

FEDERAL ENERGY REGULATORY COMMISSION

Leonard Tao
Chief FOIA Officer

CHIEF FOIA OFFICER REPORT



March 2013

I. Steps Taken to Apply the Presumption of Openness

Describe steps taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

ANSWER FOLLOWING QUESTIONS

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period? Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?

During FY2012 FERC conducted refresher training sessions for program offices. These sessions focused on proper interpretation of the scope of requests, and extending searches to include contractors and emails. All FERC Staff were encouraged to provide electronic versions of responsive material. FERC FOIA professionals also attended the National FOIA day seminar at the Newseum in March. FERC FOIA professionals attended the FOIA Annual report and Chief FOIA Officer report refresher sessions at the Department of Justice.

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

During FY2012 one full discretionary release and two partial discretionary releases were made to requesters.

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

Exemption 5.

4. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.

The discretionary releases that were made during FY2012 were internal material that could have been withheld pursuant to FOIA Exemption 5. These documents included staff memorandum and emails.

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

FERC personnel receive continuous training as to how to properly respond to FOIA requests in an effort to maximize compliance with the law.

We have increased our communication efforts to assist customers by providing guidance on how to access the vast amount of public information that is readily available on the FERC webpage and e-library. We believe that these efforts have resulted in reducing the total number of FOIA requests that were submitted in FY2012.

A comparison of the statistics in FERC's FY2011 and FY2012 Annual FOIA reports indicates that 28% of the requests in FY2012 were fully granted. This is a 12% increase in the number of requests that were fully granted in FY2011. In FY2012, 43% of requests were partially granted. This represents a 8% increase over the number of requests that were partially granted in FY2011. The Commission continues to strive towards being more transparent and making as many releases as possible. This includes our focused efforts to evaluate documents that contain Exemption 5 material and also take the age of the material into consideration when rendering a determination regarding the release of documents.

Breakdown of disclosures: full and partial grant

	PROCESSED	FULL	PARTIAL
FY2012	65	18 (28%)	28 (43%)
FY2011	92	15 (16%)	32 (35%)

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. During FY2012 additional IT experts were assigned to work directly with the FOIA professionals to develop a new FOIA tracking system, automate more of the FOIA processing functions.

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

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

3. Has your agency assessed whether adequate staff is being devoted to FOIA administration?

Yes, we have reviewed the overall functionality of the FOIA program and determined that we currently have adequate staffing to successfully carry out the necessary tasks in a timely manner. However, we will continue to monitor this situation and make adjustments as necessary.

4. Describe 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, streamlining consultations, eliminating redundancy, etc.

We have increased the level of direct interaction with program offices during the search process, which has resulted in more focused searches and appropriate responsive documents. E-mail notifications are sent to appropriate FOIA review team members to alert them of upcoming due dates. Weekly reports are reviewed to monitor the FOIA process. Staff reassignments are made as necessary to accommodate FOIA timelines that may conflict with other workload of Staff.

III. Steps Taken to Increase Proactive Disclosures

Describe steps taken to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures

1. Provide examples of materials that your agency has posted this year.

FERC continues to post documents of interest on the FERC webpage and E-library. Approximately 23,404 new issuances, such as orders, notices, rulemakings, etc, and 64,487 new submittals that include settlements, Applications, comments, etc. were added to the FERC e-library in FY2012.

News releases, statements, speeches, interviews, transcripts, special reports are readily available on the webpage. The webpage also provides a broad overview of FERC functions, as well as detailed information that is organized by specific industry/ and program areas. This includes brochures and tips to assist citizens, particularly landowners that may be directly affected by ongoing matters at FERC such a pipeline construction, eminent domain, etc. It also includes information about the neutral unit within FERC, Dispute Resolution Services, that provides mediation, facilitation, and training for parties engaged in or impacted by FERC- related disputes. Industry experts can also locate pertinent contact information on the webpage to obtain clarification and assistance with specific FERC forms to ensure that they are in full compliance and meet specified timeline requirements.

Special data sets were added to the FERC e-library that can be utilized by a variety of power system researchers, including

those who may be interested in the design of day ahead markets.

Appellate Briefs, Slip opinions and orders issued in FERC cases, as well as Commission decisions that are challenged in Federal courts are posted to the webpage.

The list below is sample of the types of material that has been posted to our webpage since October 1, 2011.

October 18, 2012

Items E-2 & E-3: FERC Proposes Enhancements to Reliability of Bulk Power System [News Release](#) | Commissioners' Statements: [Norris](#) and [LaFleur](#) | [E-2 NOPR](#)  | [E-3 NOPR](#) 

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

November 14, 2012

FERC Votes to Suspend JP Morgan Ventures Energy Corp.'s Market-Based Rate Authority [News Release](#) | [Decision](#) 

November 19, 2012

FERC Approves Market Manipulation Settlement with Gila River [News Release](#) | [Stipulation & Consent Agreement](#) 

December 7, 2012

FERC, Hawaii PUC Sign Agreement on Information Sharing [News Release](#) | [MOU](#) 

March 15, 2012 - Chairman Wellinghoff's statement on the New Enforcement Mechanism for Reliability Standards [Read More](#)

March 15, 2012 - Chairman Wellinghoff's statement on the Constellation Energy Commodities Group Investigation [Read More](#)

March 9, 2012 - FERC approves Settlement between Enforcement and Constellation Energy Commodities Group [Stipulation & Consent Agreement](#) 

[Mobil Pipe Line Company v. FERC](#) 

No. 11-1021 (D.C. Cir. April 17, 2012)

May 17, 2012 [2012 Summer Market and Reliability Assessment](#) 

[RM12-6-000 and RM12-7-000](#)  June 22, 2012 Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure (Notice of Proposed Rulemaking)

July 2, 2012 [RTO Unit Commitment Test System](#) 

August 29, 2012

FERC staff sends Fourteenth Report to Congress on progress made in licensing and constructing the Alaska Natural Gas Pipeline [Report](#) PDF

September 12, 2012 - Chairman Wellinghoff interview with Chris Newkumet on “Platts Energy Week” on September 9 part 2 [Transcript](#) PDF

September 20, 2012

Item E-24: FERC Initiates Proceeding into Actions by JP Morgan [News Release](#) | [Decision](#) PDF

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, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities on the site, creating mobile applications, providing explanatory material, etc.?

Yes.

3. If so, provide examples of such improvements.

FERC established an abbreviated method to allow individuals to submit ‘e-comments’ that can include up to 6,000 characters of text-only regarding Hydroelectric License/Re-license Proceedings, Pre-Filing Activity for Planned Natural Gas Projects, Applications for Authorization to Construct a Natural Gas Pipeline, Liquefied Natural Gas (LNG) or Other Facility (CP Dockets). All filings that do not meet the special e-comment criteria must be submitted via FERC’s regular e-filing process. Individuals may also express concerns and provide feedback

on FERC’s twitter and facebook applications. They also have the opportunity to interact with FERC staff face to face at scoping meetings that are often conducted in their communities.

4. 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>

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>

IV. Steps Taken to Greater Utilize Technology

Electronic receipt of FOIA requests:

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

Yes. FERC has the ability to receive FOIA requests electronically.

2. If your agency is decentralized, can FOIA requests be Made electronically to all components of your agency?

FERC is comprised of one FOIA component.

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

No.

4. If so, describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.

N/A

5. In particular, does your agency tracking system provide the requester with an estimated date of completion for his or her request?

Each requester is advised via email of the estimated completion date.

6. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability?

Yes, we expect to have the ability to carry out this function upon completion of the new FOIA tracking system. Currently, requesters can contact our FOIA office via email or telephone for a status update.

Use of technology to facilitate processing of requests:

7. 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.

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

As we continue our efforts to enhance our FOIA system and technology, this is an element that has been addressed. Preliminary discussions have included incorporating the utilization of Sharepoint for document sharing. This will also provide for an easier method to identify duplicate requests. Processing time will be reduced by utilizing correspondence templates and relying on new automated tracking and alert notifications for staff.

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

1. Refer to Section VII.A of your Annual FOIA Report for figures on FOIA Requests – Response Time for all Processed Requests.
 - a. Does your agency utilize a separate track for simple requests?

Yes.
 - b. If so, for your agency overall, for Fiscal Year 2012, what was the average number of days to process.

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 - 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? simple requests twenty working days or fewer?

N/A
2. Refer to Sections XII.D.(2) and XII.E.(2) of your Annual FOIA Report for figures on backlogged requests/appeals, and Sections VII.E and VI.C.(5) on the ten oldest pending requests/appeals.

- a. If your agency had a backlog of requests at the close of Fiscal Year 2012, did that backlog decrease as compared with Fiscal Year 2011?

No.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011?

No.

- c. In Fiscal Year 2012, did your agency close the Ten oldest requests that were pending as of the end of Fiscal Year 2011?

Yes.

- d. In fiscal year 2012, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2011?

N/A.

- 3. If you answered "no" to any question in "item 2," answer the following questions and 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 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?

Yes.

- d. What other causes, if any, contributed to the lack of a decrease in the request backlog?

N/A.

Administrative Appeal Backlog:

- a. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?

No.

- b. Was the lack of a reduction in the appeal backlog caused by a loss of staff ?

No.

- c. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received?

No

- d. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?

The Appeal was received near the end of FY2012 and was still being processed.

- 4. OIP issued guidance encouraging agencies to make

interim releases on requests that involve a voluminous amount of material or require searches in multiple locations. If your agency had a backlog in Fiscal Year 2012, provide an estimate of the number of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

FERC processed approximately five backlog requests that included providing several substantive interim responses. Some of examples of these responses are reflected below:

Example 1.	Initial response completed -	4/9/12
	Final response completed -	12/5/12
Example 2.	Initial response completed -	4/25/12
	Second response completed -	6/4/12
	Third response completed -	7/27/12
	Fourth response completed -	9/28/12
	Final response completed -	11/8/12
Example 3.	Initial response completed -	7/20/12
	Final response completed -	10/16/12
Example 4.	Initial response completed	9/24/12
	Final response completed	11/20/12

Answer the following questions concerning the use of the FOIA's statutory law enforcement exclusions, 5 U.S.C. 552(c)(1),(2), (3):

1. Did your agency invoke a statutory exclusion during Fiscal Year 2012?

No.

2. If so, what was the total number of times exclusions were invoked?

N/A

Describe 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 IT experts to identify the best system to meet the needs of our agency. We believe that the experience that was gained during this process will greatly enhance our ability 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.

