



Commodity Futures Trading Commission

2020 Chief FOIA Officer Report

Section 1: Steps Taken to Apply the Presumption of Openness

A. FOIA Leadership

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at the Assistant Secretary or equivalent level. Is your agency's Chief FOIA Officer at this level?

Yes.

2. Please provide the name and title of your agency's Chief FOIA Officer.

John Einstman, Deputy General Counsel for General Law.

B. FOIA Training

3. 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.

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

Our FOIA attorney attended multiple DOJ FOIA trainings, including: FOIA for Attorneys and Access Professionals, the Annual FOIA Report Training, the FOIA Litigation Seminar, and the Chief FOIA Officer Report Refresher. We also have one full-time FOIA paralegal, who attended DOJ's Introduction to the Freedom of Information Act Training. We have another paralegal who assists with FOIA periodically, and she attended the FOIA for Attorneys and Access Professionals Training.

5. 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%

6. 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

C. Outreach

7. Did your FOIA professionals engage in any outreach or dialogue 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.

No.

D. Other Initiatives

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

Our agency had a new Chairman start this summer, and with his arrival, we have also had many new directors start for our various offices and divisions. Our FOIA attorney provided a FOIA training as part of the on-boarding process for each of those individuals to educate them about their obligations under the FOIA.

9. 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.

The agency holds open meetings, roundtables, and Advisory Committee meetings. In addition to providing access in person and via dial-in, the agency posts statements, documents, and transcripts on-line to improve transparency and openness (<http://www.cftc.gov/PressRoom/Events/CommissionMeetings/index.htm>). The agency also provides notice of external meetings concerning the Dodd-Frank Act and provides information about the date, time, attendees, and topic (<http://www.cftc.gov/LawRegulation/DoddFrankAct/ExternalMeetings/index.htm>). Also, the agency uses social media platforms such as Twitter to share information with the public.

Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests

1. For Fiscal Year 2019, 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 2019 Annual FOIA Report.

18.44

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.

For more than half of Fiscal Year 2019, we did not have any FOIA staff, which resulted in a significant backlog. Once we were able to hire one FOIA staff member, and another a few months later, they did their best to keep up with incoming requests while addressing the backlog. But due to the backlog from months of either no FOIA staff or minimal FOIA staff, we were not always able to meet the ten-day deadline. After hiring FOIA staff during the second half of the year, we are now getting back on track and, going forward, should be able to address requests for expedited processing within ten days.

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.

Yes. When our new FOIA attorney started, she did an assessment of our FOIA procedures and identified areas for improvement. Changes that we have implemented so far include: updated acknowledgment letters, consistent coding of simple and complex track requests, and new request for document email templates. We are still in the process of making changes. Other changes we plan to make within the next year include: updates to all response letter templates, updates to FOIA document request forms, and possibly a switch to a new FOIA management system, which we are currently evaluating.

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 2019 (please provide a total number or an estimate of the number).

The agency has a low demand for FOIA requester services. Each requester is given the direct extension to contact the FOIA professional who is processing their request. Therefore, most questions are handled directly by the FOIA professional with the most knowledge of the request. We estimate that the FOIA Public Liaison received approximately twelve requests for assistance.

5. Optional -- Please describe:

- Best practices used to ensure that your FOIA system operates efficiently and effectively

We have made a point to increase communication with our requesters, especially on complex requests. If a request is going to take a while to process, we are making a greater effort to reach out the requester to gain clarification on what the requester is looking for and to discuss the requester's priorities, so that we may be able to narrow the request to get the requester exactly what they are looking for as soon as practicable.

- Any challenges your agency faces in this area

As noted above, our FOIA staff has attended various DOJ FOIA trainings throughout the past months. At these trainings, they have taken note of best practices advised by DOJ. Our FOIA attorney has also assessed our FOIA procedures and has created a plan for improvements. However, due to lack of staff during the past year, we are still getting back on our feet after closing most of the backlog and are still in the process of implementing improvements. It will take us some time to implement all the changes we would like to make, but we are making good progress. And, an additional FOIA paralegal started on January 13, 2020, which will allow us to accelerate our improvements.

Section III: Steps Taken to Increase Proactive Disclosures

1. 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 past year, we did not receive three or more requests for the same records. Regardless, we posted the decisions of our Reparations Program back through 2006, after receiving one FOIA request for the information. Previously, only a few years had been posted.

<https://www.cftc.gov/LawRegulation/Dispositions/index.htm>

In addition, the agency continues to make proactive disclosures on the agency's website in connection with the numerous Dodd-Frank Act rulemakings. Pursuant to its transparency policy, the agency continues to list all meetings with outside stakeholders. The agency regularly posts No-Action Letters, Interpretative Letters and Exemptive Letters on the agency website to inform the public on various agency matters. Finally, the agency's press office routinely posts advisory notices, speeches, testimony, notices of enforcement actions, and other materials of interest on the agency website. Links to these records are provided on the agency's homepage: <http://www.cftc.gov/index.htm>

In addition, the agency routinely proactively discloses materials to assist the public including:

<http://www.cftc.gov/MarketReports/CommitmentsofTraders/index.htm>

<http://www.cftc.gov/MarketReports/SwapsReports/index.htm>
<http://www.cftc.gov/MarketReports/CottonOnCall/index.htm>
<http://www.cftc.gov/MarketReports/BankParticipationReports/index.htm>
<http://www.cftc.gov/MarketReports/financialfcmdata/index.htm>
<http://www.cftc.gov/MarketReports/NetPositionChangesData/index.htm>
<http://www.cftc.gov/MarketReports/StaffReportonMay6MarketEvents/index.htm>
<http://www.cftc.gov/International/InternationalInitiatives/index.htm>

2. 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.

3. If yes, please provide examples of such improvements.

The agency continues to work on improvements to our website navigation and to make our posted information more useful.

The agency's program offices routinely provide updated market data (<http://www.cftc.gov/MarketReports/index.htm>), industry filings and information about new regulatory developments (<http://www.cftc.gov/IndustryOversight/IndustryFilings/index.htm>). For instance, the Dodd-Frank Act created new entities, Swap Data Repositories ("SDRs"), to provide central facilities for swap data reporting and recordkeeping. The agency's website includes a page on these entities, including FAQs and instructions on how to apply for SDR status (<http://www.cftc.gov/IndustryOversight/DataRepositories/index.htm>). The agency allows anyone in the world to sign up on the agency's website to receive updates on specific or all information that is posted on the website. Further, all of the agency's releases are instantly tweeted and posted on Facebook. To date, the agency has almost 16,000 Facebook followers and over 41,000 Twitter followers.

In addition, the Office of Public Affairs is the Commission's primary public-facing office that provides honest, timely and useful information across all communication platforms in order to serve internal and external stakeholders in all sectors to accomplish and facilitate the Commission's mission. OPA proactively conducts outreach and creates messages designed to raise awareness of the CFTC brand in order to promote public trust. OPA also works to ensure that public meetings are accessible online via webcast or through a dial-in number.

Further, LabCFTC is designed to make the CFTC more accessible to FinTech innovators, and serves as a platform to inform the Commission's understanding of new technologies. Consumers, farmers, ranchers as well as investors have benefited from the technological innovation of the markets overseen by the CFTC, and LabCFTC works with these parties to help. LabCFTC also engages with academia, students and professionals on applications of FinTech relevant in the CFTC space. In particular, LabCFTC's GuidePoint Program is an integral part of LabCFTC, which offers an additional, dedicated point of contact to the FinTech innovator community. GuidePoint provides FinTech innovators with a simple, direct channel to obtain feedback on inquiries in support of responsible innovation. GuidePoint also provides an opportunity to inform Commission staff of relevant issues and suggestions to enhance FinTech development. There is no fee to use GuidePoint.

4. Optional – Please describe:

- Best practices used to improve proactive disclosures

The agency has recently taken a deep dive into reviewing some of its policies and procedures, and is making improvements to further its dedication to transparency and proactive disclosure. The agency is committed to evaluating its policies and procedures more frequently to ensure that information is shared properly, efficiently, and as openly as possible.

- Any challenges your agency faces in this area

Although the agency has taken steps to make our information more accessible and useful, one challenge is that our FOIA requests tend to be on all different topics. We do not see many repeat requests, and we did not have any information in FY2019 that was requested through three or more FOIA requests. Accordingly, it can sometimes be difficult to determine what information would be most helpful to post for the public.

Section IV: Steps Taken to Greater Utilize Technology

1. Is your agency leveraging or exploring any new technology to facilitate efficiency in its FOIA administration that you have not previously reported? If so, please describe the type of technology.

The agency recently received a demo of a brand new FOIA request tracking and management software and is considering switching over to the new system.

2. 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, our agency reviewed the FOIA website to identify areas we need to update. Based on the review, we have made some changes, such as updating the contact information. Please note that we are still in the process of making other updates after our review, such as adding to our FOIA Reading Room.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2019?

Yes, we successfully posted all four quarterly reports for Fiscal Year 2019 on time. All four quarterly reports appeared on FOIA.gov.

4. 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 2020.

As stated above, we posted all four quarterly reports on our agency's website, but we did not realize that the information was not appearing on FOIA.gov. We are actively working to resolve this to ensure that all reports show up on FOIA.gov going forward.

5. 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 2018 Annual FOIA Report and, if available, for your agency's Fiscal Year 2019 Annual FOIA Report.

The link to the raw data for Fiscal Year 2018 can be found here:

<https://www.cftc.gov/FOI/foiareadingrooms.html>

6. Optional – Please describe:

- Best practices used in greater utilizing technology

We work closely with our forensics team to conduct accurate and efficient searches for responsive records.

- Any challenges your agency faces in this area

A challenge to greater utilization in technology continues to be a lack of staff and other resources.

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs

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 your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2019?

No.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2019 that were placed in your simple track.

73%

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 2018 and Fiscal Year 2019 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 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?

Yes.

6. If not, did your agency process more requests during Fiscal Year 2019 than it did during Fiscal Year 2018?

N/A

7. If your agency's request backlog increased during Fiscal Year 2019, 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.
- Any other reasons – please briefly describe or provide examples when possible.

Our backlog increased significantly during Fiscal Year 2019 due to loss of staff. However, by the end of Fiscal Year 2019, we were able to reduce the backlog so that we ended the year with a smaller backlog than we had at the end of Fiscal Year 2018.

8. 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 2019. If your agency has no request backlog, please answer with “N/A.”

5.79%

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?

N/A

10. If not, did your agency process more appeals during Fiscal Year 2019 than it did during Fiscal Year 2018?

Yes. We processed one appeal in Fiscal Year 2018 and two appeals in Fiscal Year 2019.

11. If your agency’s appeal backlog increased during Fiscal Year 2019, 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.
- Any other reasons – please briefly describe or provide examples when possible.

N/A

12. 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 2019. If your agency did not receive any appeals in Fiscal Year 2019 and/or has no appeal backlog, please answer with “N/A.”

N/A

C. Backlog Reduction Plans

13. In the 2019 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1,000 requests in Fiscal Year 2018 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 2019?

N/A – We did not create a backlog reduction plan because our backlog was not over 1,000 requests.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2019, what is your agency's plan to reduce this backlog during Fiscal Year 2020?

N/A

D. Status of 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 2018 and Fiscal Year 2019 when completing this section of your Chief FOIA Officer Report.

OLDEST REQUESTS

15. In Fiscal Year 2019, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

No.

16. 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 2018 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

We closed nine out of ten of our oldest requests.

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

We hired one FOIA attorney during Fiscal Year 2019, and we were eventually able to hire a FOIA paralegal. After assessing our FOIA needs, we decided to hire another FOIA paralegal who started on January 13, 2020. This increase in staff will allow us to reduce the time it takes

to process requests. In addition, we have increased communication with requesters to assist in narrowing the scope of certain requests, which leads to increased processing times.

TEN OLDEST APPEALS

18. In Fiscal Year 2019, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

N/A

19. 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 2018 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

N/A

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

N/A

TEN OLDEST CONSULTATIONS

21. In Fiscal Year 2019, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

Yes.

22. 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 2018 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

N/A

E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans

23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2019.

We did not have any full-time FOIA staff for the first half of Fiscal Year 2019.

24. 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

25. 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 2020.

We were able to close nine out of ten of our oldest requests. The one we did not close is a very large request requiring the review of almost 10,000 records. We are prioritizing this request and have had one FOIA staff member devoted to reviewing these records over the past weeks. We anticipate being able to close this request within the next few months.

F. Success Stories

Out of all the activities undertaken by your agency since March 2019 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.

Due to the loss of staff, we did not have any full-time FOIA staff for the first half of Fiscal Year 2019. This resulted in a backlog of 75 requests as of April 2019. However, we then hired two FOIA professionals, and with their diligent efforts, we were able to end Fiscal Year 2019 with a backlog of only eight requests.