

Federal Trade Commission
FREEDOM OF INFORMATION ACT ANNUAL REPORT
Fiscal Year 2013
(Oct. 1, 2012 - Sept. 30, 2013)

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I. Basic Information Regarding Report

1. Name, title, address, and telephone number of person to be contacted with questions about the report:

Andrea Kelly

Paralegal Specialist

600 Pennsylvania Avenue, N.W., Room 585

1. Names, addresses, and telephone numbers of all individual agency components and offices that receive FOIA requests:

Regardless of how submitted (via mail, fax, or e mail) requests should be addressed as follows:

Freedom of Information Act Request

Office of the General Counsel

Federal Trade Commission

600 Pennsylvania Avenue, N.W.

Washington, D.C.

III. Acronyms, Definitions, and Exemptions

1. Agency specific acronyms or terms:

FOIA – Freedom of Information Act (5 U.S.C. § 552)

FTC – Federal Trade Commission

HSR – Hart Scott Rodino (Clayton Act)

FY – Fiscal Year

PA – Privacy Act (5 U.S.C. § 552a)

2. Basic terms, expressed in common terminology:

a. **Administrative Appeal** – a request to a federal agency asking that it review at a higher administrative level a FOIA

Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in their Annual FOIA Report data for both the agency overall and for each principal component of the agency.

- e. **Consultation** – the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.

- f. **Exemption 3 Statute** – a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.

- g. **FOIA Request** – a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a “third party” request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., “first party” requests) when those requesters are not subject to the Privacy Act, such as non U.S. citizens. Moreover, because all first party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first party requests where an agency determines that it must search beyond its Privacy Act “systems of records” or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require the agency to utilize the FOIA in responding to the requester are included in this Report.

Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this Report.)

- h. **Full Grant** – an agency decision to disclose all records in full in response to a FOIA request.

- i. **Full Denial** – an agency decision not to release any records in response to a FOIA request because the records are exempt in their entireties under one or more of

the FOIA exemptions, or because of a procedural reason, such as when no records could be located.

- j. **Median Number** – the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.

- k. **Multi Track Processing** – a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.
 - i. **Expedited Processing** – an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.

 - ii. **Simple Request** – a FOIA request that an agency using multi track processing places in its fastest (non expedited) track based on the low volume and/or simplicity of the records requested.

 - iii. **Complex Request** – a FOIA request that an agency using multi track processing places in a slower track based on the high volume and/or complexity of the records requested.

- l. **Partial Grant/Partial Denial** – in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.

- m. **Pending Request or Pending Administrative Appeal** – a request or administrative appeal for which an agency has not taken final action in all respects.

n. **Perfected Request** – a request for records

g. Exemption 7: records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual

h.

IV. EXEMPTION 3 STATUTES

Statute	Type of Information Withheld	Case Citation	Agency / Component	Number of Times Relied upon by Agency / Component	Total Number of Times Relied upon by Agency Overall
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15 U.S.C. § 46(f)

"[A]ny trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential"

41 U.S.C. § 4702(b)

Contractor proposals that are in the possession or control of an executive agency and that have not been set forth or incorporated by reference into contracts

Sinkfield v. HUD, No. 10-885, 2012 U.S. Dist. LEXIS 35233, at *13-15 (S.D. Ohio Mar. 15, 2012);

V.A. FOIA REQUESTS -- RECEIVED, PROCESSED AND PENDING FOIA REQUESTS

V.B.(1). DISPOSITION OF FOIA REQUESTS -- ALL PROCESSED REQUESTS

Agency / Component	Number of Full Grants	Number of Partial Grants / Partial Denials	Number of Full Denials Based on Exemptions	Number of Full Denials Based on Reasons Other than Exemptions									TOTAL
				No Records	All Records Referred to Another Component or Agency	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper FOIA Request for Other Reason	Not Agency Record	Duplicate Request	Other *Explain in Chart Below	
FTC	489	571	33	240	2	50	14	12	6	1	15	10	1,443
													0
AGENCY OVERALL	489	571	33	240	2	50	14	12	6	1	15	10	1,443

V.B.(2). DISPOSITION OF FOIA REQUESTS -- "OTHER" REASONS FOR "FULL DENIALS BASED ON REASONS OTHER THAN EXEMPTIONS"

Agency / Component	Description of "Other" Reasons for Denials from Chart B(1)	Number of Times "Other" Reason Was Relied Upon	TOTAL
FTC	Public records only	7	10
	Request is overly burdensome	3	
AGENCY OVERALL			10

V.B.(3). DISPOSITION OF FOIA REQUESTS -- NUMBER OF TIMES EXEMPTIONS APPLIED

Agency / Component	Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
FTC	0	0	176	56	89	504	52	0	25	5	14	0	0	0
AGENCY OVERALL	0	0	176	56	89	504	52	0						

VI.A. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS -- RECEIVED, PROCESSED, AND PENDING ADMINISTRATIVE APPEALS

Agency / Component	Number of Appeals Pending as of Start of Fiscal Year	Number of Appeals Received in Fiscal Year	Number of Appeals Processed in Fiscal Year	Number of Appeals Pending as of End of Fiscal Year
FTC	0			

VI.B. DISPOSITION OF ADMINISTRATIVE APPEALS -- ALL PROCESSED APPEALS

Agency / Component	Number Affirmed on Appeal	Number Partially Affirmed & Partially Reversed/Remanded on Appeal	Number Completely Reversed/Remanded on Appeal	Number of Appeals Closed for Other Reasons	TOTAL
FTC	4	5	5	12	26
AGENCY OVERALL	4	5	5	12	26

VI.C.(2). REASONS FOR DENIAL ON A PPEAL -- REASONS OTHER THAN EXEMPTIONS

Agency / Component	No Records	Records Referred at Initial Request Level	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper Request for Other Reasons	Not Agency Record	Duplicate Request or Appeal	Request in Litigation	Appeal Based Solely on Denial of Request for Expedited Processing	*Explain in chart below
FTC	1	0	4	4	0	1	0	0	0	0	2
AGENCY OVERALL	1	0	4	4	0	1	0	0	0	0	2

VI.C.(3). REASONS FOR DENIAL ON APPEAL -- "OTHER" REASONS

Agency / Component	Description of "Other" Reasons for Denial on Appeal from Chart C(2)	Number of Times "Other" Reason Was Relied Upon	TOTAL
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FTC

VI.C.(4). RESPONSE TIME FOR ADMINISTRATIVE APPEALS

Agency / Component Median Number of Days

VI.C.(5). TEN OLDEST PENDING ADMINISTRATIVE APPEALS

Agency /

VII.A. FOIA REQUESTS -- RESPONSE TIME FOR ALL PROCESSED PERFECTED REQUESTS

Agency /

VII.B. PROCESSED REQUESTS -- RESPONSE TIME FOR PERFECTED REQUESTS IN WHICH INFORMATION WAS GRANTED

Agency /
Component

VII.C. PROCESSED COMPLEX REQUESTS -- RESPONSE TIME IN DAY INCREMENTS

Agency / Component	<1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
FTC	192	76	23	16	11	2	0	1	0	0	2	0	0	323
AGENCY OVERALL	192	76	23	16	11	2	0	1	0	0	2	0	0	323

VII.D. PENDING REQUESTS -- ALL PENDING PERFECTED REQUESTS

	SIMPLE	COMPLEX	PROCESSING
Agency / Component			

VII.E. PENDING REQUESTS -- TEN OLDEST PENDING PERFECTED REQUESTS

Agency / Component		10th Oldest Request	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Request
AGENCY OVERALL	Date of Receipt	2013-09-20	2013-09-20	2013-09-18	2013-09-17	2013-09-13	2013-09-11	2013-09-11	2013-08-27	2013-08-08	2012-05-11
	Number of Days Pending	6	6	8	9	11	13	13	23	36	344

VIII.A. REQUESTS FOR EXPEDITED PROCESSING

Agency / Component	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
AGENCY OVERALL	1	31	3	4.94	29

*The FTC did not make a determination for 2 requests for expedited processing because the request was closed within ten calendar days.

2 requests for expedited processing were withdrawn by the requester.

VIII.B. REQUESTS FOR FEE WAIVER

Agency / Component	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
AGENCY OVERALL	13	15	12	15.82

*The FTC did not make a determination on 124 requests for a fee waiver because the requests were not billable.

XII.A. BACKLOGS OF FOIA REQUESTS AND ADMINISTRATIVE APPEALS

Agency / Component	Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
FTC	3	0
AGENCY OVERALL	3	0

XII.C. CONSULTATIONS ON FOIA REQUESTS -- TEN OLDEST CONSULTATIONS RECEIVED FROM OTHER AGENCIES AND PENDING AT THE AGENCY

Agency /
Component

XII.D.(1). COMPARISON OF NUMBERS OF REQUESTS FROM PREVIOUS AND CURRENT ANNUAL REPORT --
 REQUESTS RECEIVED AND PROCESSED

Agency / Component	NUMBER OF REQUESTS <u>RECEIVED</u>		NUMBER OF REQUESTS <u>PROCESSED</u>	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
FTC	1,415	1,447	1,438	1,443
AGENCY OVERALL	1,415	1,447	1,438	1,443

XII.D.(2). COMPARISON OF NUMBERS OF REQUESTS FROM PREVIOUS AND CURRENT ANNUAL REPORT -- BACKLOGGED REQUESTS

Agency / Component

XII.E.(1). COMPARISON OF NUMBERS OF ADMINIS

XII.E.(2). COMPARISON OF NUMBERS OF ADMINISTRATIVE APPEALS FROM PREVIOUS AND CURRENT ANNUAL REPORT -- BACKLOGGED APPEALS

Agency / Component	Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report
FTC	0	0
AGENCY OVERALL	0	0