

**2014 Chief FOIA Officer Report
Federal Deposit Insurance Corporation
Richard J. Osterman, Jr., Acting Chief FOIA Officer
March 2013 - March 2014**

Section I: Steps Taken to Apply the Presumption of Openness

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

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working 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?

Answer: 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.

Answer: The FOIA/Privacy Act Group ("FOIA Group") hosted training on FOIA Exemptions 6, 7 and 8. This training was attended by 20 FDIC participants.

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

Answer: Yes. FDIC FOIA professionals attended the *FOIA and the Privacy Act* course sponsored by Graduate School USA in May 2013, the FOIA training conference hosted by the Consumer Financial Protection Bureau in August 2013, and the *FOIA Litigation Seminar* conducted by the Department of Justice in October 2013.

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

Answer: 100%

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.

Answer: The FDIC will offer core, substantive FOIA training to all of its FOIA professionals during 2014. All FDIC FOIA professionals will be required to attend at least one of the OIP courses offered during the year, such as the Director's Lecture Series.

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.

Answer: The FDIC does not engage in formal outreach because the FDIC FOIA requester community is relatively smaller and less discernable than it is for other larger agencies (such as the DOJ). However, the FDIC's FOIA professionals regularly reach out to requesters on an ad hoc basis in order to discuss the processing of their requests to ensure that requests are handled promptly and effectively.

Discretionary Disclosures:

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

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.

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 General Counsel, or their designees. The Chairman of the FDIC may also authorize such disclosure. In accordance with Part 309, both FDIC headquarters and Regional Offices make discretionary disclosures on a case-by-case basis in response to written requests received for exempt information.

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

Answer: Yes. The FDIC made discretionary disclosures of exempt documents in response to Part 309 requests during the reporting period.

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

Answer: FOIA exemptions that would have covered the information that was released as a matter of discretion include Exemptions 5.

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

Answer: The FDIC made discretionary releases of information contained in correspondence that could have been withheld under the deliberative process privilege.

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

Answer: N/A.

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.

Answer: Yes. All of the required quarterly FOIA reports for Fiscal Year 2013 have been posted in the FDIC's Freedom of Information Act (FOIA) Service Center at: <http://www.fdic.gov/about/freedom/reports.html>.

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.

Answer: As further described below in *Spotlight on Success*, the FDIC now posts professional liability settlement agreements on its website. See: <http://www.fdic.gov/about/freedom/plsa/>. Every effort is made to release as much information in the agreements as possible. In addition, the FDIC is taking further steps to ensure the presumption of openness by proactively posting many other records, such as those indicated below in Section III, paragraph 3.

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

As the Attorney General emphasized in his FOIA Guidelines, "[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.

Describe here the steps your agency has taken to ensure that your management of your FOIA program is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

Personnel:

During Sunshine Week 2012 OPM announced the creation of a new job series entitled the Government Information Series, to address the work performed by FOIA and Privacy Act professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

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

Answer: Yes.

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

Answer: N/A.

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

Answer: N/A.

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.

Answer: Yes. The FDIC maintained an average of 2.32 days to adjudicate requests for expedited processing in Fiscal Year 2013.

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.

Answer: No. Over the past three fiscal years, the FDIC has received on average fewer than 4 consultations and 21 referrals per year from other agencies. When it receives a consultation or referral of a FOIA request from another agency, the FDIC coordinates closely with that agency to ensure that the request is handled as efficiently and promptly as possible. Additional steps are not required at this time to improve efficiency given the low volume of consultations and referrals.

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

Answer: Yes. The FDIC utilizes e-mail to communicate with requesters.

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

Answer: No. The FDIC's Ombudsman has been designated as the FDIC's FOIA Public Liaison and is available to serve as a supervisory official to whom a FOIA requester can raise concerns about the service received from the FOIA/PA Group. The FDIC also has its own ADR program that is available to implement the full spectrum of ADR processes in internal and external conflict management.

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.

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 are 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 and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

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?

Answer: Yes.

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

Answer: The FOIA Group routinely reviews FOIA requests to determine whether requested records should be posted on the FDIC's website. 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. Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.

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

Documents considered at FDIC Board of Director's meetings –
<http://www.fdic.gov/news/news/financial/2013/fil13006a.html>
http://www.fdic.gov/news/board/2013/2013-10-08_notice.html
http://www.fdic.gov/news/board/2013/2013-09-10_notice.html
http://www.fdic.gov/news/board/2013/2013-08-28_notice.html
http://www.fdic.gov/news/board/2013/2013-07-09_notice.html
http://www.fdic.gov/news/board/2013/2013-06-04_notice.html
http://www.fdic.gov/news/board/2013/2013-04-11_notice.html

Summary of Deposits (SOD) - <http://www2.fdic.gov/sod/index.asp>

Chief Financial Officer's (CFO) Reports to the Board
http://www.fdic.gov/about/strategic/corporate/cfo_report_2ndqtr_13/index.html
http://www.fdic.gov/about/strategic/corporate/cfo_report_1stqtr_13/

FDIC Consumer News – Summer 2013 -
<http://www.fdic.gov/consumers/consumer/news/cnsum13/>

Quarterly Banking Profile - <http://www2.fdic.gov/qbp/>

Regulatory Capital Updates - <http://www.fdic.gov/regulations/capital/>

Public sections of the resolution plans submitted to the FDIC and Federal Reserve Board under Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act -
<http://www.fdic.gov/regulations/reform/resplans/>

Professional liability settlement agreements - <http://www.fdic.gov/about/freedom/plsa/>

Information related to the "Volcker Rule" -
<http://www.fdic.gov/regulations/reform/volcker/index.html>

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.?

Answer: Yes.

5. If so, provide examples of such improvements.

Answer: The FDIC provided a general overview of the Interim Final Rule on Regulatory Capital adopted by the FDIC in July 2013 by video on its website (<http://www.fdic.gov/regulations/capital/sessions.html>) and on YouTube (<http://www.youtube.com/watch?v=yrE-seNyXvI>).

The FDIC also instituted the Technical Assistance Video Program, a series of educational videos designed to provide useful information to bank directors, officers and employees on areas of supervisory focus and regulatory changes. The Program is available online at: <http://www.fdic.gov/regulations/resources/director/video.html>.

Open sessions of FDIC Board of Directors meetings may be viewed live online and recordings of these sessions are subsequently made available to the public. See: http://www.vodium.com/MediapodLibrary/index.asp?library=pn100472_fdic_boardmeetings&SessionArgs=0A1U0100000100000101

The FDIC has also established the *Money Smart Podcast Network*, which contains portable audio (MP3) versions of the FDIC's award-winning financial education series. See: <http://www.fdic.gov/consumers/consumer/moneysmart/audio/>

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

Answer: Yes. The FDIC employs a variety of social media tools to share information about the agency's activities and programs, including YouTube, Facebook and Twitter. For example, the FDIC's recently published list of banks examined for compliance with the Community Reinvestment Act (CRA) was highlighted on both Facebook and Twitter.

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.

Answer: No.

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

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, or the FDIC page on Facebook or Twitter allows the public to receive many different alerts, including news releases, Financial Institution Letters, consumer updates, statistical publications and others.

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?

Answer: Yes. A requester who submits a requests through the FDIC's FOIA public access web portal can track the status of his/her request electronically. Requesters who submit their requests by mail, facsimile, or e-mail can the status of their requests by calling the FDIC's Freedom of Information Act (FOIA) Service Center at (202) 898-7021 or by sending an e-mail to EFOIA@FDIC.gov.

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?

Answer: The FDIC's Freedom of Information Act (FOIA) Service Center provides a public access web portal where the status of a FOIA request filed through the portal may be obtained. The portal may be accessed at: <https://efoiarequest.fdic.gov/palMain.aspx>.

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.

Answer: The FDIC's FOIA public access web portal provides the tracking number, received date, estimated delivery date, and the current status for FOIA requests submitted through the portal.

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

Answer: Yes. The FDIC's FOIA public access web portal provides the estimated delivery date for FOIA requests submitted through the portal.

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.

Answer: N/A.

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?

Answer: Yes.

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

Answer: The FDIC continues to implement its new Records and Information Management (RIM) program providing for more efficient management of all types of paper and electronic records. Emails are being migrated to the email+ component of RIM, making emails that are responsive to FOIA requests easier to locate and retrieve. Search+, another component of RIM, is a search utility that will aid in the indexing, search, and retrieval of relevant Electronically Stored Information (ESI) across multiple document repositories.

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

Answer: Not at this time

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?

Answer: Yes.

- 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?

Answer: Yes. The average number of days to process simple requests was 9.89 days in Fiscal Year 2013.

- 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?

Answer: 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?

Answer: The FDIC had no backlog of requests at the close of Fiscal Year 2012 or at the close of Fiscal Year 2013.

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

Answer: Yes. The FDIC reported a backlog of one administrative appeal at the close of Fiscal Year 2012. There was no backlog of administrative appeals at the close of Fiscal Year 2013.

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?

Answer: Yes. The ten oldest requests that were pending as of the end of Fiscal Year 2012 were closed in either the 1st or 2nd Quarter of Fiscal Year 2013.

- 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.

Answer: N/A.

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?

Answer: Yes. The FDIC ended Fiscal Year 2012 with 6 pending administrative appeals. All of these pending administrative appeals were closed in Fiscal Year 2013.

- 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.

Answer: 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?

Answer: The FDIC ended Fiscal Year 2012 with no pending 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.

Answer: The FDIC ended Fiscal Year 2012 with no pending consultations.

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?

Answer: N/A.

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

Answer: N/A.

- 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?

Answer: N/A.

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

Answer: N/A.

“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.

Answer: N/A.

- 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.

Answer: 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.

Answer: N/A.

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.

Answer: 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?

Answer: Yes. The FDIC does make interim releases in response to FOIA requests that involve voluminous amounts of material or require searches in multiple locations.

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.

Answer: N/A. The FDIC did not have a backlog in Fiscal Year 2013.

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?

Answer: No. The FDIC did not invoke a statutory exclusion during Fiscal Year 2013.

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

Answer: N/A.

Spotlight on Success

Out of all the activities undertaken by your agency since March 2013 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency’s efforts. The success story can come from any one of the five key areas. As noted above, these agency success stories will be highlighted during Sunshine Week by OIP. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

Answer: During early March of 2013, the FDIC received several FOIA requests from major newspapers and TV stations seeking all of the settlement agreements entered into by the FDIC through its Professional Liability Unit, from 2008 to the present. Collecting all responsive agreements was a huge undertaking because it involved having to collect agreements from hundreds of lawsuits from dozens of in-house and outside counsel, and involving failed bank receiverships from nearly every state. In an effort to be proactive and to respond as quickly as possible to these FOIA requests, the FDIC began posting to its public website copies of all the executed agreements en masse, going back to 2008, from claims it had settled against individuals and entities who contributed to the failure of insured financial institutions. By the end of March 2013, nearly all agreements had been posted and by early April, all of the pending media requests were closed as full grants. To date, the FDIC has posted the terms and conditions of over 400 such “professional liability” settlement agreements and, as a direct result of the FDIC’s proactive postings, there have not been further FOIA requests from the media seeking professional liability settlement agreements from 2008 to the present. Additional agreements are continuously being published as they become available.