

FREEDOM OF INFORMATION ACT ANNUAL REPORT

FOIA Data Submission Form for Federal Trade Commission

Fiscal Year 2007

(Oct. 1, 2006 - Sept. 30, 2007)

I. Basic Information Regarding Report

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

Caitlin Tobin
Paralegal Specialist
600 Pennsylvania Avenue, N.W., Room 585
Washington, D.C. 20580
(202) 326-3059

B. Electronic address for report on the World Wide Web.

<http://www.ftc.gov/foia/2007r-fo.pdf>

C. How to obtain a copy of the report in paper form.

Federal Trade Commission
Consumer Response Center
Room 130
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

II. How to Make a FOIA Request

All FOIA requests must be in the form of a written request precisely describing the records sought. Any request for nonpublic records will be handled as a FOIA request regardless of how it is identified, but requests should be identified as a "FOIA request" in order to avoid delay in processing.

FOIA requests should contain a precise description of the records sought, including the subject matter, relevant time period, and the name and address of any company to which the request pertains. Requests should also include an agreement to pay any FOIA processing fees, and the requestor's address and telephone number.

A. 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 number is 202-326-2477.
E-mail address is: FOIA@FTC.GOV

B. Description of the agency's response-time ranges.

Over 86% of the requests submitted were completed within 20 days.

C. Description of why some requests are not granted.

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. Definitions of Terms and Acronyms Used in the Report

A. Agency-specific acronyms or terms.

1. FOIA - Freedom of Information Act (5 U.S.C. § 552)
2. FTC - Federal Trade Commission
3. HSR - Hart Scott Rodino (Clayton Act)
4. FY - Fiscal Year
5. PA - Privacy Act (5 U.S.C. § 552a)

B. Basic Terms, expressed in common terminology.⁽¹⁾

1. *FOIA/PA request* – Freedom of Information Act/Privacy Act request. A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records concerning oneself; such requests are also treated as FOIA requests. (All requests for access to records, regardless of which law is cited by the requester, are included in this report.)

2. *Initial Request* – a request to a federal agency for access to records under the Freedom of Information Act.

3. *Appeal* – a request to a federal agency asking that it review at a higher administrative level a full denial or partial denial of access to records under the Freedom of Information Act, or any other FOIA determination such as a matter pertaining to fees.
4. *Processed Request or Appeal* – a request or appeal for which an agency has taken a final action on the request or the appeal in all respects.
5. *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 in each track are processed on a first-in/first-out basis. A requester who has an urgent need for records may request expedited processing (see below).
6. *Expedited processing* – an agency will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier.
7. *Simple request* – a FOIA request that an agency using multi-track processing places in its fastest (nonexpedited) track based on the volume or simplicity of records requested.
8. *Complex request* – a FOIA request that an agency using multi-track processing places in a slower track based on the volume or complexity of records requested.
9. *Grant* – an agency decision to disclose all records in full in response to a FOIA request.
10. *Partial grant* – an agency decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entirety, but to withhold others in whole or in part.
11. *Denial* – an agency decision not to release any part of a record or records in response to a FOIA request because all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA's exemptions, or for some procedural reason.
12. *Time limits* – the time period in the Freedom of Information Act for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a "perfected" FOIA request).
13. *"Perfected" request* – a FOIA request for records which adequately describes the records sought, which has been received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.

14. *Exemption 3 statute* – a separate federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA subsection (b)(3).

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

16. *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.

IV. Exemption 3 Statutes

A. List of Exemption 3 statutes relied on by agency during current fiscal year.

Federal Trade Commission Act, Section 6(f), as amended, 15 U.S.C. § 46(f) -- prohibits the disclosure of "any trade secrets or any commercial or financial information which is obtained from any person and which is privileged or confidential." Its use was upheld in *Doherty v. FTC*, 1981-1 Trade Cas. (CCH) § 64,117 (D.D.C. June 24, 1981).

Federal Trade Commission Act, Section 21(b), 15 U.S.C. § 57b-2(b) -- prohibits the disclosure of any materials received pursuant to compulsory process in a law enforcement investigation. Its use was upheld in *Dairymen, Inc. v. FTC*, 1980-2 Trade Cas. (CCH) ¶ 63,479 (D.D.C. July 9, 1980).

Federal Trade Commission Act, Section 21(f), 15 U.S.C. § 57b-2(f) -- exempts from disclosure material obtained pursuant to process or voluntarily in lieu of process in a law enforcement investigation. Its use was upheld in *A. Michael's Piano v. FTC*, 18 F.3d 138 (2d Cir. 1994).

Clayton Act (Hart-Scott-Rodino Provisions), Section 7A(h), 15 U.S.C. § 18a(h) -- prohibits the disclosure of material filed pursuant to the premerger (HSR) provisions of the Act. Its use was upheld in *Lieberman v. FTC*, 771 F.2d 32 (2d Cir. 1985).

Section 1114 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 –which is codified at 21 U.S.C. § 355 note –exempts any information or documentary material that may have been filed pursuant to the pharmaceutical agreement notification.

V. Initial FOIA/PA Access Requests

A. Number of initial requests.

1. Number of requests pending as of end of preceding fiscal year: **19**
2. Number of requests received during current fiscal year: **1038**
3. Number of requests processed during current fiscal year: **1055**
4. Number of requests pending as of end of current fiscal year: **2**

B. Disposition of initial requests.

1. Total grants: **403**
2. Partial grants: **408**
3. Denials: **20**
 - a. Number of times each FOIA exemption used
(counting each exemption once per request)

Exemption 1	0
Exemption 2	5
Exemption 3	162
Exemption 4	35
Exemption 5	64
Exemption 6	338
Exemption 7(A)	27
Exemption 7(B)	0
Exemption 7(C)	12
Exemption 7(D)	6
Exemption 7(E)	0
Exemption 7(F)	0
Exemption 8	0
Exemption 9	0

4. Other reasons for non-disclosure: **224**

a. no records	159
b. referrals	1
c. withdrawn	32
d. fee-related	4
e. records not reasonably described	2
f. not a proper request for some other reason	9
g. not an agency record	2
h. duplicate request	11
i. other (specify)	4
- materials on the public record	

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Number of appeals.

1. Number of appeals received during fiscal year: **19**
2. Number of appeals processed during fiscal year: **19**

B. Disposition of appeals.

1. Number completely upheld: **11**
2. Number partially reversed: **2**
3. Number completely reversed: **0**
 - a. Number of times each FOIA exemption used

(counting each exemption once per appeal)

Exemption 1	0
Exemption 2	0
Exemption 3	5
Exemption 4	0
Exemption 5	4

Exemption 6	5
Exemption 7(A)	3
Exemption 7(B)	0
Exemption 7(C)	1
Exemption 7(D)	1
Exemption 7(E)	0
Exemption 7(F)	0
Exemption 8	0
Exemption 9	0
4. Other reasons for non-disclosure (total): 6	
a. no records	1
b. referrals	0
c. withdrawn	0
d. fee-related	3
e. records not reasonably described	1
f. not a proper request for some other reason	0
g. not an agency record	0
h. duplicate request	0
i. other (specify)	1*
*additional record located	

VII. Compliance with Time Limits/Status of Pending Requests

A. Median time for processing requests.

1. Simple requests:

- a. number of requests processed: **842**
- b. median number of days to process: **4**

- 2. Complex requests
 - a. number of requests processed: **213**
 - b. median number of days to process: **19**
- 3. Requests accorded expedited processing: **0**

B. Status of pending requests.

- 1. Number of requests pending at end of FY 07: **2**
- 2. Median number of days that such requests were pending as of that date: **6**

VIII. Expedited Processing

The agency did not receive any requests that satisfied the requirements for expedited processing.

IX. Costs/FOIA Staffing

A. Staffing levels.

- 1. Number of full-time FOIA personnel: **6**
- 2. Number of personnel with part-time or occasional FOIA duties (in work-years): **2**
- 3. Total number of personnel (in work years): **8**

B. Total costs (staff and resources combined).

- 1. FOIA processing (including appeals): **\$552,885**
- 2. Litigation-related activities (estimated): **\$11,685**
- 3. Total Costs: **\$564,570**

X. Fees

A. Total fees collected FY 07: **\$22,128.88**

B. Percentage of total costs **3.92%**

XI. FOIA Regulations (Including Fee Schedule)

A copy of the Commission rules (including fee schedule), 16 C.F.R. §§ 4.8-13 (2001), are available in electronic form at <http://www.ftc.gov/ftc/legal.htm>.

XII. Report on FOIA Executive Order Implementation

A. Description of supplementation/modification of agency improvement plan (if applicable)

B. Report on agency implementation of its plan, including its performance meeting milestones, with respect to each improvement area

The agency was successful in implementing the majority of the areas in the improvement plan. The overall success of the improvements is demonstrated in the minimal backlog, an overall decrease in the number of days to process requests, improved cooperation from agency program personnel, and praise from an independent reviewer and requesters. The FOIA program is visible at the FTC and all agency staff are committed to timely and accurate responses.

1. Troubleshooting any existing problems with respect to electronic tracking. Last year, the FOIA office reviewed its procedures and determined that a senior staff person should approve all assignments to the multi-track designation. We successfully implemented the changes and the median number of days to process simple requests decreased from 5 days in FY'06 to 4 days in FY'07. Similarly, the median days to process complex requests decreased from 34 days in FY'06 to 19 days in FY'07.

2. Training. We met the goal of training all FOIA contacts— those with the most immediate FOIA responsibilities. Additionally, we conducted training for selected groups of staff by division, and ad hoc training, which covered approximately 200 employees.

3. Process by which necessary cooperation is obtained from agency “program personnel.” Last year, the FOIA Office solicited, received and implemented changes suggested by its internal contacts. As a consequence, the agency drastically improved its response times in receiving responses from agency staff. In over 80% of cases agency staff respond to requests for records in less than 20 days, and over 50% of response are received in 5 days or less. We measured the average number of days responses time in 6 month increments: 6/1/06-12/31/06 the response time was 19.2 days average; 1/1/07-6/30/07 response days were 12.8 average; 7/1/07-12/31/07 response days averaged 7.6. This represents a 40% improvement in the number of days agency staff responded to the requests for documents. This is a significant factor in the overall decrease in response times.

4. Billing and Collection. FOIA staff and the agency’s Financial Management Office developed a plan to ensure timely reporting of billing and collection information which was implemented November 20, 2006. This resulted in collecting over 80% of all charges billed (we expect that to increase because we are still receiving payment for some bills sent in FY'07)

5. Overall FOIA website improvement. The agency completed its review of websites and created a new version of the FTC website which went live in November 2006, well ahead of

the September 1, 2007 deadline. The project was an overwhelming success. In March, 2007 an independent review by The National Security Archive (NSA) rated the FTC's website as among the top 5 in the federal government. See *File Not Found: 10 Years After E-FOIA, Most Federal Agencies Are Delinquent*, March 12, 2007 at 3 (http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB216/e-foia_audit_report.pdf). In addition, the NSA noted that the agency was among only 21% of federal agencies that had all required elements on the website. *File not Found* at 3. Further, the report praised the agency for the ease of locating the website, "For example, the Federal Trade Commission Web site displays a FOIA tab just below the site header in a main navigation bar with seven other general administrative links for the agency." *File not Found* at 24. The agency redesigned its external website in April 2007 and has continued to place the FOIA link prominently on the home page.

6. Agency's FOIA Reference Guide. The FOIA office completed its review of the reference guide and posted it to the Agency's web site on January 26, 2007. At that time, the public was invited to send comments to an email account. Although the agency received no comments from the public, the NSA Report praised the content noting that the FTC was one of only nine agencies providing all ten elements of essential guidance to requesters. (*File not Found* at 15). The NSA Report praised the guide further stating, "The Federal Trade Commission (FTC) is one agency with an excellent PDF guide—a comprehensive handbook covering all major issues relevant to FOIA requesters, including detailed discussion of exemptions, how to file requests, fees, and a list of major information systems as well as a description of the types of records held by the agency." (*File not Found* at 19).

8. Affirmative Disclosure under 5 U.S.C. § 552(a)(2). All extant policy statements were posted to the agency's website ahead of the December 31, 2006 target date. Additionally, the agency updated, and continues to update, its frequently requested records and post the records to the website. As noted in the NSA Report, the FTC maintains a "Well-organized electronic reading room with extensive records". (*File not Found* at 3).

9. Recycling of improvement information gleaned from FOIA Requester Service Centers. The FOIA Office has created a web page feedback form and modified all outgoing responses to include the link. This was completed on January 15, 2007, meeting our deadline. We have received only two responses providing feed back: one from a reporter with the San Francisco Chronicle "Thanks for the latest batch of FOIA stuff about Google. You get the gold star. I deal with a lot of FOIA offices and FTC is the best so far. I like to call the others the anti-FOIA offices, which about sums up how they see their roles."; and one from a frequent requester, who wrote, in part, :

"I just wanted to write to thank you very much for the great way in which my recent FOIA request . . . was handled

I received a prompt reply despite the careful review and particular redactions required. Also, the records provided were clear, responsive and very helpful. Although an electronic copy would have been preferably, I recognize that this is not always possible given the redactions required on these records.

Thank you again for the great customer service”

10. Forms of communication with requesters. The FOIA Office has revised all template letters and is soliciting feedback via the web page noted in item 9 above. The only feedback we have received has been the positive feedback noted in item 9 above.

11. Backlog Reduction. The agency only had 2 requests pending at the end of the Fy’07, down from 19 in FY’06. The median number of days pending dropped from 27 in FY’06 to 6 in FY’07. Additionally, the agency met its goal to address the ten oldest requests by September 1, 2007.

C. Identification and discussion of any deficiency in meeting plan milestones (if applicable)

1. Training. The agency was deficient in meeting some of its goals with respect to training all agency staff.

2. The agency milestone was to complete training all headquarters staff by April 30, 2007 and all Regional office staff by June 15.

3. Although we did not meet the milestone dates for training all agency staff in person, we took several steps to ensure that training materials were provided to all staff. First, the chief FOIA officer distributed a memo to all staff that detailed staff obligations under the FOIA and provided detailed instructions about how to respond to FOIA requests. Second, as noted above, we provided in-person training to a subset of agency staff, including those who have the most contact with FOIA requests. Third, all new professionals attend a training seminar and the Office of General Counsel provides basic FOIA training at the seminar. Finally, we created an intranet page with relevant materials to all staff that provides guidance on FOIA obligations and procedures. We believe, the decrease in response times for agency staff to respond to requests for documents (as described above) as well as the decrease in overall agency response times illustrates the success of our efforts.

4. We are currently working with representatives throughout the agency to determine the best method for providing this training to all employees. We anticipate completing this process by the end of the Fiscal year.

D. Additional narrative statement regarding other executive order-related activities (optional)

E. Concise description of FOIA Exemptions

The nine exemptions to the FOIA authorize federal agencies to withhold information covering: (1) classified national defense and foreign relations information; (2) internal agency rules and practices; (3) information that is prohibited from disclosure by another federal law; (4) trade secrets and other confidential business information; (5) inter-agency or intra-agency communications that are protected by legal privileges; (6) information involving matters of personal privacy; (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; (8) information relating to the supervision of financial institutions; and (9) geological information on wells.

F. Additional statistics:

1. Ten Oldest Pending FOIA Requests

Calendar Year	2000	2001	2002	2003	2004	2005	2006	2007
Requests								Sep. 21 Oct. 23 Oct. 26 Nov. 1 Nov 5 (2) Nov 7 (5)

2. Consultations

The agency's software does not currently track number of consultations received, processed or pending.

G. Attachment: Agency Improvement plan (in current form)

The agency's FOIA Improvement Plan is attached and can also be found on the web at

<http://www.ftc.gov/foia/ftcplan.pdf>.