

FEDERAL ENERGY REGULATORY COMMISSION

Leonard Tao

Chief FOIA Officer

CHIEF FOIA OFFICER REPORT



March 2014

Section I: Steps Taken to Apply the Presumption of Openness

FOIA Training:

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

Yes.

2. If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.

During FY2013 FERC one refresher training class was provided to our program office that receives the highest volume of FOIA requests. This included approximately 200 staff members. This session focused on proper interpretation of the scope of requests and reiterated that searches should include emails and contractors, as necessary. Staff was advised to contact IT services for further guidance on conducting effective email searches. Staff was strongly encouraged to prioritize FOIA requests and provide responsive material in a timely manner to allow adequate time for analysis.

3. Did your FOIA professionals attend any FOIA training during the reporting period such as that provided by the Department of Justice?

FOIA professional attended Annual report and Chief FOIA Officer report refresher sessions at the Department of Justice.

4. Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period.

FERC has one full time FOIA professional

5. OIP has issued guidance that every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year. Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year.

FERC expects to develop a comprehensive training program that may include web based training.

Outreach:

6. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement.

No.

Discretionary Disclosures:

7. Does your agency have a formal process in place to review records for discretionary release? If so, please briefly describe this process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases.

FERC has established a policy that includes an additional review of material that may be withheld pursuant to exemption 5. Particularly, to identify instances when a partial release can be considered.

8. During the reporting period did your agency make any discretionary releases of otherwise exempt information?

Yes. Three partial discretionary releases were made in FY2013.

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

Exemption 5

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

During FY2013 FERC has made discretionary releases of email communications between FERC and cooperating agencies regarding older proceedings.

Another discretionary release included a large volume of staff data requests.

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

Other Initiatives:

12. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014.

No. During FY2013 FERC placed emphasis on finalizing a new FOIA tracker system. Therefore, some quarterly reports were not posted. The new FOIA tracker is now operational and will provide automated annual and quarterly reports.

13. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please provide links in your description.

A comparison of the statistics in FERC's FY2012 and FY2013 Annual FOIA reports indicates that 14% of the requests in FY2013 were fully granted. In FY2013, 30% of requests were partially granted. 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
FY2013	99	14 (14%)	30 (30%)
FY2012	65	18 (28%)	28 (43%)

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

Personnel:

1. Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series?

No.

2. If not, what proportion of personnel has been converted to the new job series?

None

3. If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted?

This matter is under review.

Processing Procedures:

4. For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Yes. FERC's average for adjudicating requests for expedited processing is 7.7 days.

5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.

No. FERC has consistently experienced a very low volume of consultations and referrals, therefore no additional processing measures have been developed.

Requester Services:

6. Do you use e-mail or other electronic means to communicate with requesters when feasible?

Yes. Most communications with requesters are conducted via email.

7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?

Yes. All appeal response letters advise requesters on mediation services at The Office of Government Information Services.

8. 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, eliminating redundancy, etc.

A considerable amount of time was spent during the development of the new tracker to create more efficiency to the FOIA program. These enhancements include automated calculations of due dates, reminders for staff of upcoming due dates, automated reminders every 20 days regarding rolling requests, immediate notification to requesters via email with the reference number and statutory due date for request. An electronic depository is now available for staff to store and easily share electronic material regarding FOIA requests. FERC will continue to review the FOIA program to identify new opportunities to create additional efficiency in the FOIA program.

Section III: Steps Taken to Increase Proactive Disclosures

Describe here the steps your agency has taken both 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 that have been made during this past reporting period (i.e., from March 2013 to March 2014). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

Posting Material:

1. Do your FOIA professionals have a system in place to identify records for proactive disclosures?

Yes.

2. If so, describe the system that is in place.

FOIA professionals routinely interact with pertinent staff members and monitor the FERC elibrary to identify specific subject matter, orders, reports and other material that should be prominently reflected on our webpage.

3. Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.

FERC Elibrary - <http://www.ferc.gov/docs-filing/elibrary.asp> The FERC elibrary includes an index of documents that have been filed at FERC or issued by FERC. Public documents can be viewed online.

The following material reflects some of the items that have been posted to the FERC webpage.

August 12, 2013 - Statement on Order Initiating Briefing Procedures on MISO Resource Adequacy Order [Read more](#)

July 30, 2013

FERC, JP Morgan Unit Agree to \$410 Million in Penalties, Disgorgement to Ratepayers [News Release](#) | Commissioners' Statements: [Clark](#) | [Stipulation and Consent Agreement](#) 

July 18, 2013

Item M-1: FERC Proposes to Remove Communications Barriers Between Gas Pipelines, Electric Utilities [News Release](#) | [NOPR](#) 

- » Visit our [Natural Gas - Electric Coordination](#) Section

July 16, 2013

FERC Orders \$453 Million in Penalties for Western Power Market Manipulation [News Release](#) | [Order Assessing Penalties](#) 



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May 16, 2013

Items E-1, E-2, & E-4: FERC Accepts ISO-NE, NTTG Order No. 1000 Compliance Filings, Requires Revisions [News Release](#) | Commissioners' Statements: [Moeller](#) and [Clark](#) | Decisions: [E-1](#) , [E-2](#)  and [E-4](#) 

October 17, 2013

Item E-9: FERC Directs Workshop on Filing of Reactive Power Service Rate Schedules [News Release](#) | [Decision](#) 

April 18, 2013

Item E-7: FERC Proposes to Adopt New Cyber Security Standards [News Release](#)
| Commissioners' Statements: [Norris](#) and [LaFleur](#) | [NOPR](#) 

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

March 21, 2013

Item E-5: FERC Approves Vegetation Management Rules to Improve Electric Reliability [News Release](#) | [Order No. 777](#) 

March 12, 2013

FERC, U.S. Coast Guard Sign Agreement to Coordinate Development of Hydrokinetic Projects [News Release](#)  | [MOU](#)

- FERC MAJOR ORDER/REGULATIONS: www.ferc.gov/legal/maj-ord-reg.asp
- FERC STAFF REPORTS/PAPERS: www.ferc.gov/legal/staff-reports.asp
- Market Oversight (includes frequently asked question/link to submit questions regarding market oversight): www.ferc.gov/market-oversight/feedback.asp
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Making Posted Material More Useful:

4. 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 posted material, improving search capabilities on the site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.?

Yes.

5. If so, provide examples of such improvements.

FERC is now using a new search engine that has greatly enhanced the customers experience on our webpage. Specifically, the new search engine includes the ability to gather material that may be in twitter and RS feeds.

6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized?

Yes. News releases, Twitter, Facebook and RSS feeds.

7. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.

No.

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

N/A

Section IV: Steps Taken to Greater Utilize Technology

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. Over the past several years agencies have reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2014, as we have done over the past years, the questions have been further refined and now also address different, more innovative aspects of technology use.

Online tracking of FOIA requests:

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

No. However, each requester is provided with contact information for the FOIA service center. Therefore, a status update can be obtained via email or telephone.

2. If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?

N/A

3. 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

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

No. However, the FERC tracker provides automated FOIA acceptance email for each new request. This notification provides the statutory date requirement for response letter.

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

Yes. The next phase of new tracker system will include an interactive FOIA log that will include status information.

Use of technology to facilitate processing of requests:

6. 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.

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

New tracker provides depository for electronic copies of FOIA requests. The next phase of tracker will include search capabilities. This will greatly enhance the overall efficiency of the FOIA program by providing a method to conduct a search of all requests to eliminate duplication of requests.

8. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program?

FERC will continue to review and identify the new technological tools that may further enhance the FOIA program.

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing 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, appeals, and consultations. *For the figures required in this Section, please use those contained in the specified sections of your agency's 2013 Annual FOIA Report and, when applicable, your agency's 2012 Annual FOIA Report.*

Simple Track Requests:

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

Yes.

Simple - These requests are identified as track 1.

Complex – These requests are identified as track 2 and 3.

- Track 2 . Requests for documents that are readily identifiable and require limited review.
- Track 3. Requests for documents that are complex and/or voluminous and require a significant search and/or review.

- b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?

No. The average number of processing days was 23.

- 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

Backlogs and “Ten Oldest” Requests, Appeals and Consultations:

2. 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. 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 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.

Backlogs

- a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012?

Yes.

Backlog requests:

2013 (3)

2012 (6)

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?

Yes.

Backlog administrative appeals:

2013 (0)

2012 (1)

Ten Oldest Requests

- c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?

No.

- d. 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 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed two of them, you should note that you closed two out of seven "oldest" requests.

Nine of the ten oldest requests were closed.

Ten Oldest Appeals

- e. In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?

Yes. FERC closed one out of one "oldest" appeals.

- f. If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C.(5) of your Fiscal Year 2012 Annual FOIA Report.

N/A

Ten Oldest Consultations

- g. In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012?

N/A. FERC had zero oldest consultations.

- h. If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report.

N/A

Reasons for Any Backlogs:

- 3. If you answered “no” to any of the questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:

Request and/or Appeal Backlog

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals?

No

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

No

- c. Was the lack of a reduction in the request and/or appeal 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 and/or appeal backlog?

“Ten oldest” Not Closed

- e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012.

The one open ten oldest request was not closed due to the subject matter and complexity of the request.

- f. If your agency was unable to close any of its ten oldest requests or appeals 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

Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:

Given the importance of these milestones, it is critical that Chief FOIA Officers assess the causes for not achieving success and create plans to address them.

4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2014.

FERC will work aggressively and focus necessary resources to successfully reach our goal of completing each of the ten oldest pending requests by the end of FY2014.

5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency’s plan for achieving backlog reduction in the year ahead.

N/A

Interim Responses:

OIP has issued guidance encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information.

6. Does your agency have a system in place to provide interim responses to requesters when appropriate?

Yes. FERC’s new tracker system provides an auto generated reminder every twenty days to provide an additional response or status update regarding rolling requests.

7. If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number or percentage 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 had one request that met this criteria.

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 2013?

No

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

N/A

Spotlight on Success

- FERC completed phase one of new FOIA tracking system.

The new FOIA tracker provides numerous features that will streamline FOIA processing. This includes automated features such as due date calculations, FOIA acceptance email sent to requesters, reminders sent to staff five days and one day before due date. Most importantly, the new system will automate required annual and quarterly reports.