

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Chief FOIA Officer Report



Office of Support Operations

February 24, 2023

2023 CHIEF FOIA OFFICER REPORT GUIDELINES - AGENCIES RECEIVING MORE THAN 50 REQUESTS FISCAL YEAR 2022

2023 Chief FOIA Officer Report Guidelines Agencies Receiving More Than 50 Requests in Fiscal Year 2022

SECTION I: FOIA LEADERSHIP AND APPLYING THE PRESUMPTION OF OPENNESS

The guiding principle underlying the Attorney General's [FOIA Guidelines](#) is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

A. Leadership Support for FOIA

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. See 5 U.S.C. § 552(j)(1) (2018). 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.

Olivier Girod, Director, Office of Support Operations.

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

The SEC's Office of the Chief Operating Officer (OCOO) Roadmap for FY2023 incorporates the FOIA objective: "Improve access to FOIA training across SEC." The OCOO Roadmap for FY2022 included the following Privacy Act objectives: (1) Publish a final rule in the Federal Register revising the SEC's Privacy Act regulations, and (2) Establish a process for remote authentication and digital consent for disclosure of records subject to the Privacy Act.

During Sunshine Week each year, the SEC's Chair issues a notice to all SEC staff to commemorate National Freedom of Information Day. In 2022, the Chair emphasized the importance of open government and transparency, as the framework for ensuring the American public knows more about their government. The Chair commended the SEC's FOIA professionals for carrying out this vital service on behalf of the public.

B. Presumption of Openness

4. The Attorney General's 2022 FOIA Guidelines provides that "agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions." Does your agency provide such confirmation in its response letters?

Yes.

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interested protected by a FOIA exemption. This is commonly referred to as a *Glomar* response. With respect to these responses, please answer the below questions:

- a. In addition to tracking the asserted exemption, does your agency specifically track whether a request involved a *Glomar* response?

Yes.

- b. If yes, please provide:
 - i. the number of times your agency issued a full or partial *Glomar* response (separate full and partial if possible);

The SEC issued either a full or partial *Glomar* response on 229 occasions during the reporting period.

- ii. the number of times a *Glomar* response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).

The SEC did not begin tracking this information until on or about December 8, 2022.

- c. If your agency does not track the use of *Glomar* responses, what would your agency need to do to track in the future? If possible, please describe the resources and time involved.

For future reporting purposes, the SEC should be able to provide the number of *Glomar* responses issued by exemption.

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

SECTION II: ENSURING FAIR AND EFFECTIVE FOIA ADMINISTRATION

The Attorney General's [FOIA Guidelines](#) provide that “[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of FOIA obligations by the entire agency workforce.” The Guidelines reinforce longstanding guidance to “work with FOIA requesters in a spirit of cooperation.” The Attorney General also “urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency’s FOIA administration” as part of ensuring fair and effective FOIA administration.

A. FOIA Training

1. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

The FOIA Office provides mandatory in-house training each year to all FOIA professionals covering a range of topics including emerging issues in FOIA administration and judicial decisions as well as refresher topics. Specific training topics covered during this reporting period included the presumption of openness and the foreseeable harm standard, reviewing and redacting various types of records (e.g., contract records, email records, investigative records, etc.), and complex track processing. SEC FOIA professionals were also encouraged to attend outside training, such as that offered by the Department of Justice and the American Society of Access Professionals. In addition, staff attended the Chief FOIA Officers Council meetings and the FOIA Advisory Committee meetings.

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

Yes.

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

- SEC's Annual Whistleblower training
- SEC's Annual FOIA training
- Training offered by the Office of Information Policy, U.S. Department of Justice
 - Litigation Seminar
 - Continuing FOIA Education
 - Advanced FOIA Training
 - NexGen FOIA Technology Showcase
 - FOIA Technology Showcase Follow-Up Workshop
 - Procedural Requirements and Fees Training
 - FOIA Summit for Agency FOIA Professionals
 - Annual FOIA Report Refresher and Quarterly Report Training
 - Chief FOIA Officer Report Training
 - Open Government Public Engagement Session
- American Society of Access Professionals 15th Annual National Training Conference
- AINS Annual Summit and User Conference
- FOIA Advisory Committee Meeting
- Chief FOIA Officers Council Meeting

4. Please 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.

5. 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

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and if senior leaders at your agency received a briefing on your agency’s FOIA resources, obligations and expectations during the FOIA process?

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 is posted to the SEC’s intranet and 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 are periodically made to the guidance to address changing law and OIP guidance.

Newly appointed SEC FOIA liaisons are required to review the SEC’s “FOIA and Privacy Act Request Processing Guidance for Liaisons” and certify completion.

The SEC’s Chief FOIA Officer and Chief Operating Officer are regularly briefed on the SEC’s resources, and expectations related to FOIA processing. Further, the SEC’s FOIA Officer provides briefings to newly appointed SEC Commissioners and other senior executives on the FOIA program at the SEC and the importance of leadership support.

All staff across the SEC are encouraged to contact OFS staff for any FOIA related issues or questions. In an effort to provide accessible FOIA training to *all* SEC employees, the Office of FOIA Service (OFS), working with components within the SEC and the Office of Information Policy (OIP), U.S. Department of Justice, successfully uploaded OIP’s newly released interactive FOIA training modules onto SEC’s eLearning platform:

- **Freedom of Information Act Training for Executives** – A 15-minute course that provides a basic overview of the FOIA and explains how this law impacts agency leaders. Topics covered include an overview of the FOIA, proactive disclosure, reporting and accountability, and FOIA resources and support.
- **Freedom of Information Act Training for Federal Employees** – A 1-hour course that provides a primer on the FOIA and explains how employees can assist the agency in FOIA administration. Topics covered include who can make a request, the FOIA's time limits, and searching for responsive records.
- **Freedom of Information Act Training for FOIA Professionals** – An in-depth course designed specifically for FOIA professionals and addressing all of the major procedural and substantive requirements of the law. Topics covered include receiving and acknowledging FOIA requests, statutory protections for sensitive information, working in a spirit of cooperation, and providing good customer service.

B. Outreach

7. Did your FOIA professionals engage in any outreach or dialogue, outside of the standard request process, 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.

Throughout the reporting period, the Office of FOIA Services (OFS) staff regularly engaged the SEC FOIA requester community on all aspects of requests in an effort to process requests efficiently and timely.

In response to challenges that were highlighted during the COVID-19 pandemic, OFS increased its outreach efforts and interactions with its requester community, and has continued this practice so that requesters are provided with the most up-to-date information on requests affected by the pandemic.

8. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue, and, if applicable, any specific examples.

Yes. For requesters seeking correspondence and emails, they are routinely contacted for clarification and to discuss narrowing the scope of the requests so that they can be processed more quickly. These discussions accomplish, among other things, identifying appropriate custodians, search terms, time frames, and particular offices and divisions which may have responsive records.

9. 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 Fiscal Year 2022 (please provide a total number or an estimate of the number).

Although OFS does not track this information, it is estimated that contact with SEC FOIA Public Liaisons occurred on ten (10) or fewer occasions. OFS includes an addendum page to response letters which notifies requesters of OGIS's dispute resolution services and the services provided by agency FOIA Public Liaisons. Additionally, SEC FOIA Professionals comprise the SEC's FOIA Requester Service Center and routinely receive inquiries for assistance from requesters regarding their requests or the FOIA in general.

C. Other Initiatives

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

Yes. OFS continually assesses resource allocation and staff utilization based on FOIA demand, making adjustments as necessary. For example, during the reporting period, consideration was given to staffing levels to ensure that Simple track requests and Complex track requests were being addressed and responded to within an appropriate length of time.

The OFS management team is aware that monitoring and addressing FOIA staffing levels is of paramount importance to maintaining efficiency and ensuring compliance. In addition to full time staff, OFS utilizes contractor staff to meet FOIA demands.

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

The SEC relies upon quality control metrics that are constantly monitored and assessed. These metrics allow for more timely responses to requests for expedition and fee waivers, monitoring the backlog, managing staff workflows, more efficient complex track processing, and making adjustments in resource allocation and staff utilization to increase and manage production. OFS generates monthly reports that include statistical analyses, which provide 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.

12. Optional -- If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.

SECTION III: PROACTIVE DISCLOSURES

The Attorney General's [FOIA Guidelines](#) emphasize that "proactive disclosure of information is . . . fundamental to the faithful application of the FOIA." The Guidelines direct agencies to post "records online quickly and systematically in advance of any public request" and reiterate that agencies should post records "in the most useful, searchable, and open formats possible."

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

Opinions, pleadings, and orders are all posted to the SEC's website from 1995 to the present. The website is regularly updated by the relevant program office with new items posted based on the actions of the respective program office. Similarly, administrative staff manuals, statements of policy and interpretations adopted by the SEC are also posted and intermittently updated by the appropriate program offices. OFS tracks instances where records have been requested three or more times so that they can be posted accordingly.

2. Provide examples of any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

During the reporting period the SEC proactively posted records to OFS's Frequently Requested Documents webpage at <https://www.sec.gov/foia-frequently-requested-documents>. Records

requested three or more times can also be found here. The following are examples of records proactively posted on the OFS website:

- [Information About Registered Municipal Advisors](#)
- [Investomania Costs \(PDF\)](#)
- [William Hinman Emails \(PDF\)](#)
- [Fails-to-Deliver Data](#)
- [Mark Zuckerberg Transcript \(PDF\)](#)
- [Elizabeth Holmes Testimony Videos](#)
- [Form ADV Data](#)

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. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

The public may subscribe to RSS feeds at <https://www.sec.gov/about/secrss.shtml> to be apprised of the most recent materials posted to the SEC website.

The SEC also 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.

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. OSD also works with investors, regulated entities, and the public to support the submission and use of structured data.

In addition, policy teams across Divisions take steps to structure existing unstructured collections of data, with the aim of incorporating open, machine-readable, and machine-actionable formats.

5. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

Yes. For proactive disclosures made by OFS there is typically coordination with the Office of the Secretary for purposes of posting. Additionally, where OFS is recommending proactive disclosure of certain records, there is collaboration with the program office that maintains the records. Depending on the nature of the records, the program office's webpage may host the information – or the records may be posted to the OFS webpage.

For example, specialized data may be hosted by the relevant office or division. This would include records on the SEC's Division of Economic and Risk Analysis webpage at <https://www.sec.gov/dera/data>, which offers investors access to aggregated data from filings for research and analysis. The SEC's Division of Investment Management's Analytics Office makes similar records available at <https://www.sec.gov/investment/analytics-office>.

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

SECTION IV: STEPS TAKE TO GREATER UTILIZE TECHNOLOGY

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's [FOIA Guidelines](#) emphasize the importance of making FOIA websites easily navigable and complying with the [FOIA.gov](#) interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

OFS utilizes FOIAXpress, an electronic document management and tracking system. This system is updated intermittently to account for anticipated FOIA issues and demands – and to simply make processing more efficient. OFS is presently evaluating an improvement for searching, sorting and identifying responsive content in large volumes of emails, attachments, and files. This technology will integrate directly with the current system and enable OFS staff to quickly filter, de-duplicate, rank, and sort documents then export the results for redaction and processing.

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program.

During this reporting period, the SEC became fully compliant with OMB's Executive Memorandum, M-21-04, "Modernizing Access to and Consent for Disclosure of Records Subject to the Privacy Act." This OMB memorandum provided guidance to Federal agencies for modernizing the processes by which individuals may access and/or consent to the disclosure of records protected under the Privacy Act, which is required by the Creating Advanced Streamlined Electronic Services for Constituents Act of 2019 (CASES Act). OFS collaborated with internal SEC stakeholders to leverage the SEC's Public Access Link (PAL) and Login.gov

to create new web forms for electronic submission for purposes of verifying identity. GAO issued its December 2022 report on agency compliance titled, “Information Management: Agencies Need to Streamline Electronic Services (GAO-23-105562),” and specifically highlighted the accomplishments of the SEC noting that of the 17 agencies reviewed, only the SEC “reported that it had fully implemented OMB’s guidance. Specifically, SEC reported that it had addressed all of the requirements of the CASES Act.”

Additionally, upgrades are consistently implemented to the SEC’s FOIA processing system, FOIAXpress. The FOIAXpress application undergoes regular updates to enhance current features and implement security patches.

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.

The SEC utilizes FOIAXpress and the PAL to manage its FOIA process. This technology improves case processing and permits the SEC to receive requests from the public directly. With the current technologies, such as enhanced find and redaction features, the SEC is able to decrease processing time. Automated reporting functions assist with monitoring workflow and allow for compliance with DOJ reporting requirements. Integrations with Login.gov and FOIA.gov has enhanced the SEC’s ability to receive automated request submissions, both in the FOIA space as well as for first-party Privacy Act requests.

During the reporting period OFS began exploring the use of a new e-discovery document retrieval and sorting system that could assist with the de-duplication of emails.

4. 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.

5. Did all four of your agency's [quarterly reports](#) for Fiscal Year 2022 appear on FOIA.gov?

Yes.

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency’s plan for ensuring that such reporting is successful in Fiscal Year 2023.

N/A

7. 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 2021 Annual FOIA Report and, if available, for your agency’s Fiscal Year 2022 Annual FOIA Report.

The raw data report link for FY2022 will be posted after DOJ approves the SEC's FY2022 Annual FOIA Report. Raw statistical data used to compile the SEC's Fiscal Year 2021 Annual FOIA Report can be found at [FY2021 SEC FOIA Annual Report Raw Data](#).

8. In February 2019, DOJ and OMB issued joint [Guidance](#) establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

Yes.

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

Implementation of the Creating Advanced Streamlined Electronic Services for Constituents Act of 2019 (CASES Act) at the SEC was an inherently challenging project. However, the team of individuals responsible for its implementation were able to successfully overcome many technical and managerial challenges, which enabled the SEC to develop and administer a successful model for implementing all of the elements required by Act.

In order to address OMB's requirements, the team had to: (1) implement FOIAXpress configuration changes; (2) identify and test remote identify-proofing and authentication solutions that use Identity Assurance Level 2 (IAL2); and (3) create electronic access and consent forms and implement a process for accepting them through digital channels. Competing agency priorities stemming from the COVID-19 pandemic also presented a unique set of obstacles that the team had to strategically navigate and overcome. The substantial coordination hurdles and logistical complications facing the team from the outset could have easily resulted in significant implementation delays. However, the team managed to achieve impressive results despite less than optimal circumstances.

Additionally, in response to a congressional inquiry from Senators Tom Carper and Rob Portman, GAO conducted a performance audit from November 2021 to October 2022 to determine the extent to which 17 selected agencies, including the SEC, addressed the requirements in the CASES Act. GAO reviewed documentation from the selected agencies, including policies and procedures, plans for addressing the CASES Act requirements, and drafts of access and consent forms to determine whether they met the Act's requirements. GAO also conducted interviews with agency officials who are responsible for privacy and FOIA activities at the 17 selected agencies.

As of September 2022, the SEC was the only agency among the 17 agencies audited to have reached full compliance with the CASES Act. Specifically, the SEC uses FOIAXpress and its Public Access Link (PAL) to connect Privacy Act requesters to Login.gov. This solution provides IAL2 multi-factor authentication, such as the collection of a requester's name, address, social security number, and driver's license information. Further, electronic access and consent forms have been posted to the SEC's privacy and FOIA webpages, and the SEC is able to accept these forms through digital channels (i.e., email).

Implementing the CASES Act at the SEC was essential to protecting records while providing prompt assistance to the public. GAO's draft audit report which was sent to the appropriate

congressional committees, OMB, and the 17 selected agencies states, “*SEC sharing of its experiences in developing and implementing a successful model, including how it overcame any technical and managerial challenges, could be valuable to other agencies. SEC could also share any lessons learned from its experience. [...] Sharing information on SEC's success in meeting OMB's requirements could benefit agencies' efforts.*”

SECTION V: STEPS TAKEN TO REMOVE BARRIERS TO ACCESS, IMPROVE TIMELINESS IN RESPONDING TO REQUESTS, AND REDUCE BACKLOGS

The Attorney General’s [FOIA Guidelines](#) instruct agencies “to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs.” Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

A. Remove Barriers to Access

1. Has your agency established alternative means of access to first-party requested records outside of the FOIA process?

Yes.

2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.

The SEC’s website allows for submission of first party requests. First party requests received by the SEC, whether for access, amendment or accounting, are assigned tracking numbers indicating that processing will be initiated under the Privacy Act. To the extent that the records are not exempt under the Privacy Act, access will be granted to a first party request. First party requests are processed under both the FOIA and the Privacy Act to provide maximum access to records.

B. Timeliness

3. For Fiscal Year 2022, 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 2022 Annual FOIA Report.

The SEC took an average of 2.68 days to adjudicate requests for expedited processing.

4. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2022 Annual FOIA Report, 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

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

Yes.

6. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2022?

Yes. Simple track requests were processed in an average of 7.78 days.

7. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?

N/A

8. Please provide the percentage of requests processed by your agency in Fiscal Year 2022 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100.

76.9% of the requests processed by the SEC in Fiscal Year 2022 were placed in the simple track.

9. 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

C. Backlogs

BACKLOGGED REQUESTS

10. If your agency had a backlog of requests at the close of Fiscal Year 2022, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

No.

11. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2022 than it did during Fiscal Year 2021?

No.

12. If your agency's request backlog increased during Fiscal Year 2022, 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)
- Impact of COVID-19 and workplace and safety precautions
- Any other reasons – please briefly describe or provide examples when possible

OFS experienced an increase in its FOIA backlog during FY2022 due to several contributing factors including a loss of staff, an increase in the complexity of requests received, and an increase in litigation. During 2022, OFS lost both junior and senior full-time FOIA staff and although we are currently in the process of backfilling these positions, some remain vacant. OFS is receiving more requests involving complex searches, and voluminous records which require increased coordination within the SEC. These requests are generating a high volume of email records that require additional time to conduct the searches, review the records, coordinate within the SEC, and prepare the records for disclosure. The SEC also experienced an increase in FOIA litigation during FY2022.

In an effort to mitigate the impacts of these factors, which have contributed to the increase in our backlog, OFS conducted an analysis to identify statistical, technological, and human capital solutions which can be incorporated into our processes and workflows to increase production.

13. 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 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with “N/A.”

The percentage of requests that made up the backlog out of the total number of requests received by the SEC in FY2022 was 4.9%.

BACKLOGGED APPEALS

14. If your agency had a backlog of appeals at the close of Fiscal Year 2022, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

Yes.

15. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2022 than it did during Fiscal Year 2021?

N/A

16. If your agency’s appeal backlog increased during Fiscal Year 2022, 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)
- Impact of COVID-19 and workplace and safety precautions
- Any other reasons – please briefly describe or provide examples when possible

N/A

17. 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 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2022 and/or has no appeal backlog, please answer with "N/A."

N/A

D. Backlog Reduction Plans

18. In the 2022 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2021 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 2022?

N/A

19. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2022, please explain your agency's plan to reduce this backlog during Fiscal Year 2023.

N/A

E. Reducing the Age of Requests, Appeals, and Consultations

TEN OLDEST REQUESTS

20. In Fiscal Year 2022, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2021 Annual FOIA Report?

No.

21. 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 2021 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

The SEC closed five (5) of its ten oldest requests.

22. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

In order to reduce the overall age of pending requests, OFS follows best practices that include emphasizing consistent and meaningful communication with requesters, conducting regular training for FOIA and non-FOIA staff, and attempting to maintain a high degree of employee satisfaction. OFS management consistently monitors the age of pending requests and takes steps to reengineer processes and address the human capital needed for making positive impacts on reducing the backlog.

TEN OLDEST APPEALS

23. In Fiscal Year 2022, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2021 Annual FOIA Report?

Yes.

24. 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 2021 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A

25. 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 the best practices emphasized by OFS, which are articulated in Section V.E., Question 22.

TEN OLDEST CONSULTATIONS

26. In Fiscal Year 2022, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2021 Annual FOIA Report?

Yes.

27. 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 2021 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

N/A

ADDITIONAL INFORMATION REGARDING TEN OLDEST

28. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2023.

The SEC is exploring the effects of differing staffing patterns that are intended to increase the number of “ten oldest” requests that will be closed during Fiscal Year 2023.

OFS is hiring staff to address attrition during the reporting period. OFS plans to conduct an analysis of current human capital resources to identify particular skill sets which can be utilized for achieving the best results in processing, such as directing resources to processing the oldest requests, assessing vacant FTE grade levels and reclassifying them as appropriate to provide the most beneficial impacts to the office.

Additionally, OFS is collaborating with the SEC’s Office of Record Management Services to devise a plan for receiving hard copy records from the Federal Records Centers that would enable more efficient processing of requests impacted by COVID.

F. Additional Information about FOIA Processing

29. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency’s overall FOIA request processing and backlog. If possible, please indicate the number and nature of requests subject to litigation, common causes leading to litigation, and any other information to illustrate the impact of litigation on your overall FOIA administration.

Yes. There were fourteen requests subject to litigation during the reporting period. The SEC’s Office of the General Counsel represents the SEC in all FOIA litigation. OFS is tasked with providing litigation support, which often includes review and production of records subject to court ordered deadlines.

The increasing volume of litigation received in FY2022, and the amount of time and staffing that are required to respond to these litigation requests, affected both processing times and backlog negatively.

30. How many requests during Fiscal Year 2022 involved unusual circumstances as defined by the FOIA? (This information is available in your agency’s FY22 raw data).

The SEC’s FY22 raw data does not allow for calculating instances of unusual circumstances.