



Commodity Futures Trading Commission
Chief FOIA Officer Report
February, 2015

**Name and Title of Chief FOIA Officer: Heather Gottry, Deputy General Counsel,
General Law**

Section I: Steps Taken to Apply the Presumption of Openness

FOIA Training:

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

FOIA professionals in the Office of the General Counsel attended four training courses in 2014: DOJ Advanced FOIA Seminar, DOJ annual FOIA Report and Chief FOIA Officer Report, Roadmap for e-discovery Compliance, and FOIA Xpress training conference. In addition, one senior FOIA attorney presented at the OIP Best Practices series on implementing technology to improve FOIA Processing. In addition to the formal training attended, FOIA professionals receive in-house training during formal and informal meetings as issues arise.

2. *Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.*

Substantive FOIA training was attended by 100% of our FOIA professionals during the reporting period.

3. *In the 2014 Chief FOIA Officer Report Guidelines, OIP asked agencies to provide a plan for ensuring that core, substantive FOIA training is offered to all agency FOIA professionals at least once each year. Please provide the status of your agency's implementation of this plan.*

As noted in the question above, all FOIA professionals attended substantive training during the reporting period. In addition, our FOIA professionals have provided trainings within the agency to small groups of agency staff to educate staff on their responsibilities under the FOIA. The

agency is supportive of these efforts and has mandated in-person FOIA training for all incoming senior officials in 2014 and will be implementing broader training for all new agency staff beginning in 2015.

Discretionary Disclosures:

4. *Does your agency have a distinct process or system in place to review records for discretionary release?*

Yes. The FOIA Office routinely advises agency program and administrative offices that Exemption 5 must be applied selectively and not automatically. The FOIA Office makes the initial determinations to claim exemptions for any record and each record is reviewed to determine if discretionary release is possible. The program office then has the opportunity to provide written objections to the discretionary release recommendation; however, the final determination is made by FOIA professionals in the Office of General Counsel, which may include participation of the General Counsel.

5. *During the reporting period, did your agency make any discretionary releases of information?*

Yes.

6. *What exemption(s) would have covered the material released as a matter of discretion?*

The discretionary disclosures consisted of records documenting internal deliberations where the materials were covered by FOIA Exemption 5.

7. *Provide a narrative description, as well as some specific examples, of the types of information that your agency released as a matter of discretion during the reporting year.*

During the reporting year, the agency completed rolling productions of records responsive to multiple requests for records involving ongoing investigations. As part of these productions, the agency released hundreds of pages of internal documents in the matters, which would otherwise fall under FOIA Exemption 5. The released materials were primarily email communications (both internal and with other regulators) discussing ongoing matters and draft documents.

8. *If your agency was not able to make any discretionary releases of information, please explain why.*

N/A

Other Initiatives:

9. *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>). In addition, the agency 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>).

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

Processing Procedures:

1. *For Fiscal Year 2014, 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 2014 Annual FOIA Report.*

The agency adjudicated requests for expedited processing in an average of 7.73 days.

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.*

N/A

Requester Services:

3. *Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at the National Archives and Records Administration? See OIP Guidance, "Notifying Requesters of the Mediation Services Offered by OGIS." (July 9, 2010)*

Yes.

4. *When assessing fees, does your agency provide a breakdown of how FOIA fees were calculated and assessed to the FOIA requester? For example, does your agency explain the amount of fees attributable to search, review, and duplication? See OIP Guidance, "The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications." (Nov. 22, 2013)*

Yes.

5. *If estimated fees estimates are particularly high, does your agency provide an explanation for the estimate to the requester? See id.*

Yes. In cases where the fees are particularly high FOIA professionals provide an explanation for the estimate and work with the requester to refine or prioritize their search.

Other Initiatives:

6. *If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc., please describe them here.*

As noted in last year's report, the FOIA program increasingly used electronic search and collection for complex FOIA requests. During this reporting period we worked with program staff and Information technology staff to refine processes for searching and reducing duplicate records which resulted in more efficient searches for records requested and more effective reviews of records identified as potentially responsive to requests.

Section III: Steps Taken to Increase Proactive Disclosures

Posting Material:

1. *Does your agency have a distinct process or system in place to identify records for proactive disclosure? If so, please describe your agency's process or system.*

Yes. 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 Commission 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 Commission's homepage (<http://www.cftc.gov/index.htm>).

2. *Does your process or system involve any collaboration with agency staff outside the FOIA office? If so, describe this interaction.*

Yes. FOIA professionals routinely interact with staff outside the FOIA office to determine whether documents can or should be proactively disclosed publicly. FOIA professionals also provide advice and guidance on the types of records that should be disclosed and work collaboratively with all program offices as well as the Office of the Secretariat, the Office of Data Technology and the Office of the Chief Privacy Officer to make these determinations.

3. *Describe your agency's process or system for identifying "frequently requested" records that should be posted online.*

FOIA professionals link all cases that have related records to determine whether the agency is receiving multiple requests for the same records. The agency posted one frequently requested record during the reporting period, however, there are several pending requests that have been identified as frequently requested and the records will be posted when the processing is complete.

4. *Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.*

In addition to the records described above, the agency proactively released the Inspector General Report on leasing in the Kansas City Office (http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/oig_rkcr061014.pdf).

Other Initiatives:

5. *If there are any other steps your agency has taken to increase proactive disclosures, please describe them here.*

N/A

Section IV: Steps Taken to Greater Utilize Technology

Making Material Posted Online More Useful:

1. *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.

2. *If yes, please provide examples of such improvements.*

The agency homepage features easy access to important information and events at the agency, efficient site navigation, and dynamic dropdown menus for primary and secondary navigation, all of which provide greater transparency of agency actions.

In addition to efficient website navigation, the agency has taken other steps to increase proactive disclosure. For example, 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. For example, more than 21 thousand people receive the agency's press releases, 20 thousand received federal register notices and over 16 thousand received any letter the agency posts to the website. Further, all of the agency's releases are instantly tweeted and posted on Facebook. To date, the agency has over nine thousand Facebook followers and over 12 thousand Twitter followers.

The agency continues to look to ways to increase public awareness. For example, the agency maintains a broad database of local news outlets to make sure people in the area of suspected fraudster will be better able to hear about the case and be watchful. Further, the agency continues to redesign the agency's website, and one of the top priorities will be to increase public awareness of and access to the information on CFTC.gov.

3. *Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?*

No. The agency is committed to transparency and works collaboratively to ensure technology is effectively leveraged to post information to benefit the public.

4. *If so, please briefly explain what those challenges are.*

N/A

Other Initiatives:

5. *Did your agency successfully post all four quarterly reports for Fiscal Year 2014?*

Yes.

6. *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 2015.*

N/A

7. *Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? See OIP Guidance, "The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications." (Nov. 22, 2013) If yes, what are the different types of electronic means that are utilized by your agency to communicate with requesters?*

Agency FOIA professionals almost exclusively use email to communicate with requesters, which has proven to be the most efficient and effective means of communication. Whenever feasible, processed records are sent via email to ensure timely delivery and reduce costs to the requester and the agency.

8. *If your agency does not communicate electronically with requesters as a default, are there any limitations or restrictions for the use of such means? If yes, does your agency inform requesters about such limitations? See *id.**

N/A

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

Simple Track:

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

Yes.

2. *If so, for your agency overall in Fiscal Year 2014, was the average number of days to process simple requests twenty working days or fewer?*

No. The average number of days to process simple perfected requests in Fiscal Year 2014 was 30.92 days. The average number of days to process simple perfected requests in which information was granted was 37 days.

3. *Please provide the percentage of requests processed by your agency in Fiscal Year 2014 that were placed in your simple track.*

31%

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

Backlogs:

5. *If your agency had a backlog of requests at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013?*

The agency's backlog of requests increased by 12 in Fiscal Year 2014. The number of FOIA requests at the agency increased by 34% during the reporting period and the agency lost one FOIA Professional. In addition, the requests received by the agency were increasingly complex and voluminous. These combined factors resulted in the increase in the backlog in Fiscal Year 2014.

6. *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 2014. If your agency did not receive any requests in Fiscal Year 2014 and/or has no request backlog, please answer with "N/A."*

The backlog makes up 16% of the requests received.

BACKLOGGED APPEALS

7. *If your agency had a backlog of appeals at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013?*

- *If not, explain why and describe the causes that contributed to your agency not being able reduce backlog. When doing so, please also indicate if any of the following were contributing factors:*
 - *An increase in the number of incoming appeal*
 - *A loss of staff*
 - *An increase in the complexity of the appeals received*
- *The agency's backlog of FOIA Appeals increased by two in Fiscal Year 2014. The backlog was a result of an increase in the number of appeals as well as the increasing*

complexity of the appeals received. We note that at the time of posting this report we have closed 5 of the 6 backlogged appeals.

8. *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 2014. If your agency did not receive any appeals in Fiscal Year 2014 and/or has no appeal backlog, please answer with "N/A."*

The backlog makes up 50% of the appeals received.

Status of Ten Oldest Requests, Appeals, and Consultations:

TEN OLDEST REQUESTS

9. *In Fiscal Year 2014, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2013 Annual FOIA Report?*

Yes.

10. *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 2013 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.*

N/A

11. *Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?*

None of the oldest requests were closed because the request was withdrawn.

TEN OLDEST APPEALS

12. *In Fiscal Year 2014, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2013 Annual FOIA Report?*

No.

13. *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 2013 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.*

The agency had four appeals open at the end of Fiscal Year 2013 and did not close any of the oldest appeals.

TEN OLDEST CONSULTATIONS

14. *In Fiscal Year 2014, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2013 Annual FOIA Report?*

N/A. The agency did not have any pending consultations at the end of Fiscal Year 2013.

15. *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 2013 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.*

N/A

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

16. *Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2013.*

The agency was able to close the ten oldest requests despite a spike in the FOIA requests received and a decrease in FOIA professionals.

17. *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

18. *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 2015.*

Since the end of the reporting period, the agency has closed the ten oldest appeals. **Use of the FOIA’s Law Enforcement Exclusions**

Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2014?

No.