

**FEDERAL COMMUNICATIONS COMMISSION
FREEDOM OF INFORMATION ACT ANNUAL REPORT
FISCAL YEAR 2011
(October 1, 2010 to September 30, 2011)**

I. BASIC INFORMATION REGARDING REPORT

1. Name, title, address, and telephone number of person(s) to be contacted with questions about the Report.

Walter Boswell
Office of the Managing Director
Federal Communications Commission
Room 1-A105
445 12th Street, SW
Washington, DC 20554
Telephone No.: 202-418-0440
Fax No.: 202-418-0521
E-mail: walter.boswell@fcc.gov

2. Electronic address for Report on the agency Web site.

<http://www.fcc.gov/foia/#reports>

3. How to obtain a copy of the Report in paper form.

Paper copies can be requested from the person/address listed above.

II. How to Make a FOIA Request

1. Names, addresses, and telephone numbers of all individual agency components that receive FOIA requests.

All FOIA requests directed to the Federal Communications Commission must be sent to the Office of the Managing Director, Federal Communications Commission. You may fill out the Electronic FOIA (E-FOIA) Request Form on the FCC's FOIA homepage, www.fcc.gov/foia/; you may email your request to us at foia@fcc.gov; you may send your FOIA request by facsimile at 202-418-0521; or you may mail an original and two copies of your request to Managing Director, Attention: FOIA Officer, Federal Communications Commission, 445 12th Street, SW, Room 1-A834, Washington, DC 20554.

Administrative Appeal must be submitted to Austin Schlick, General Counsel, Office of General Counsel, Room 8-C750, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. The application for review and the envelope containing it should be

captioned “Review of Freedom of Information Action.” A copy must also be served on the person (if any) who originally submitted the materials at issue in the FOIA request to the Commission.

2. Brief description of why some requests are not granted and an overview of certain general categories of the agency’s records to which the FOIA exemptions apply.

Requests that are denied or partially denied usually fall under Exemptions 4, 5, 6 and/or 7. The type of information most often withheld involves materials that are related solely to trade secrets and other confidential business information (Exemption 4); deliberative process privileged information (Exemption 5); information deemed an unwarranted invasion of personal privacy (Exemption 6); and/or law enforcement-related records (Exemption 7).

III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

1. Agency-specific acronyms or terms used in this Report.

FCC – Federal Communications Commission.

2. Definitions of terms used in this Report:

- a. **Administrative Appeal** – a request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.
- b. **Average Number** – the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.
- c. **Backlog** – the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.
- d. **Component** – for agencies that process requests on a decentralized basis, a “component” is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests.
- e. **Consultation** – the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.

- f. **Exemption 3 Statute** – a federal statute that exempts information from disclosure and the agency relies on to withhold information under subsection (b)(3) of the FOIA.

- g. **FOIA Request** – a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a “third-party” request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., “first-party” requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act “systems of records” or where a Privacy Act exemption applies, and the agency looks to FOIA to afford greater access. All requests that required the agency to apply the FOIA in responding to the requester are included in this Report.

Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this Report.)

- h. **Full Grant** – an agency decision to disclose all records in full in response to a FOIA request.

- i. **Full Denial** – an agency decision not to release any records in response to a FOIA request because the records are exempt in their entireties under one or more of the FOIA exemptions or for a procedural reason, such as when no records could be located.

- j. **Median Number** – the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.

- k. **Multi-Track Processing** – a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Within each track, requests are processed on a first in/first out basis.
 - i. **Expedited Processing** – an agency will process a FOIA request on an expedited basis when a requester

satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.

- ii. **Simple Request** – a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.
 - iii. **Complex Request** – a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.
- l. **Partial Grant/Partial Denial** –an agency decision, in response to a FOIA request, to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.
 - m. **Pending Request or Pending Administrative Appeal** – a request or administrative appeal for which an agency has not taken final action in all respects.
 - n. **Perfected Request** – a request for records that reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.
 - o. **Processed Request or Processed Administrative Appeal** – a request or administrative appeal for which an agency has taken final action in all respects.
 - p. **Range in Number of Days** – the lowest and highest number of days required to process requests or administrative appeals.
 - q. **Time Limits** – the time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).
3. Concise descriptions of the nine FOIA exemptions:
- a. **Exemption 1:** classified national defense and foreign relations information;
 - b. **Exemption 2:** internal agency rules and practices;
 - c. **Exemption 3:** information that is prohibited from disclosure by another federal law;

- d. **Exemption 4:** trade secrets and other confidential business information;
- e. **Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges;
- f. **Exemption 6:** information involving matters of personal privacy;
- g. **Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- h. **Exemption 8:** information relating to the supervision of financial institutions;
- i. **Exemption 9:** geological information on wells.

IV. EXEMPTION 3 STATUTES

A. Exemption 3 Statutes Relied upon to Withhold Information

Statute	Type of Information Withheld	Case Citation	Total Number of Times Relied upon by Agency
5 U.S.C. app. § 107(a) (Ethics in Government Act of 1978)	Financial disclosure information pertaining to certain government employees.	<u>Meyerhoff v. EPA</u> , 958 F.2d 1498, 1500-02 (9 th Cir. 1992); <u>Concepcion v. FBI</u> , 606 F. Supp. 2d 14, 33 (D.D.C. 2009).	2
31 U.S.C. § 3729(c) (False Claims Act)	Records pertaining to financial false claims.	None -- never litigated.	1

V. FOIA REQUESTS

A. Received, Processed and Pending Requests

	Number of Requests Pending as of Start of Fiscal Year	Number of Requests Received in Fiscal Year	Number of Requests Processed in Fiscal Year	Number of Requests Pending as of End of Fiscal Year
AGENCY OVERALL – FCC	52 ¹	590	594	48 ²

¹ Twenty-nine of the 52 requests pending at the end of FY 2010 were filed in late August or in September 2010 and therefore were not backlogged.

² Twenty-nine of the 48 requests pending at the end of FY 2011 were filed in late August or in September 2011 and therefore were not backlogged.

B. (1) Disposition of FOIA Requests – All Processed Requests

	Number of Full Grants	Number of Partial Grants/ Partial Denials	Number of Full Denials Based on Exemptions	Number of Full Denials Based on Reasons Other than Exemptions									TOTAL
				No Records	All Records Referred to Another Component or Agency	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper FOIA Request for Other Reason	Not Agency Record	Duplicate Request	Other *Explain in chart below	
AGENCY OVERALL - FCC	169	147	20	77	2	72	13	74	2	18	0	0	594

B. (2) Disposition of FOIA Requests – “Other” Reasons for “Full Denials Based on Reasons Other than Exemptions” from Section V, B (1) Chart

Component	Description of “Other” Reasons for Denials from Chart B (1) & Number of Times Those Reasons Were Relied upon	TOTAL
Agency Overall – FCC	N/A	0

B. (3) Disposition of FOIA Requests – Number of Times Exemptions Applied³

	Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
AGENCY OVERALL – FCC	0	78	3	24	39	110	11	0	18	1	12	2	0	0

³ The number of times exemptions applied for FY-2010 and FY-2009 were underreported due to a reporting error in the database. The number of times exemptions applied for FY-2010 should have read: 0; 43; 2; 23; 33; 88; 15; 0; 21; 1; 15; 0; 0; 0; respectively. The number of times exemptions applied for FY-2009 should have read: 0; 62; 0; 32; 35; 86; 9; 0; 36; 0; 15; 0; 0; 0; respectively.

VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS

A. Received, Processed and Pending Administrative Appeals

Number of Appeals Pending as of Start of Fiscal Year	Number of Appeals Received in Fiscal Year	Number of Appeals Processed in Fiscal Year	Number of Appeals Pending as of End of Fiscal Year
13	17	17 ⁴	13 ⁵

B. Disposition of Administrative Appeals – All Processed Appeals

Number Affirmed on Appeal	Number Partially Affirmed & Partially Reversed/Remanded on Appeal	Number Completely Reversed/Remanded on Appeal	Number of Appeals Closed for Other Reasons	TOTAL
10	2	0	5 ⁶	17

⁴ The 17 processed appeals include 12 decisions addressing 14 appeals and three withdrawn appeals.

⁵ Although 13 appeals were pending at the end of FY 2011, four decisions disposing of six appeals were issued in October 2011. Thus, as of October 25, 2011, seven appeals remained pending.

⁶ Three were withdrawn, one was dismissed as late-filed, and one was dismissed as moot.

C. (1) Reasons for Denial on Appeal – Number of Times Exemptions Applied

Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
0	0	0	1	5	1	0	0	0	0	0	0	0	0

C. (2) Reasons for Denial on Appeal – Reasons Other than Exemptions

No Records	Records Referred at Initial Request Level	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper Request for Other Reasons	Not Agency Record	Duplicate Request or Appeal	Request in Litigation	Appeal Based Solely on Denial of Request for Expedited Processing	Other *Explain in chart below
0	0	3 ⁷	4	0	0	1	0	0	1	1

C. (3) Reasons for Denial on Appeal – “Other” Reasons from Section VI, C (2) Chart

Description of “Other” Reasons for Denial on Appeal from Chart C (2) & Number of Times Those Reasons Were Relied upon	TOTAL
Late-filed appeal	1

⁷The FCC does not consider withdrawn appeals to be denials.

C. (4) Response Time for Administrative Appeals

Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
328	307	17	509

C. (5) Ten Oldest Pending Administrative Appeals

	10 th Oldest Appeal	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Appeal
Date of Receipt of Ten Oldest Appeals	9/7/11	8/12/11	5/6/11	4/27/11	3/9/11	2/4/11	1/28/11	11/23/10	8/19/10	6/18/09
Number of Days Pending	17	34	102	109	145	166	171	215	281	588

VII. FOIA REQUESTS: RESPONSE TIME FOR PROCESSED AND PENDING REQUESTS

A. Processed Requests – Response Time for All Processed Perfected Requests⁸

	SIMPLE				COMPLEX				EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
AGENCY OVERALL – FCC	18	23.32	<1	495	0	0	0	0	0	0	0	0

⁸ All processed requests are reported.

B. Processed Requests – Response Time for Perfected Requests in Which Information Was Granted

	SIMPLE				COMPLEX				EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
AGENCY OVERALL – FCC	20	28.13	<1	495	0	0	0	0	0	0	0	0

C. Processed Requests – Response Time in Day Increments

Simple Requests

	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
AGENCY OVERALL – FCC	416	117	33	12	5	1	1	2	0	0	4	1	2	594

Complex Requests

	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
AGENCY OVERALL – FCC	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Requests Granted Expedited Processing

	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
AGENCY OVERALL - FCC	0	0	0	0	0	0	0	0	0	0	0	0	0	0

D. Pending Requests – All Pending Perfected Requests⁹

	SIMPLE			COMPLEX			EXPEDITED PROCESSING		
	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days
AGENCY OVERALL – FCC	48	20	123	0	0	0	0	0	0

⁹ All pending requests are reported. Twenty-nine of the 48 requests pending at the end of the FY-2011 were filed in late August or in September 2011 and therefore were not backlogged.

E. Pending Requests – Ten Oldest Pending Perfected Requests

Agency Overall – FCC	10th Oldest Request and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Request and Number of Days Pending
	12/7/10	12/2/10	9/30/10	7/13/10	3/24/10	12/14/09	11/18/09	5/29/09	3/4/09	4/17/07 ¹⁰
	206 days	209 days	251 days	308 days	387 days	459 days	477 days	600 days	662 days	1153 days

¹⁰ This request was closed after the end of the fiscal year.

VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER

A. Requests for Expedited Processing

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
AGENCY OVERALL – FCC	0	4	16	15.5	2

B. Requests for Fee Waiver

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
AGENCY OVERALL - FCC	2	4	10	10

IX. FOIA PERSONNEL AND COSTS

	PERSONNEL			COSTS		
	Number of “Full-Time FOIA Employees”	Number of “Equivalent Full-Time FOIA Employees”	Total Number of “Full-Time FOIA Staff” (The sum of Columns 1 & 2)	Processing Costs (At initial request and appeal levels)	Litigation- Related Costs	Total Costs
AGENCY OVERALL – FCC	2	15.80	17.80	\$2,212,990.11	\$87,400.41	\$2,300,390.52

X. FEES COLLECTED FOR PROCESSING REQUESTS

	Total Amount of Fees Collected	Percentage of Total Costs
AGENCY OVERALL – FCC	\$16,620.39	0.75%

XI. FOIA REGULATIONS

- The FCC’s FOIA regulations, 47 C.F.R. §§ 0.441 – 0.470, including the FOIA fee schedule, may be found at: <http://transition.fcc.gov/foia/cfr.html>

XII. BACKLOGS, CONSULTATIONS, AND COMPARISONS

A. Backlogs of FOIA Requests and Administrative Appeals

	Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
AGENCY OVERALL – FCC	19	9

B. Consultations on FOIA Requests – Received, Processed, and Pending Consultations

	Number of Consultations Received from Other Agencies that Were <u>Pending</u> at FCC Agency as of <u>Start</u> of the Fiscal Year	Number of Consultations <u>Received</u> from Other Agencies During the Fiscal Year	Number of Consultations Received from Other Agencies that Were <u>Processed</u> by FCC Agency During the Fiscal Year	Number of Consultations Received from Other Agencies that Were <u>Pending</u> at FCC Agency as of <u>End</u> of the Fiscal Year
AGENCY OVERALL – FCC	0	2	2	0

C. Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at the FCC

Agency Overall – FCC	10th Oldest Consultation and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Consultation and Number of Days Pending
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

D. Comparison of Numbers of Requests from Previous and Current Annual Report – Requests Received, Processed, and Backlogged

	NUMBER OF REQUESTS <u>RECEIVED</u>		NUMBER OF REQUESTS <u>PROCESSED</u>	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
AGENCY OVERALL – FCC	593	590	598	594

	Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report
AGENCY OVERALL – FCC	23	19

E. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report – Appeals Received, Processed, and Backlogged

	NUMBER OF APPEALS <u>RECEIVED</u>		NUMBER OF APPEALS <u>PROCESSED</u>	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
AGENCY OVERALL – FCC	21	17	16	17

Column 1

Column 2

	Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report
AGENCY OVERALL – FCC	11	9¹¹

F. Discussion of Other FOIA Activities:

¹¹ Of the nine appeals backlogged at the end of FY 2011, six were disposed of in four decisions issued in October 2011. Thus, as of October 25, 2011, three appeals remained pending.