provided insight into the requesters’ priorities so that responses could be tailored to best suit their needs. Throughout the reporting period, SEC FOIA staff engaged the requester community in order to better understand requests, to assist in timely processing, and to solicit what might be done to improve transparency at the SEC.

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.

The SEC’s Office FOIA Services offers on the SEC’s internal training site a FOIA e-Learning Module obtained from DOJ’s Office of Information Policy: “FOIA Training for Federal Employees.” This module is designed for all federal employees and provides a basic primer on the FOIA. In addition, staff are provided with links to DOJ sites – “Department of Justice Guide to the Freedom of Information Act” and the “Department of Justice FOIA Reference Guide.”

SEC FOIA liaisons within the components of the SEC are required to annually review the SEC’s “FOIA and Privacy Act Request Processing Guidance for Liaisons.” This guidance describes the basic processes and procedures for FOIA liaisons and other SEC staff so that they might better assist the FOIA office in processing requests. Revisions were made to the guidance in 2018 to incorporate changes resulting from the FOIA Improvement Act of 2016.

Additionally, SEC FOIA liaisons attended training offered by the FOIA office related to revisions to the SEC’s FOIA regulations and the FOIA Improvement Act of 2016.

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.

In recognition of “Sunshine Week” in March 2018, the Chairman of the SEC emailed all staff in order to highlight the importance of the FOIA and maintaining transparency and openness.

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

DOJ’s [FOIA Guidelines](#) emphasize that “[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests.” It is essential that agencies effectively manage their FOIA program.

Please answer the following questions to describe the steps your agency has taken to ensure that the management of your FOIA program is effective and efficient. You should also include any additional information that describes your agency's efforts in this area.

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 5.75.

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.

- Note: In September 2017, OIP released a FOIA Self-Assessment Toolkit as a resource for agencies conducting a self-assessment of their FOIA program. The Toolkit is available on OIP’s website for all agencies to use.

The OFS generated monthly reports that included statistical analyses, which provided the ability to compare and contrast with prior reporting. The OFS management team continuously examines the FOIA process at the SEC to improve efficiency and to ensure compliance.

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).

Requesters rarely sought assistance from an SEC FOIA Public Liaison. Although OFS does not track this information, it is estimated that contact with SEC FOIA Public Liaisons occurred on ten (10) or fewer occasions. During the reporting period, OFS began including an addendum page to response letters. This addendum was created in observation of the advisory opinion OGIS issued in July 2017 concerning agency communications and the need to notify requesters of OGIS's dispute resolution services and the services provided by agency FOIA Public Liaisons.

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.

The "FOIA system" used by the SEC is FOIA Xpress, a processing application and tracking system. FOIA Xpress has allowed for a streamlined process. Among other functions, the system generates customizable templates, creates reports, tracks requests and manages storage of records. Search and redact features decrease review time.

Best practices within the "FOIA program" at the SEC would include maintaining a high degree of employee satisfaction, regular training of FOIA and non-FOIA staff, and emphasizing consistent and meaningful communication with requesters.

One challenge has been staff attrition during the reporting period, to include staff at the management level. At present OFS has been unable to replace these individuals.

Section III: Steps Taken to Increase Proactive Disclosures

The Department of Justice has long focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

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

During the reporting period the SEC posted the following records. These records here are a representative sample and do not constitute an exhaustive list.

- The SEC launched a new tool, SEC Action Lookup – Individuals (SALI), that allows investors to check the background of investment providers including their employment history, licensing information, registration history and disciplinary actions. The tool is located at <https://www.sec.gov/litigations/sec-action-look-up>.
- Closed-End Fund Information. This report provides basic identification information for all entities with an "active" filing status that are organized as closed-end investment companies (closed-end funds or CEFs). A CEF is an entity that has filed both a Form N-

8A and Form N-2 with the Commission. https://www.sec.gov/open/datasets-closed-end-investment_company.html.

- Information About Registered Municipal Advisors. <https://www.sec.gov/help/foia-docs-muniadvisorshtm.html>.
- FOIA Request Logs by Quarter and Fiscal Year. <https://www.sec.gov/foia/docs/foia-logs.htm>.
- Records pertaining to Tesla and Elon Musk. https://www.sec.gov/files/tesla-elon-musk-records-foia-3_1.pdf.

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 SEC OFS has a branch dedicated to triage of incoming requests. If the triage branch identifies prior requests for the same records, a FOIA manager and the FOIA specialist that is assigned for processing will be notified. Identification of prior requests for the same records might also occur during processing. For every request assigned to them, FOIA specialists are required to conduct key word searches in FOIA Xpress, the SEC's FOIA processing system, to identify prior requests for the same records. If the triage branch and the FOIA specialist fail to locate prior requests, after receiving a copy of the request, FOIA liaisons will advise OFS that the records subject to that FOIA request have already been produced to OFS in response to a previous, separate request.

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 SEC regularly updates a log of additions to the website, which keeps visitors apprised of new information (<http://www.sec.gov/news/whatsnew/wn-today.shtml>). The SEC has a separate web page where high value data sets are available. <https://www.sec.gov/data>. Descriptions of the most recently published data sets can be found on the SEC's main web page. Individuals may sign up to receive SEC email updates as well. The SEC also has a form available on its website for the public to provide feedback and suggestions.

In promoting proactive disclosures, the SEC's FOIA webpage includes a "What's New" section that lists the five most recent postings to the FOIA page. Additionally, FOIA logs are posted quarterly. Many divisions and offices within the SEC make records available on their specific page of the SEC's website. Some divisions and offices maintain a separate space for newly available and/or frequently requested records. Examples are the Division of Trading and Markets, which has its own "Frequently Requested Documents" page at <https://www.sec.gov/divisions/marketreg/mrfreqreq.shtml> and the Division of Corporation

Finance which posts “Frequently Requested Materials” at <https://www.sec.gov/divisions/corpfin/cffreqreq.shtml>.

The Office of Structured Disclosure (OSD), within the Division of Economic and Risk Analysis, supports the SEC's efforts to make data accessible and easy to use. OSD works closely with other SEC Divisions and Offices to design data structuring approaches for required disclosures, and supports the SEC's data collections and data usage by designing taxonomies, validation rules, data quality assessments, and tools for conducting data analyses.

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

OFS consults regularly with other divisions and offices within the SEC. This process helps to identify potential proactive disclosures. OFS will work with those divisions and offices to determine how the records can be posted efficiently. This collaborative process also involves identifying the form and manner in which the records would be most useful to the public. FOIA staff communicate regularly and directly with the requester community regarding specific types of records that could be made proactively available and the most useful formats of those disclosures.

Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information more accessible. In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that that describes your agency's efforts in this area.

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.

Yes. The SEC's OFS utilizes FOIA Xpress, an electronic document management system that allows staff to store and review records. For new FOIA requests, searches of FOIA Xpress can locate prior FOIA requests for the same records. All SEC databases are subject to FOIA searches. SEC staff search the appropriate database(s), including internal and external websites, to determine the existence of responsive records. Staff will also conduct generalized internet searches to determine the public availability of responsive records. This may include searches of LexisNexis and PACER, as necessary. All searches are conducted using the subject of the FOIA request or other key terms that might reasonably determine if any responsive records exist. Where there is uncertainty, key words are obtained by coordinating with the requester.

Email searches: For email that has not yet been archived, it is the responsibility of the relevant program office or division to have individual staff members or that office's OIT specialist

conduct a search that will produce the responsive email records. If the email records have been archived, a search will be conducted by the SEC's Office of Information Technology (OIT). OIT will use the key words and time period provided to them by OFS. After the search is conducted, OFS will be given access to the responsive emails in .pst format. Typically, the .pst files are converted to .pdf format for review purposes.

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?

Yes.

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

Yes.

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.

N/A

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.

2017: <https://www.sec.gov/foia/arfoia17-raw.csv>

2018: <https://www.sec.gov/foia/arfoia18-raw.csv>

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

The SEC's FOIA office promotes active collaboration with SEC IT specialists in order to find ways to accommodate requesters, to include enhancing existing search and access capabilities and identifying new technologies that might be leveraged in FOIA processing. In addition, the FOIA office will evaluate other agencies' technology tools to see if they might be of value to the SEC. The FOIA office consistently examines resources presently available to other SEC offices and divisions to determine if there are technology tools that might be integrated into FOIA processing and transparency initiatives. All technological improvements implemented by the FOIA office are monitored to assess their effectiveness. Adapting and utilizing technology is often limited by the availability of resources.

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

The Department of Justice has emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations.

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2018 Annual FOIA Report and, when applicable, your agency's 2017 Annual FOIA Report.

A. Simple Track

Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

1. Does your agency utilize a separate track for simple requests? If your agency uses a multi-track system beyond simple, complex, and expedited to process requests, please describe the tracks you use and how they promote efficiency.

The SEC utilizes three separate tracks: simple, complex and expedited.

2. If your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2018?

Yes.

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

99%

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

Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the

fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2016 and Fiscal Year 2017 when completing this section of your Chief FOIA Officer Report.

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.

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

Yes.

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 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.

The SEC's request backlog increased during Fiscal Year 2018 due to an increase in the number of incoming requests, a loss of staff, and an increase in the complexity of the requests received. The complexity of the requests required further consultation with staff in other divisions and offices and review of voluminous documents. The combination of all these factors resulted in the request backlog increase.

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."

14,229 = # of requests received. 112 = # of backlogged requests. Percentage of requests that make up the backlog = 0.78%

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 number of backlogged appeals at the end of FY 2018 was zero (0).

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 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.
- 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."

N/A

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 you 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

Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and

consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2016 and Fiscal Year 2017 when completing this section of your Chief FOIA Officer Report.

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?

No

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

Nine of the ten oldest requests that were pending in Fiscal Year 2017 were closed.

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?

One. No interim response was issued.

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 SEC observed the best practices set forth in the response to Section II, Question 5.

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 fewer 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.

The SEC's Office of the General Counsel (OGC) processes all FOIA appeals. Adjudicating appeals can present complex issues that require further consultation with staff in other divisions and offices and review of voluminous documents. To reduce the overall age of pending appeals, OGC observes those best practices emphasized by OFS. This includes maintaining a high degree of employee satisfaction, FOIA training of OGC staff that process appeals, and consistent and meaningful communication with requesters.

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 (there were no pending consultations in FY17).

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.

All but one of the ten oldest requests were closed in Fiscal Year 2018. An increase in the number of incoming requests, a loss of staff, and an increase in the complexity of the requests received prevented OFS from closing all the ten oldest requests from Fiscal Year 2018.

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.

All but one of the ten oldest requests were closed in Fiscal Year 2018. The SEC plans to adhere to its best practices as described in response to Section II, Question 5.

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.

During the reporting period, an SEC FOIA staff member was accepted as a member of the present FOIA Advisory Committee. Application to the Committee was made by the SEC so that the agency might have a voice in improving FOIA administration to benefit the requester community.

During last year's Sunshine Week, an SEC FOIA staff member received an award from DOJ OIP for "Exceptional Service by a FOIA Professional." Further, the SEC's FOIA Officer was recognized with a "Lifetime Service Award" that reflected over 20 years of FOIA advocacy.

As a medium-sized agency, the SEC processes FOIA requests at a level received at much larger federal agencies, averaging approximately 14,000 per year in each of the last four years. Despite the volume of requests, which included many of significant complexity, the SEC closed FY2018 with a backlog of less than 1% (112 requests).

An SEC FOIA Manager was invited to be a member on a panel discussing customer service at the 11th Annual ASAP National Training Conference in July. Further, this manager also instructed a new breakout session on Exemption 8 at that same conference.

The SEC was recognized by MuckRock, a non-profit, collaborative news site that requests, analyzes, and shares government records, as the Most Responsive Agency in their 2018 FOIA March Madness. MuckRock noted that "[t]his is the second year the SEC has taken the title, in no small part, it seems, due to a system that helps them handle 13,000+ requests per year." The SEC was similarly recognized in 2017.