

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

**Chief FOIA Officer Report**



**Office of Support Operations**

**March 12, 2018**

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## High-Volume Agencies Receiving More Than 50 Requests in FY16

### Content of 2018 Chief FOIA Officer Reports

**Chief FOIA Officer: Barry Walters, Director of the Office of Support Operations**

#### 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 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.

Within the reporting period, FOIA professionals attended in-house training that focused on the following topics: fees under the FOIA, optimizing searches, managing FOIA workload, complex track requests, application of FOIA exemptions and redactions, discretionary releases, the *American Immigration Lawyers Association v. EOIR* decision, consultations and referrals and confidential, commercial information under Exemption 4.

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.

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

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

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## **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?

In July 2017, the Chief FOIA Officer and the FOIA Officer met with MuckRock, a non-profit, collaborative news site that requests, analyzes, and shares government records. The discussion concerned SEC FOIA processing in order to solicit what might be done to improve transparency at the SEC.

During the reporting period, the Chief FOIA Officer and OFS staff met with several members of the federal FOIA Advisory Committee. The SEC assisted the Committee by providing information about proactive disclosures and FOIA initiatives. This included a discussion of the opportunities and barriers faced in implementing those initiatives.

The Chief FOIA Officer and OFS staff also met with a frequent requester and transparency advocate to solicit what might be done to improve FOIA processing at the SEC.

## **C. Other Initiatives**

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

The SEC's Office FOIA Services (OFS) 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."

During the reporting period, the OFS provided FOIA and Privacy Act training to the SEC's Boston Regional Office (BRO). The training was held in conjunction with a meeting of between 30-60 BRO enforcement attorneys who had expressed an interest in learning more about the FOIA process at the Commission.

SEC FOIA liaisons within the components of the SEC were required to 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 OFS in processing requests.

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.

During 2017 Sunshine Week, the SEC's Acting Chairman issued a Commission-wide message conveying the importance of the FOIA and emphasizing a commitment to openness and transparency.

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## **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 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.

It took OFS an average of 3.7 days for adjudicating 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 OFS generated monthly reports that included statistical analyses, which provided the ability to compare and contrast with prior reporting. The OFS management team is always examining 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 2017 (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.

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.

The SEC does not track this information.

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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 FOIA Improvement Act of 2016 required federal agencies to review their regulations and conform them to amendments made in the Act. Apart from this requirement, the SEC undertook to wholly revise their FOIA regulations to clarify, update, and streamline the language of procedural provisions.

### **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:

- The Division of Economic and Risk Analysis (DERA) assembles information on internet search traffic for EDGAR filings through SEC.gov. The data is intended to provide insight into the usage of publicly accessible EDGAR company filings in a simple but extensive manner. <https://www.sec.gov/dera/data/edgar-log-file-data-set.html>
- Chairman's Calendar. <https://www.sec.gov/foia/docs/sec-chair-calendar.htm>
- Commission Votes on Actions Filed in Federal Court From April 8, 2013 through June 20, 2017. <https://www.sec.gov/data/enforcement/commission-votes-on-actions-filed-in-federal-court-from-4-8-13.html>
- Alternative Trading System ("ATS") List. <https://www.sec.gov/foia/docs/atlist.htm>
- FOIA Request Logs by Quarter and Fiscal Year. <https://www.sec.gov/foia/docs/foia-logs.htm>

Also during the reporting period, the OFS created an online FOIA Library where it posts copies of recently processed FOIA requests and responses.

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

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.

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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/corpfincffreqreq.shtml>.

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>). Further, the SEC has a form available on its website for the public to provide feedback and suggestions.

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?

Generally, the OFS communicates directly with the requester community regarding records that could be made proactively available online. The SEC has not used web analytics to inform its proactive disclosures.

The OFS implemented the FOIA Library, which allows the public to view FOIA requests and the responses to those requests in nearly real time, and the Public Access Link (PAL) which permits the public to access certain fields related to the status of FOIA requests. Combined they serve as important tools investors can use to gain a better understanding of the securities industry and a clearer insight into the Commission's work.

#### **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 describes your agency's efforts in this area.

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

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yes please describe the best practices, the types of technology used and the impact on your agency's processing.

OFS routinely works with IT specialists and with SEC components in order to find ways to accommodate the requester community by enhancing search and access capabilities. The SEC's efforts in leveraging technology to facilitate overall FOIA efficiency and transparency include two innovative web pages OFS has recently implemented. Both are designed to provide the public with increased access to SEC records. The FOIA Library, which allows the public to view FOIA requests and agency responses in nearly real time, and the Public Access Link (PAL) which permits the public to access information related to the status of FOIA requests. Further, OFS made processing more efficient by enhancing the "Find and Redact" feature within the FOIA Xpress system.

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

Yes. The SEC's quarterly reports can be accessed at <https://www.sec.gov/foia/foia-reports.shtml#quarterly>.

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.

N/A

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.

FY2016 SEC FOIA Annual Report Raw Data is located at <https://www.sec.gov/foia/arfoia16-raw.csv>.

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

As noted above, the OFS implemented the Public Access Link (PAL). The PAL is a public-facing web portal that integrates with the SEC's FOIA processing system, FOIA Xpress, to facilitate the SEC's disclosure of information. The PAL allows users to connect directly with the SEC to track a FOIA request in real time. The SEC PAL can be located at <https://www.sec.gov/public-access-link>.

#### **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

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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 2017 Annual FOIA Report and, when applicable, your agency's 2016 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?

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?

Yes.

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

Approximately 99% of the requests processed were placed in our simple track (13,055 Simple Processed vs. 13,069 Total Processed).

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



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Yes.

6. If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog.

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.

0.55% (73 backlogged requests, 13,063 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?

No. At the close of Fiscal Year 2017 the appeals backlog increased from Fiscal Year 2016 (from 2 in FY16 to 13 in FY17).

9. If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog.

The SEC had a small backlog of 13 appeals. Those appeals presented complex issues that required further consultation with staff in other divisions and offices and review of voluminous documents.

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."

2%

### **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

12. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2017, what is your agency's plan to reduce this backlog during Fiscal Year 2018?

N/A

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## **D. Status of Ten 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.

### **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.

Seven of the ten oldest requests were closed.

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?

One case was withdrawn. An interim response was not provided.

### **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?

Yes

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?

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N/A (there were no pending consultations in FY16).

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.

All of the ten oldest requests from Fiscal Year 2016 were in the complex track. The two appeals were closed. No consultations remained from the prior year.

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.

Of the three remaining complex track requests, one has been closed and the other two are presently being processed. The two backlogged appeals were closed. To address requests in the complex track, OFS staff members have been assigned to teams, which rotate so that these requests can be processed on a continuous basis.

### **F. Success Stories**

Out of all the activities undertaken by your agency since March 2017 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, the Securities and Exchange Commission’s OFS was recognized by the U.S. Department of Justice for “exceptional service” by FOIA professionals. The award to a team of 28 professionals recognized their work in handling a growing volume of FOIA requests while reducing the office’s backlog. Between fiscal 2010 and fiscal 2016, FOIA requests to the SEC rose by 38 percent while the number of completed requests in that period increased by 40

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percent. Despite being a medium-sized agency, the SEC processes FOIA requests at a level received at much larger federal agencies, averaging nearly 15,000 per year in each of the last four years. In addition to increased volume, the FOIA requests to the SEC have become increasingly complex. While many requests previously involved minimal time and effort to process, they now often entail multiple records over a span of years, resulting in hundreds or thousands of pages that require line-by-line reviews.

In June 2017 the SEC's FOIA Team received the Customer Service Award at the Chairman's Honorary Awards ceremony for their significant and innovative contributions to the agency's mission and programs.

In April 2017 the SEC was recognized by MuckRock as the Most Responsive Agency in their 2017 FOIA March Madness.

In FY2017 the SEC continued to reduce its backlog from the previous year. The SEC closed FY2016 with a backlog of less than 1% (94\* requests); and in FY2017 it closed the year with a 0.55% (73 requests) backlog. The reduction was made possible by focusing on completing older requests while juggling an increase in the number of substantive requests from the prior year.

\* This number was revised from the FY2016 Annual FOIA report due to the opening of a request after the FY2016 report was generated.