



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the General Counsel

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Christian S. White  
Deputy General Counsel  
for Legal Counsel

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Direct Dial  
202-326-2476

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To: Attorney General Eric Holder

From: Christian S. White  
Deputy General Counsel  
Chief FOIA Officer

Re: Chief FOIA Officer Report

In response to your FOIA Guidelines, this is the Federal Trade Commission's report on implementing the Freedom of Information Act during 2009.

#### I. Steps Taken to Apply the Presumption of Openness

1. The Federal Trade Commission discloses information in response to Freedom of Information Act requests and on its own initiative. The FTC routinely places a large volume of records on the agency's website to foster knowledge of the FTC's programs and activities. In addition, the agency's FOIA office applies the presumption of openness to the extent possible in the law enforcement context.

Shortly after the President's FOIA memorandum and the Attorney General's FOIA Guidelines were published, the Chief FOIA officer circulated the materials to all agency senior managers and to each division designee responsible for coordinating that FOIA responses. Also, the Assistant General Counsel responsible for the FTC FOIA program conducted ten formal training sessions on all aspects of FOIA. The President's FOIA memorandum and Attorney General's FOIA Guidelines were distributed and discussed at each session. In addition to formal training sessions, FTC FOIA staff routinely provide advice and guidance to agency staff, stressing the agency's commitment to openness.

2. The FTC processed 1467 FOIA requests in FY '09, an increase of nearly 25% over the previous year. Nearly 50% of all requests were granted in full, 29% were partially granted, and

only 1% of requests were denied in full. Thirteen of the seventeen requests denied in full were denied based on statutory prohibitions on disclosure or because the subject documents contained personal information implicating privacy concerns. Four requests (.2% of total requests) were denied because they concerned active law enforcement matters, privileged deliberations, and a high 2 Exemption. These percentages demonstrate the agency's commitment to openness, while protecting the agency's critical interest in conducting non-public law enforcement investigations. In comparison, in FY '07, 38% of requests were granted in full, 39% were partially granted, and nearly 2% were denied in full.

## II. Steps Taken to Ensure that the agency has an Effective system for Responding to Requests

The Federal Trade Commission's FOIA branch is located within the Office of General Counsel. The operations are overseen by the Assistant General Counsel for Information and Legal Support. The branch is staffed by another attorney, one lead paralegal, and nine paralegals. All paralegals attend the Office of Legal Education's 3-day FOIA training program and are provided in-house training on FOIA procedures and policies. In addition, managers in each division of the agency have designated a FOIA access officer who coordinates the search for records of that division. The FOIA access officer receives additional FOIA training in searching for records and identifying record storage locations. When the agency receives a FOIA request, the FOIA staff member reviews the request and searches the agency's electronic record keeping system to identify which divisions may have responsive records. The FOIA staff then sends a request for documents to the relevant FOIA access officers, who search for responsive records.

In addition to engaging managers at all levels, the FOIA office works closely with the agency IT specialists. The FTC FOIA office operates in a wholly electronic environment. When staff identifies record locations, IT staff ensures that the FOIA staff receives access to the appropriate drives, folders, or databases to download the responsive records. IT supports the FOIA Xpress software used to process all FOIA requests. FOIA staff also work with the agency's web team to post materials on the agency's website, <http://www.ftc.gov>, when applicable.

The agency's senior management takes its FOIA obligations seriously. As discussed earlier, the FOIA office has conducted numerous FOIA training throughout the agency. Senior managers in many divisions require their staff to attend training and routinely follow up with FOIA staff to ensure full compliance with all FOIA mandates. Each year, new attorneys receive an introduction to the FOIA as part of a required off-site training program for all new FTC attorneys.

## III. Steps Taken to Increase Proactive Disclosures

As discussed earlier, the agency maintains a robust website and discloses a large volume of material on its website at its own initiative. The agency routinely posts all adjudicative decisions, rulemaking materials and comments, workshop information, speeches, and a wide range of other documents. The FOIA reading room is updated when the agency receives multiple requests for the same records. Staff now identifies materials that are suitable for public

posting. For instance, the agency recently proactively disclosed the specifications and order for filing a special report for a study on the Practice of Debt Buying and recently identified a set of warning letters that will be disclosed after personally identifying information is removed. With further training, we expect staff will identify additional records appropriate for proactive disclosure.

#### IV. Steps Taken to Use Technology More Effectively

1. Yes.

2. N/A

3. Yes

4. N/A

5. Yes

6. N/A

7. Yes

8. N/A

The agency receives requests electronically via a dedicated email account ([FOIA@ftc.gov](mailto:FOIA@ftc.gov)) as well as an on-line request form (<https://www.ftc.gov/ftc/foia.htm>). The agency has used both of these methods since 2001 and receives the majority of requests electronically.

The agency tracks all requests electronically in the FOIA Xpress application (a commercial FOIA application). All FOIA requests are processed in FOIA Xpress. All new FOIA requests are entered into the database and assigned a tracking number. Once they are assigned to FOIA staff, the staff uses the application to send out requests for documents, track the status, import the responsive records for review and redaction, generate response letters and send the records in the format requested. Paper records are scanned and then electronically imported into the system. Because all portions of the request are performed in FOIA Xpress, the agency uses the system to generate the Annual Report.

#### V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

The agency makes every effort to respond to request in a timely manner. In FY '09 the agency responded to simple requests on average in 6.59 days and complex requests in 24.5 days. Most complex requests and many the simple requests require the agency to locate and review thousands of pages of records.

1. This year, the agency's backlog increased from eight in FY '08 to 18 in FY '09.

2. The increase in the backlog is directly attributed to the nearly 25% increase in FOIA requests received. Additionally, the majority of the backlog requests are complex requests involving tens of thousands of pages of records. In those instances, the agency provides responses on a rolling basis. For example, the oldest pending request was received on April, 8, 2008, however, the agency has made 15 releases of responsive records as they are obtained and reviewed. Because the FTC makes rolling releases in order to provide requesters as many records as possible in a timely fashion, some FOIA requests remain open despite the agency having substantially responded. Despite the 25% increase in FOIA requests, the agency backlog remains below 1%. The backlog of requests to which no response has yet been made is significantly below 1%. There is no appeal backlog.

3. Despite the low backlog, the FOIA branch continues to train agency staff to reduce the processing time further. In addition, the agency has acquired software that should enable faster searching and review of electronic records. When that software becomes operational, it should further reduce the backlog.