

**2016 Chief FOIA Officer Report  
Federal Deposit Insurance Corporation  
Charles Yi, General Counsel and Chief FOIA Officer  
March 2015 - March 2016**

**Section I: Steps Taken to Apply the Presumption of Openness**

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's 2009 FOIA Guidelines is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working 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?

**Answer:** Yes. Members of the the FDIC's FOIA/Privacy Act Group attended the American Society of Access Professionals (ASAP) 8th National Training Conference and/or a West LegalEd Center webinar entitled *FOIA 101: Understanding the Freedom of Information Act*.

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

**Answer:** 100% of the FDIC's FOIA/Privacy Act Group professionals and staff attended substantive FOIA training during the reporting period.

3. OIP has directed agencies to "take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year." If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

**Answer:** N/A.

***Discretionary Releases:***

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

**Answer:** Yes. The FDIC makes discretionary disclosures of exempt records pursuant to 12 C.F.R. § 309.6 (“Part 309”), which provides that under appropriate circumstances, discretionary disclosures may be authorized by the Director of the FDIC division having primary authority over the exempt records in question, or by the Chairman, the Board of Directors, the General Counsel, or their designees.

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

**Answer:** Yes.

6. What exemption(s) would have covered the material released as a matter of discretion? For a discussion of the exemptions that allow for discretionary releases, please see OIP’s guidance on implementing the President’s and Attorney General’s 2009 FOIA Memoranda.

**Answer:** FOIA Exemption 2 covered the information that was released as a matter of discretion during the reporting year.

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.

**Answer:** The FDIC made discretionary releases of information concerning personnel retention agreements that could have been withheld under Exemption 2.

8. If your agency was not able to make any discretionary releases of information, please explain why. For example, you should note here if your agency did not have an opportunity to make discretionary disclosures because you provided full releases in response to all requests or the only exemptions that were applied were those that do not lend themselves to discretionary release (*i.e.* Exemptions 1, 3, 4, 6, 7A, 7B, 7C, 7F).

**Answer:** 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.

**Answer:** N/A.

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

The Attorney General’s 2009 FOIA Guidelines emphasized that “[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just

a presumption of disclosure, but also an effective system for responding to FOIA requests.” It is essential that agencies effectively manage their FOIA program.

Please answer the following questions to describe the steps your agency has taken to ensure that your management of your FOIA program is effective and efficient. You should also include any additional information that that describes your agency's efforts in this area.

***Processing Procedures:***

1. For Fiscal Year 2015, 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 2015 Annual FOIA Report.

**Answer:** The FDIC took an average of 8.49 days to adjudicate requests for expedited processing in Fiscal Year 2015.

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.

**Answer:** N/A.

3. On July 2, 2015, OIP issued new guidance to agencies on the proper procedures to be used in the event an agency has a reason to inquire whether a requester is still interested in the processing of his or her request. Please confirm here that to the extent your agency may have had occasion to send a "still interested" inquiry, it has done so in accordance with the new guidelines for doing so, including affording requesters thirty working days to respond.

**Answer:** The FDIC did not have occasion to send any “still interested” inquiries during the reporting period.

***Requester Services:***

4. Agency FOIA Requester Service Centers and FOIA Public Liaisons serve as the face and voice of an agency. In this capacity they provide a very important service for requesters, informing them about how the FOIA process works and providing specific details on the handling of their individual requests. The FOIA also calls on agency FOIA Requester Service Centers and FOIA Public Liaisons to assist requesters in resolving disputes. Please explain here any steps your agency has taken to strengthen these services to better inform requesters about their requests and to prevent or resolve FOIA disputes.

**Answer:** The FDIC regularly provides the link to the agency's Freedom of Information Act (FOIA) Service Center in its correspondence with requesters as well as contact information for FOIA/Privacy Act Group personnel. The FOIA Service Center includes dedicated telephone and facsimile numbers that requesters utilize to obtain information or

raise concerns about their requests. In addition, every page of the FDIC's public website contains a link to the FOIA Service Center. Lastly, the FOIA Service Center provides contact information for the FDIC's Ombudsman who has been designated as the FDIC's FOIA Public Liaison and serves as a supervisory official to whom FOIA requesters can also raise concerns about the service received from the FDIC on their requests.

***Other Initiatives:***

5. 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.

**Answer:** The FOIA Group produces regular reports which are used to monitor the processing of requests. In addition, the FOIA Group routinely reviews its automated FOIA system to ensure the proper processing of requests. Among other things, all FOIA correspondence and responsive records are now maintained electronically to improve efficiency. Also, FOIA staff is evaluated under a pay-for-performance system with regularly scheduled meetings to assess their FOIA skills and to maintain overall quality control.

### **Section III: Steps Taken to Increase Proactive Disclosures**

Both the President's and Attorney General's FOIA memoranda focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

***Posting Material:***

1. Describe your agency's process or system for identifying "frequently requested" records required to be posted online under Subsection (a)(2) of the FOIA. For example, does your agency monitor its FOIA logs or is there some other system in place to identify these records for posting.

**Answer:** When a FOIA request is received, the FDIC's FOIA/Privacy Act Group uses its FOIA processing software to identify previous requests for the same or similar records. If it is determined that multiple requests for records subject to disclosure under the FOIA have been received, the documents are deemed "frequently requested" and are posted on the FDIC's website or otherwise made available for public inspection and copying.

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

**Answer:** Yes. The FOIA Group routinely reviews FOIA requests to determine whether requested records should be posted on the FDIC's website as a proactive disclosure. The FOIA Group also utilizes its FOIA software to identify records that are of interest to the public by analyzing, for example, trends in the nature of requests.

3. When making proactive disclosures of records, are your agency's FOIA professionals involved in coding the records for Section 508 compliance or otherwise preparing them for posting? If so, provide an estimate of how much time is involved for each of your FOIA professionals and your agency overall.

**Answer:** No. The FDIC's FOIA professionals are not involved in coding records proactively disclosed for Section 508 compliance. However, records posted in the FDIC's FOIA Reading Room are Section 508 compliant.

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

**Answer:** No.

5. If so, please briefly explain those challenges.

**Answer:** N/A.

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

**Answer:** Information posted on the FDIC's website during the reporting period includes:

Quarterly Banking Profile:

First Quarter 2015 - <https://www5.fdic.gov/qbp/2015mar/qbp.pdf>

Second Quarter 2015 - <https://www5.fdic.gov/qbp/2015jun/qbp.pdf>

Third Quarter 2015 - <https://fdic.gov/bank/analytical/qbp/2015sep/qbp.pdf>

FDIC Consumer News:

Summer 2015 - <https://www.fdic.gov/consumers/consumer/news/csum15/index.html>

Supervisory Insights:

Summer 2015 -

<https://www.fdic.gov/regulations/examinations/supervisory/insights/sisum15/SISummer2015.pdf>

Chief Financial Officer's (CFO) Report to the Board:

Fourth Quarter 2014 -

[https://www.fdic.gov/about/strategic/corporate/cfo\\_report\\_4thqtr\\_14/](https://www.fdic.gov/about/strategic/corporate/cfo_report_4thqtr_14/)

First Quarter 2015 -

[https://www.fdic.gov/about/strategic/corporate/cfo\\_report\\_1stqtr\\_15/0315\\_cfo\\_report.pdf](https://www.fdic.gov/about/strategic/corporate/cfo_report_1stqtr_15/0315_cfo_report.pdf)

Documents considered at FDIC Board of Director's meetings:

April 21, 2015 - [https://www.fdic.gov/news/board/2015/2015-04-21\\_notice.html](https://www.fdic.gov/news/board/2015/2015-04-21_notice.html)

June 16, 2015 - [https://www.fdic.gov/news/board/2015/2015-06-16\\_notice.html](https://www.fdic.gov/news/board/2015/2015-06-16_notice.html)

October 22, 2015 - [https://www.fdic.gov/news/board/2015/2015-10-22\\_notice.html](https://www.fdic.gov/news/board/2015/2015-10-22_notice.html)

Chairman's Calendar:

First Quarter 2015 - [https://www.fdic.gov/about/freedom/Chairman\\_1Q-2015.pdf](https://www.fdic.gov/about/freedom/Chairman_1Q-2015.pdf)

Second Quarter 2015 - [https://www.fdic.gov/about/freedom/Chairman\\_2Q\\_2015.pdf](https://www.fdic.gov/about/freedom/Chairman_2Q_2015.pdf)

7. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe those efforts.

**Answer:** Yes. The FDIC often issues press releases to publicize or highlight releases of information. For example, the FDIC issues a press release to inform the public when it announces the list of orders of administrative enforcement actions taken against banks and individuals during the preceding month. Press releases issued during 2015 are available at <https://www.fdic.gov/news/news/press/2015/>.

#### **Other Initiatives:**

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

**Answer:** The FDIC continues to use its website, social media, webcasts, podcasts, and publications to proactively make information available to the general public. An email subscription service, RSS feeds, as well as the FDIC pages on Facebook and Twitter allow the public to receive many different alerts, including news releases, Financial Institution Letters, consumer updates, statistical publications and other information.

### **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.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that that describes your agency's efforts in this area.

***Making Material Posted Online More Usable:***

1. Beyond posting new material, is your agency taking steps to make the posted information more usable to the public, especially to the community of individuals who regularly access your agency's website?

**Answer:** Yes. The FDIC has taken steps to make information posted on its website more usable to the public.

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

**Answer:** The FDIC continues to utilize YouTube to make information available to the public. For example, during the reporting period it posted several videos on YouTube that were produced in conjunction with the Consumer Finance Protection Bureau to help teachers educate children to make smart financial decisions.

***Other Initiatives:***

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2015?

**Answer:** Yes. All four of the FDIC's quarterly FOIA reports for Fiscal Year 2015 were successfully posted online.

4. 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 2016.

**Answer:** N/A.

5. 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 are utilized by your agency to communicate with requesters?

**Answer:** Yes. The FDIC's preferred method of communication with requesters is e-mail. However, the FDIC can also communicate online with those requesters who submit their requests electronically through the FDIC's FOIA public access web portal.

6. 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.*

**Answer:** N/A.

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

The President's FOIA Memorandum and the Attorney General's 2009 FOIA Guidelines have emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report 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.

**Simple Track:** 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.

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

**Answer:** Yes.

2. If so, for your agency overall in Fiscal Year 2015, was the average number of days to process simple requests twenty working days or fewer?

**Answer:** The average number of days to process simple requests in Fiscal Year 2015 was 19.78 days.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2015 that were placed in your simple track.

**Answer:** 54% of the requests processed by the FDIC in Fiscal Year 2015 were simple requests. (329 of 606)

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?

**Answer:** N/A.

**Backlogs:** 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. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2014 and Fiscal Year 2015 when completing this section of your Chief FOIA Officer Report.

## BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

**Answer:** The FDIC had no backlog of requests at the close of Fiscal Year 2014. The backlog reported for Fiscal Year 2015 was 13 requests.

6. If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming requests.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

**Answer:** Of the 13 cases reports as backlogged at the end of Fiscal Year 2015, 10 were complex requests which required substantial time to locate and review responsive documents.

7. 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 2015.

**Answer:** Backlogged requests made up 2% of the total number of requests received by the FDIC in Fiscal Year 2015. (*13 of 630*)

## BACKLOGGED APPEALS

8. If your agency had a backlog of appeals at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

**Answer:** The FDIC had no backlog of appeals at the end of either Fiscal Year 2014 or Fiscal Year 2015.

9. If not, explain why and describe the causes that contributed to your agency not being able to reduce backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming appeals.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.

- Any other reasons – please briefly describe or provide examples when possible.

**Answer:** N/A.

10. 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 2015. If your agency did not receive any appeals in Fiscal Year 2015 and/or has no appeal backlog, please answer with “N/A.”

**Answer:** N/A.

***Status of Ten Oldest Requests, Appeals, and Consultations:*** 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 2014 and Fiscal Year 2015 when completing this section of your Chief FOIA Officer Report.

#### **TEN OLDEST REQUESTS**

11. In Fiscal Year 2015, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

**Answer:** Yes. All ten of the FDIC’s oldest requests from Fiscal Year 2014 were closed during the first quarter of Fiscal Year 2015.

12. 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 2014 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

**Answer:** N/A.

13. 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?

**Answer:** None of the FDIC’s ten oldest requests were withdrawn by the requester.

#### **TEN OLDEST APPEALS**

14. In Fiscal Year 2015, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

**Answer:** The FDIC had only two appeals pending at the end of Fiscal Year 2014. Both were closed during the first quarter of Fiscal Year 2015.

15. 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 2014 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

**Answer:** N/A.

## **TEN OLDEST CONSULTATIONS**

16. In Fiscal Year 2015, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

**Answer:** The FDIC had no consultations pending at the end of Fiscal Year 2014.

17. 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 2014 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

**Answer:** N/A.

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

18. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2014.

**Answer:** N/A.

19. 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.

**Answer:** N/A.

20. 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 2016.

**Answer:** N/A.

### **Use of FOIA's Law Enforcement "Exclusions"**

1. Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2015?

**Answer:** No. The FDIC did not invoke a statutory exclusion during Fiscal Year 2015.

2. If so, please provide the total number of times exclusions were invoked

**Answer:** N/A.