

FEDERAL ENERGY REGULATORY COMMISSION

Leonard Tao
Chief FOIA Officer

CHIEF FOIA OFFICER REPORT



March 2012

Section I: Steps Taken to Apply the Presumption of Openness

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

During FY2011 FERC conducted numerous training sessions for program offices. These sessions focused on proper interpretation of the scope of requests and conducting an adequate search of contractors. All Staff are encouraged to provide electronic versions of responsive material.

2. Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?

Yes. 'Referrals, Consultations and Coordination' training that was presented by the Department of Justice.

3. Did your agency make any discretionary releases of otherwise exempt information?

During FY2011 four full discretionary releases and four partial discretionary releases were made to requesters.

4. What exemptions would have covered the information that was released as a matter of discretion?

Exemption 5.

5. Describe your agency's process to review records to determine whether discretionary releases are possible.

When a request is received that may implicate Exemption 5, the FOIA officer communicates with program offices within the agency to determine whether a discretionary release may be undertaken in accordance with guidelines set forth in the Attorney General's memorandum dated March 2009.

6. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

The focus during the review process now emphasizes that documents that pose no reasonable expectation of foreseeable harm be considered for release or at a minimum partial release.

7. Did your agency have an increase in the number of responses where records were released in full?

No.

Breakdown of full disclosures:

	PROCESSED	FULL
FY2011	92	15
FY2010	114	25

8. Did your agency have an increase in the number of responses where records were released in part?

No.

Breakdown of partial disclosures:

	PROCESSED	PARTIAL
FY2011	92	32
FY2010	114	38

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

1. Do FOIA professionals within your agency have sufficient IT support?

Yes. The FOIA professionals have always had access to IT professionals. However, during FY2011 a new team of IT experts were assigned to work directly with the FOIA professionals to gain an overall understanding of the dynamics of the FOIA process, to enhance technical support and assist with new FOIA software issues.

2. Is there regular interaction between agency FOIA professionals and the Chief FOIA Officer?

Yes. The Chief FOIA Officer participates in daily briefings regarding the status of FOIA requests and the FOIA program in its entirety.

3. Do your FOIA professionals work with your agency's Open Government Team?

The FOIA professionals and Open Government team conduct periodic briefings, as necessary.

4. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to FOIA administration.

FERC continuously monitors that amount of processing time that is required for each request to identify areas for improvement.

5. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.

Developed better communication with program offices to properly identify appropriate responsive material at the beginning of the process to prevent processing delays.

Section III: Steps Taken to Increase Proactive Disclosures

1. Has your agency added new material to your website since last year?

FERC continues to post documents of interest on the FERC webpage and E-library. Approximately 24,424 new issuances, such as orders, notices, rulemakings, etc, and 64,848 new submittals that include settlements, Applications, comments, etc. were added to the FERC e-library in FY2011.

2. Provide examples of the records, datasets, videos, etc., that have been posted this past year.

The list below is a partial listing of material that has been posted to our webpage since October 1, 2010.

September 22, 2011 - [Presentation at the Northern California Power Agency \(NCPA\) 2011 Annual Conference](#) PDF

September 7, 2011 - [Presentation at the ISO Stakeholder Symposium](#) PDF

August 8, 2011 - [Presentation at the Utility Commissioners/Wall Street Dialogue](#) PDF

August 2, 2011 - [Presentation at the 2011 Wind Turbine Reliability Workshop](#) PDF

July 21, 2011 - Chairman Wellinghoff's statement on Transmission Planning and Cost Allocation [Read More](#)

May 9, 2011

FERC, NERC Combining Southwest Outage Inquiry Efforts [News Release](#) [PDF](#)

May 5, 2011

Joseph McClelland testifies before the Senate Energy and Natural Resources Committee on Cyber Security [Testimony](#) [PDF](#) [Event Details](#)

April 26, 2011

Visit FERC's new section on [Tree Trimming & Vegetation Management](#)

April 21, 2011

Item A-3: [Staff presents the State of the Markets 2010](#) [PDF](#)

April 21, 2011

Item G-1: FERC orders \$30 million fine against former Amaranth trader [News Release](#) | [Decision](#) [PDF](#)

March 30, 2011

FERC and U.S. Army Corps of Engineers sign agreement on hydropower [News Release](#) | [MOU](#) [PDF](#)

March 17, 2011

Item E-5: FERC seeks comment on horizontal market power analysis [News Release](#) | [NOI](#) [PDF](#) » Visit our [Mergers](#) Section

March 3, 2011 - Chairman Wellinghoff at the Powering the People Conference

Video - <http://www.ferc.gov/multimedia/030311-wellinghoff.asp>

February 3, 2011

FERC staff issues Assessment of Demand Response & Advanced Metering Report [News Release](#) | [Report](#) [PDF](#) | [Survey Data](#)

January 20, 2011

Item A-3: Study identifies tools to help ensure grid reliability [News Release](#) | [Chairman's Statement](#) | Commissioners' Statements: [Spitzer](#) | [Report](#) [PDF](#) | [Supporting Documents](#) | [Notice Inviting Comments on Report](#) [PDF](#)

▪ » Visit our [Electric Reliability](#) Section

December 16, 2010

Item G-1: FERC establishes new Five-Year Oil Pipeline Rate Index [News Release](#) | [Decision](#) [PDF](#) » Visit our [Oil](#) Section

November 18, 2010

Items G-3 & G-4: FERC launches investigations into Pipeline Rates [News Release](#) | [Chairman's Statement](#) | Commissioners' Statements: [Moeller](#) and [Norris](#) | Decisions: [G-3 PDF](#) and [G-4 PDF](#)

November 18, 2010

Items E-4, E-5, E-6 & E-7: FERC clarifies ROE policy for Electric Transmission Projects [News Release](#) | Decisions: [E-4 PDF](#), [E-5 PDF](#), [E-6 PDF](#) and [E-7 PDF](#)

- » Visit our [Transmission Investment](#) Section

October 21, 2010

Items G-1 & G-2: FERC seeks comment on intrastate pipeline capacity transfers [News Release](#) | [NOI PDF](#) | [Decision G-2 PDF](#)

- » Visit our [Gas Pipelines](#) Section

October 7, 2010

FERC takes first step in smart grid rulemaking process [News Release](#) | [Notice PDF](#)

3. Describe the system your agency uses to routinely identify records that are appropriate for posting.

FERC systematically reviews FOIA requests to identify the types of material that are most frequently sought by requesters and determining if this information can be made available proactively.

4. Beyond posting new material, is your agency taking steps to make the information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities, providing explanatory material, etc.?

FERC has always had online tips to provide guidance to users on how to conduct searches and easily identify material of interest on the webpage and e-library. Users are also encouraged to contact the Public Reference Room public.referenceroom@ferc.gov and the public inquiries division in the Office of External Affairs PubInqDL@ferc.gov for assistance with searches and inquiries. System status updates are provided on the webpage along with tips to address specific concerns that have been raised by users.

5. Describe any other steps taken to increase proactive disclosures at your agency.

The FERC webpage is routinely updated to reflect new topics of interest. The e-library is continuously updated to reflect real time filings and submittals for proceedings at FERC. It provides access to over two million documents with over 10 million pages that have been archived over more than 20 years. It contains electronic versions of documents issued by FERC from 1989 to present, microfilm of documents for 1981 to 1995, native files electronically submitted from November 2000 to present. Members of the public can instantaneously access public material in the e-library. <http://www.ferc.gov/docs-filing/elibrary.asp>

The FERC webpage includes grouping by various industries, new releases, Policy Statements, Memorandums of Understanding, Staff reports, Federal Statutes, Major Orders and Regulations, settlements, and court cases. <http://www.ferc.gov>

Members of the public are encouraged to register for eSubscription service for each proceeding that may be of interest to them. This service provides real time notification of activity in each proceeding. <http://www.ferc.gov/docs-filing/esubscription.as>

Section IV: Steps Taken to Greater Utilize Technology

Electronic receipt of FOIA requests:

1. Can FOIA requests be made electronically to your agency?

Yes.

2. If your agency processes requests on a decentralized basis, do all components of your agency receive requests electronically?

FERC is comprised of one FOIA component and has the ability to receive FOIA requests electronically.

Online tracking of FOIA requests:

3. Can a FOIA requester track the status of his/her request electronically?

No.

4. If not, is your agency taking steps to establish this capability?

Yes.

Use of technology to facilitate processing of requests:

5. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

Yes.

6. If so, describe the technological improvements being made.

FERC is currently working with in house IT experts to create a new tracking system, and expect to fully utilize this new system to prepare subsequent FOIA Annual Reports. We expect this system to provide real-time online status information for requesters and routinely add postings of responsive documents to the webpage. We also anticipate that this system will provide a more efficient method of document management that will include electronic storage, retrieval and sharing documents. Processing time will be reduced by utilizing correspondence templates and relying on new automated tracking and alert notifications for staff.

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

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests and appeals. *For the figures required in this Section, please use those contained in the specified sections of your agency's 2011 Annual FOIA Report.*

1. 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. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.

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

Yes.

- b. If so, for your agency overall, for Fiscal Year 2011, was the average number of days to process simple requests twenty working days or fewer?

No. The average number of days for simple requests was 23 days.

- c. If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?

N/A

2. Sections XII.D.(2) and XII.E.(2) of your agency’s Annual FOIA Report, entitled “Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report – Backlogged Requests/Appeals,” show the numbers of any backlog of pending requests or pending appeals from Fiscal Year 2011 as compared to Fiscal Year 2010. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition, Section VII.E, entitled “Pending Requests – Ten Oldest Pending Requests,” and Section VI.C.(5), entitled “Ten Oldest Pending Administrative Appeals,” from both Fiscal Year 2010 and Fiscal Year 2011 should be used for this section.

- a. If your agency had a backlog of requests at the close of Fiscal Year 2011, did that backlog decrease as compared with Fiscal Year 2010?

No. FERC had one backlog request at the close of FY2010 that is still open.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2011, did that backlog decrease as compared to Fiscal Year 2010?

FERC had no backlog.

- c. In Fiscal Year 2011, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2010?

No. There is one pending request that was reported on the 2010 FOIA Annual Report as one of the ten oldest pending requests. We are continuing to work closely with the requester to provide the remainder of responsive material, if

any, to satisfy this request. We expect to resolve this matter in the near future.

- d. In Fiscal Year 2011, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2010?

N/A

3. If you answered "no" to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation:

Request Backlog:

- a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests? NO
- b. Was the lack of a reduction in the request backlog caused by a loss of staff? NO.
- c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received? NO.
- d. What other causes, if any, contributed to the lack of a decrease in the request backlog?
N/A

Administrative Appeal Backlog:

- e. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals? N/A
- f. Was the lack of a reduction in the appeal backlog caused by a loss of staff? N/A
- g. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received? N/A
- h. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?
N/A

All agencies should strive to both reduce any existing backlogs or requests and appeals and to improve their timeliness in responding to requests and appeals. Describe the steps your agency is taking to make improvements in those areas. In doing so, answer the following questions and then also include any other steps being taken to reduce backlogs and to improve timeliness.

1. Does your agency routinely set goals and monitor the progress of your FOIA caseload? YES
2. Has your agency increased its FOIA staffing? NO

3. Has your agency made IT improvements to increase timeliness? Yes
4. If your agency receives consultations from other agencies, has your agency taken steps to improve the efficiency of the handling of such consultations, such as utilizing IT to share the documents, or establishing guidelines or agreements with other agencies on the handling of particular information to speed up or eliminate the need for consultations? Yes

Use of FOIA's Law Enforcement "Exclusions"

In order to increase transparency regarding the use of the FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to "treat the records as not subject to the requirements of [the FOIA]," 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. Did your agency invoke a statutory exclusion during Fiscal Year 2011? No
2. If so, what is the total number of times exclusions were invoked? N/A

Spotlight on Success

Out of all the activities undertaken by your agency since March 2011 to increase transparency and improve FOIA administration, describe here one success story that you would like to highlight as emblematic of your agency's efforts.

FERC expended a considerable amount of time working directly with vendors to identify the best system to meet the needs of our agency. This included participating in a pilot project that lasted for several months. We believe that the experience that was gained from this pilot project will greatly enhance our ability to work closely with our IT experts to develop a high performance FOIA system. The new FOIA system will enhance FERC's ability to more effectively and nimbly respond to citizens' FOIA requests so that FERC may maximize an already high level of compliance with the law.