

Federal Trade Commission
FREEDOM OF INFORMATION ACT ANNUAL REPORT
Fiscal Year 2012
(Oct. 1, 2011 - Sept. 30, 2012)

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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:

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Washington, D.C. 20580
(202) 326-2836
Akelly@ftc.gov

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. 20580
Facsimile: 202-326-2477
E-mail address: FOIA@FTC.GOV

2. Brief description of why some requests are not granted and an overview of certain general categories of records to which the FOIA exemptions apply.

The FTC primarily receives requests for consumer complaints regarding a company's business practices and requests for records relating to the FTC's law enforcement investigations. The majority of requests that are initially denied, or partially denied, are based on personal privacy concerns reflected in FOIA Exemption 6. Many denials are also due to statutory constraints on disclosure or because disclosure would interfere with ongoing law enforcement activities.

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 determination made by the agency at the initial request level.

b. Average Number – the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.

- c. **Backlog** – the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year and are beyond the statutory time period for a response.
- d. **Component** – for agencies that process requests on a decentralized basis, a “component” is an entity, also sometimes referred to as an Office, Division, 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

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

3. Descriptions of the nine FOIA exemptions:

- a. **Exemption 1:** classified national defense and foreign relations information
- b. **Exemption 2:** information that is related solely to the internal personnel rules and practices of an agency
- c. **Exemption 3:** information that is prohibited from disclosure by another federal law
- d. **Exemption 4:** trade secrets and other confidential business information
- e. **Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges
- f. **Exemption 6:** information involving matters of personal privacy
- 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. **Exemption 8:** information relating to the supervision of financial institutions
- i. **Exemption 9:** geological information on wells

IV. Exemption 3 Statutes

Statute	Type of Information Withheld	Case Citation	Total Number of Times Relied upon by Agency
15 U.S.C. § 46(f) (Federal Trade Commission Act)	"[A]ny trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential."	Doherty v. FTC, No. 80-0513, 1981 WL 2094, at *3 (D.D.C. June 24, 1981) (15 U.S.C. § 46(f)).	57
15 U.S.C. § 57b-2 (Federal Trade Commission Act)	<p>Certain investigative materials received by the FTC and "provided pursuant to any compulsory process under this subchapter or which is provided voluntarily in place of such compulsory process;"</p> <p>or</p> <p>"any material reflecting a consumer complaint obtained from any other foreign source, if that foreign source supplying the material has requested confidential treatment as a condition of providing the material;"</p> <p>or</p> <p>"any material reflecting a consumer complaint submitted to a Commission reporting mechanism sponsored in part by foreign law enforcement agencies or other foreign government agencies."</p>	<p>A. Michael's Piano, Inc. v. FTC, 18 F.3d 138, 143-44 (2d Cir. 1994) (15 U.S.C. § 57b-2); Carter, Fullerton & Hayes, LLC v. FTC, 637 F. Supp. 2d 1, 9 (D.D.C. 2009) (15 U.S.C. § 57b-2); National Educ. Ass'n v. FTC, No. 79-959-S, 1983 WL 1883, at *1 (D. Mass. Sept. 26, 1983) (15 U.S.C. § 57b-2).</p>	108
15 U.S.C. § 18a(h) (Hart-Scott-Rodino Antitrust Improvements Act)	Information submitted in connection with the premerger notification provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976.	Its use was upheld in <i>Lieberman v. FTC</i> , 771 F.2d 32 (2nd Cir. 1985).	16

21 U.S.C. § 355
(Medicare Modernization Act)

Any information or documentary material that may have been filed

V. FOIA Requests

A. Received, Processed and Pending FOIA Requests

	Number of Requests Pending as of Start of Fiscal Year	Number of Requests Received in Fiscal Year	Number of Requests Processed in Fiscal Year	Number of Requests Pending as of End of Fiscal Year
Agency Overall	30*	1415	1438	7

*The FTC’s FOIA Annual Report for Fiscal Year 2011 mistakenly reported that there were 32 requests pending at the start of the fiscal year, and 28 requests pending at the end. In reality, there were 34 requests pending at the start of FY2011, and 30 requests pending at the end.

B. (1) Disposition of FOIA Requests- All Processed Requests

Number of Full Grants	Number of Partial Grants & Partial Denials	Number of Denials Based on Exemptions	Number of Full Denials Based on Other Reasons than Exemption									
			No Records	All Records Referred to Another Component or Agency	Request Withdrawn	Fee-Related Reason	Records Not Reasonably Described	Improper FOIA Request for Some Other Reason	Not an Agency Record	Duplicate Request	Other See B. (2)	Total
637	483	19	223	0	27	10	5	10	2	6	16	1438

B. (2) Disposition of FOIA Requests- “Other” Reasons for “Full Denials Based on Reasons Other Than Exemptions”

Description of “Other” Reasons for Denials from Chart B. (1) & Number of Times Those Reasons Were Relied Upon	Total
Public Records	13
Glomar (The agency could neither confirm nor deny the existence of a record)	3

B. (3) Disposition of FOIA Requests- Number of Times Exemptions Applied

VI. Administrative Appeals of Initial Determinations of FOIA Requests

C. (2) Reasons for Denial on Appeal- Reasons Other than Exemptions

C. (3) Reasons for Denial on Appeal- Other Reasons

Description of "Other" Reasons for Denial on Appeal from Chart C. (2) & Number of Times Those Reasons Were Relied upon	Total
Appeal Based on Lack of a Vaughn Index	4
Requester Category Upheld	2

VII. FOIA Requests: Response Time for Processed and Pending Requests

A. Processed Requests- Response Time for All Processed Perfected Requests

	Simple				Complex				Expedited Processing			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
Agency Overall	3	5.29	1	129	26.5	49.48	1	463	16	11.4	1	18

B. Processed Requests- Response Time for Perfected Requests in Which Information was Granted

	Simple				Complex				Expedited Processing			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
Agency Overall	5	6.73	1	106	15	29.8	1	499	5	5.33	2	9

Complex Requests

Requests Granted Expedited Processing

D. Pending Requests- All

All Pending Perfected Requests

	Simple			Complex			Expedited		
	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days

Agency
Overall

E. Pending Requests-Ten Oldest Perfected Requests

	10 th Oldest Request and Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Request and Number of Days Pending
Date of Receipt				9/27/2012	9/24/2012	9/21/2012	9/21/2012	9/20/2012	9/19/2012	5/11/2012
Number of Days Pending	N/A	N/A	N/A	1	4	5	5	6	7	96

VIII. Requests for Expedited Processing and Requests for Fee Waiver

A. Requests for Expedited Processing

	Number Granted	Number Denied	No Determination: Closed in Less Than 10 days	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated within Ten Calendar Days
Agency Total	3	12	2	2	3	14

B. Requests for Fee Waiver

	Number Granted	Number Denied	Not Billable	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
Agency Total	9	17	76	5	12.23

IX. FOIA Personnel and Costs

	Personnel			Costs		
	Number of “Full-Time FOIA Employees”	Number of “Equivalent Full-Time FOIA Employee”	Total Number of “Full-Time FOIA Staff”	Processing Costs	Litigation Related Costs	Total Costs
Agency Overall	1	10.45	11.45	\$620,096	\$15,845	\$635,941

X. Fees Collected For Processing Requests

	Total Amount of Fees Collected	Percentage of Total Costs
Agency Overall	\$28,981.38	4.67%

XI. FOIA Regulations

The Federal Trade Commission’s FOIA regulations, including fee schedule, are located at [FTC FOIA Regulations 16 CFR 4.11](#)

XII. Backlogs, Consultations, and Comparisons

	Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
Agency Overall	1	0

B. Consultations on FOIA Requests- Received, Processed, and Pending Consultations

	Number of Consultations Received from Other Agencies that Were Pending at Your Agency as of Start of the Fiscal Year	Number of Consultations Received from Other Agencies During the Fiscal Year	Number of Consultations Received from Other Agencies that Were Processed by Your Agency During the Fiscal Year	Number of Consultations Received from Other Agencies that Were Pending at Your Agency as of End of the Fiscal Year
Agency Overall	0	2	2	0

C. Consultations on FOIA Requests- Ten Oldest Consultations Received from Other Agencies and Pending at the FTC

	10th Oldest Consultation and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Consultation and Number of Days Pending
Date of Receipt	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Number of Days Pending	0	0	0	0	0	0	0	0	0	0

D. Comparison of Numbers of Requests from Previous and Current Annual Report- Request Received, Processed, and Backlogged

	Number of Request Received		Number of Requests Processed	
	Number Received During FY2011	Number Received During FY2012	Number Processed During FY2011	Number Processed During FY2012
Agency Overall	1523	1415	1527	1438
	Number of Backlogged Requests as of End of FY 2011		Number of Backlogged Requests as of End of FY2012	
Agency Overall	7		1	

E. Comparison of Numbers of Administrative Appeals from Previous and Current