

**2013 Chief FOIA Officer Report
of the
Federal Communications Commission
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March 2012 – March 2013**

The Federal Communications Commission (FCC) is an independent regulatory agency. It was established by the Communications Act of 1934 and is charged with regulating interstate and international communications by radio, wire, satellite and cable. It is directed by five Commissioners nominated by the President and confirmed by the United States Senate. The President designates one of the Commissioners as Chairman, who acts as the chief executive officer of the agency. The FCC is organized by function into seven operating Bureaus and ten Staff Offices. Implementation of the Freedom of Information Act (FOIA) is the responsibility of all FCC components, as FOIA requests are processed by the Bureau or Office that is the custodian of the records sought. The Commission's General Counsel has been designated as the FCC's Chief FOIA Officer.

The general reporting period for the Chief FOIA Officer Report is March 1, 2012 to February 28, 2013. The FCC conducted a review of its administration of the FOIA and analyzed the data from its [FOIA Annual Report from Fiscal Year 2012](#) (October 1, 2011 to September 30, 2012), supplemented by data gathered for the period October 1, 2012 through February 28, 2013. Highlights of this review and analysis are:

- There are fewer backlogged FOIA appeals at the end of this reporting period than there were at the end of the previous reporting period, and all ten of the oldest pending FOIA appeals were addressed during the reporting period.
- The backlog of complex initial FOIAs was reduced by more than 44% during the reporting period.
- Access to agency records continues to improve as a result of, among other measures, greater accessibility of information on the agency website.

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.

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

The FCC did conduct training covering FOIA administration during the reporting period.

2. *Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?*

The FCC's Office of General Counsel (OGC) legal staff, the FCC's FOIA Liaison, and other agency FOIA professionals attended programs and training conducted by the Department of Justice Office of Information Policy and the American University Washington College of Law's Collaboration on Government Secrecy.

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.

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

Yes.

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

5 U.S.C. § 552(b)(5).

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

The Commission released header information from internal emails.

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

When records have been determined to be exempt from disclosure under one or more FOIA exemptions, FCC FOIA processing staff then review these records in accordance with the guidance issued by DOJ/OIP concerning discretionary release. Because many of the agency's decisions to withhold all or part of a record are based on FOIA Exemption 4, 5 U.S.C. § 552(b)(4), and the Trade Secrets Act, 18 U.S.C. § 1905, however, the Commission

has little discretion to release the records. In addition, the Commission carefully balances personal privacy interests with the public interest in making determinations whether to redact personal information based on the personal privacy exemptions, 5 U.S.C. §§ 552(b)(6) and (7)(C). When records are withheld in full or in part based on Exemption 5, 5 U.S.C. § 552(b)(5), usually involving the deliberative process privilege, staff reviews them to determine whether there will be any foreseeable harm from the release of the record. Factors considered include the age of the record and the sensitivity of its content, the nature of the decision at issue, the status of the agency decision, and the personnel involved. For records withheld under the subsections of FOIA Exemption 7 other than subsection (7)(C) (personal information), staff reviews the records to ensure that the harm to law enforcement activities is not speculative or abstract. This type of review is performed at both the initial FOIA level and the appeal level.

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." This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support.

Describe here the steps your agency has taken to ensure that its system for responding to requests 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.

1. Do FOIA professionals within your agency have sufficient IT support?

Yes. The FCC's IT team works closely with the agency's FOIA professionals to ensure efficient, streamlined processing of FOIA requests. The IT team is kept apprised of the technology needs of the FOIA Office. The IT team also attends training conducted by DOJ/OIP to become aware of new innovations in FOIA processing technology that could improve the FCC's FOIA processes.

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

OGC and Office of Managing Director (OMD) FOIA staff meet with the FCC's Open Government team (including OMD's New Media group) to discuss methods for increasing proactive disclosures to reduce the need for filing a FOIA request for agency records. The staff also discusses ways in which the redesigned FCC website (launched in 2011) can be used to increase information available to the public.

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

OMD reviews FOIA staffing on an agency-wide basis in an effort to ensure sufficient resources to process all FOIA requests within the FOIA's statutory timeframes to the greatest degree possible. Starting in FY 2013, the Commission implemented a new unitary time code for all FOIA processing activities, to make it easier to determine if resources are being appropriately deployed.

4. *Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, streamlining consultations, eliminating redundancy, etc.*

The FOIA Office in OMD assigns for response initial FOIA requests (usually within one day of receipt) to the FCC's Bureaus and Offices that are the custodians of the records sought. The FOIA Liaison, who leads the FOIA Office, also issues weekly reports listing the new FOIA requests filed with the agency, the Bureau or Office assigned to the request, and the due date for responding to the request. The FOIA Office issues alerts to the Bureaus or Offices processing the initial requests to ensure due dates are met to the greatest extent possible, or statutorily permissible or agreed-upon extensions are obtained. Also, the agency continues to distribute to FOIA processing staff advanced software to help fulfill the agency's segregation and redaction duties under the FOIA.

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 2012 to March 2013). 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.

1. *Provide examples of material that your agency has posted this past year.*

- ***TV Station Profiles and Public Inspection File (Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations).*** The Commission amended its 40 year-old public inspection file rules so that documents, many of which were previously available only at the offices of television stations, are now online for the first time on an FCC-hosted website. The public file contains a variety of information about each station's operations and service to its community of license, including information about political time sold or given away by each station, quarterly lists of the most significant programs each station aired concerning issues of importance to its community, data on ownership of each station and active applications each station has filed with the Commission. These files contain over 550,000 public disclosure documents (about half of which have not been online previously) and are available at <https://stations.fcc.gov>.
- ***Low Power FM (LPFM) Channel Finder.*** The Low Power FM (LPFM) Channel Finder search tool was launched in 2012 and provides potential applicants with a simple means to tentatively identify FM broadcast frequencies potentially available in their communities. The LPFM Channel Finder is available at <http://www.fcc.gov/encyclopedia/low-power-fm-lpfm-channel-finder>.
- ***LEARN Website.*** The Middle Class Tax Relief and Job Creation Act of 2012 (the Spectrum Act) provided for an incentive auction for the voluntary reallocation of certain broadcast spectrum for the provision of mobile broadband and other innovative services. In January, 2013, the FCC launched a new LEARN (Learn Everything About Reverse-Auctions Now) site with enhanced online resources as a one-stop information resource for incentive auction stakeholders, particularly the nation's broadcasters. The new LEARN site provides easy access to a range of information intended to help broadcasters and other stakeholders make more informed business decisions about participating in the incentive auction, which the FCC anticipates holding in 2014. The LEARN Website is available at <http://wireless.fcc.gov/incentiveauctions/learn-program/index.html>.
- ***Bill Shock.*** Bill shock is a sudden and unexpected increase in a mobile wireless user's monthly bill that is not caused by a change in service plans. In April 2012, the Commission launched a "bill shock" website, an online tool to help consumers track implementation of recent

commitments by wireless carriers to provide usage alerts before and after consumers exceed their wireless plan limits. The FCC's Bill Shock Alert page features a dynamic table for tracking carrier compliance with specific usage alerts. The table is available via RSS and JSON feeds, allowing it to update in real time when featured on third-party websites. The Bill Shock website is available at <http://www.fcc.gov/bill-shock-alerts>.

- **Smartphone Security Checker.** In an effort to assist the more than 120 million American smartphone owners, the FCC on December 17, 2012, launched the Smartphone Security Checker, an online tool to protect against mobile security threats. The Smartphone Security Checker is available at <http://www.fcc.gov/smartphone-security>.
 - **Consumer Publications Library:** Beginning in September 2012, bureaus and offices throughout the FCC participated in a comprehensive review of approximately 200 online consumer guides to ensure all of the information contained was current. The online guides also serve as master documents for the Commission's consumer call center. The project is nearing completion. The Consumer Publications Library is available at <http://www.fcc.gov/encyclopedia/consumer-publications-library>.
 - **Section 43.61 API.** Section 43.61 of the Commission's rules, 47 C.F.R. § 43.61, requires that each common carrier engaged in providing international telecommunications service between the continental United States, Alaska, Hawaii, and off-shore U.S. points and any country or point outside that area file a report with the Commission. The reporting requirements include information on actual traffic and revenue data for each service provided by the carrier, divided among service billed in the United States, service billed outside the United States, and service transiting the United States. Historically, the FCC has provided non-confidential data as a series of spreadsheet reports for the public to review. In 2012, the FCC began providing the data through several APIs as .xml outputs. The Section 43.61 API is available at <http://www.fcc.gov/developers/section-4361-api>.
2. ***Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of the posted material, improving***

search capabilities on the site, creating mobile applications, providing explanatory material, etc.?

Yes.

3. If so, provide examples of such improvements.

- ***Maps.*** In the past year, we have developed a process to publish new interactive mapping for public consumption. These maps are individually tailored to specific policy decisions the FCC has made and help in delivering the same content to the public in new and more effective ways. The full set of maps can be found at <http://www.fcc.gov/maps>. The efforts are agency-wide and include communicating outcomes of the Low Power FM rules, Connect America Fund, the Mobile Connect America Fund, Auctions, Pirate Radio Actions, Congressional Reports such as the 706 Report on the Status of Effective Broadband Deployment nationwide, the Rural Health Care Pilot program of the Universal Service Fund, and 800 MHz policy changes. Our maps are very popular and are often republished in major news outlets as they are easily ported to other web pages without additional technology or investment.
- ***Virtual Workshop.*** To provide additional opportunities for all affected stakeholders and interested parties to provide input on the Connect America Fund (part of the Commission's Universal Service reform agenda), the FCC is soliciting input on the Connect America Cost Model through a "virtual workshop." The workshop is comprised of online discussion forums hosted on the FCC's website where Commission staff and members of the public can share information and ideas on multiple related topics in near real-time, while weighing the advantages and disadvantages of different approaches for meeting the goals established in a Commission Order. The virtual workshop allows the Commission to capture the best of real-time workshops – interactive discussion that highlights areas of agreement and provides a forum for discussion on areas where consensus may be harder to reach – while at the same time giving participants the time to fully consider and develop their advocacy. In addition, the virtual workshop allows those who might not be able to join an in-person workshop to contribute to the conversation, thereby enhancing participation from all stakeholders. The Virtual Workshop website is available at <http://www.fcc.gov/blog/wcb-cost-model-virtual-workshop-2012>.

- ***Demonstration of Antenna Structure Registration System Changes.*** The FCC provided a live online video demonstration of the changes to the Antenna Structure Registration (ASR) system, including guidance on the environmental notification process and changes in the forms and process for members of the public to file requests for environmental review. An on-demand recording of the demonstration and discussion was made available on the FCC website as part of the permanent set of reference tools the public can use to help them better navigate the ASR process. The ASR Demonstration website is available at <http://www.fcc.gov/events/demonstration-changes-antenna-structure-registration-asr-system>.

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

- ***Strengthened Social Media Presence.*** Starting in 2009, the Commission launched efforts to connect to the public and stakeholders through the most popular current social media technologies in order to keep them informed about FCC events and issues with which the agency is engaged. These include an account at Twitter, a page on Facebook, and a channel at YouTube through which users can view video of past Commission events such as Open Meetings. The Commission increased its social media presence in the following ways:
 - **Facebook:** In March, 2012, the FCC averaged 4,924 weekly users and had 9,142 lifetime “likes.” Currently, the FCC has 6,292 weekly users and 11,486 lifetime “likes.”
 - **Twitter:** In March, 2012, the FCC had 477,813 followers and 1,799 total tweets; currently, the FCC has 524,922 followers, and 2894 tweets.
 - **Blogposts:** The FCC has posted 412 blog entries on fcc.gov. The number of blogposts has increased by 15% since March 2012.
 - **YouTube:** The FCC’s presence has grown 17% in the last year. In March, 2012, the FCC had 317 videos on YouTube, and currently has 380 videos, 247,000 total views, and 760 subscribers.
- ***Smartphone Security Twitter Chat.*** In order to increase the visibility of FCC's new online tool for securing smartphones, the Commission held an interactive chat session on Twitter with experts from the FCC, private sector,

and other government agencies. See <http://www.fcc.gov/events/smartphone-security-twitter-chat-info-dec-18-2012-1-2-pm-et10-am-11-am-pt>. The Smartphone Security Checker is available at <http://www.fcc.gov/smartphone-security>. The transcript of Chat is available at <http://www.staysafeonline.org/blog/chatstc-smartphone-safety-twitter-chat-transcript>.

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. In 2010 and 2011, agencies reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2013, as we did in 2012, the questions have been further refined and now also address different, more innovative aspects of technology use.

Electronic receipt of FOIA requests:

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

Yes, either by email to FOIA@FCC.gov, or by electronic on-line form at <http://transition.fcc.gov/foia/#reqform>.

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

The FCC is a small agency that in FY 2012 received approximately 500 initial FOIA requests, and in the first five months of FY 2013 received 200 FOIA requests. The FOIA requests are assigned by a central FOIA Office and distributed electronically to the Bureau or Office that is the custodian of records responsive to each request.

Online tracking of FOIA requests:

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

No.

4. *If so, describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such*

as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.

Not applicable.

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

Not applicable. However, the acknowledgment sent to the FOIA requester contains the estimated date of response. In FY 2012, the FCC responded to 83% of FOIA requests within the statutory deadline or by an extension agreed to by the requester.

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

The FCC is enhancing its presently internal automated system for tracking and processing FOIA requests to provide FOIA requesters with the ability to track the status of their requests through a search capability based on a tracking number provided to them. The FCC is also reviewing possible use of the new FOIAOnline.regulations.gov portal which would allow for enhanced filing, tracking, and release of records capabilities.

Use of technology to facilitate processing of requests:

7. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

Yes.

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

The FCC's IT team is assessing ways it can better utilize technology the agency already owns or licenses to improve record search capabilities. A shared drive has long been used to enable FCC staff to retrieve and review records gathered for FOIA responses. Extending the shared drive concept to use by other Federal agencies is not warranted because the FCC receives very few consultation or referral requests and because the shared drive exists within the FCC's security firewall.

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

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. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.

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

Yes. During the reporting period we adopted a separate track for processing more complex requests.

2. If so, for your agency overall, for Fiscal Year 2012, was the average number of days to process simple requests twenty working days or fewer?

Perfect simple requests in FY 2012 were processed on average in 26 days, which is within the time permitted by statute considering authorized extensions of time. As noted previously, during this time period, the FCC responded to 83% of FOIA requests within the statutory deadline or an extension agreed to by the requester.

3. 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?

Not applicable.

Sections XII.D.(2) and XII.E.(2) of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report - Backlogged Requests/Appeals," show the numbers of any backlog of pending requests or pending appeals from Fiscal Year 2012 as compared to Fiscal

Year 2011. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition, Section VII.E, entitled “Pending Requests – Ten Oldest Pending Requests,” and Section VI.C.(5), entitled “Ten Oldest Pending Administrative Appeals,” from both Fiscal Year 2011 and Fiscal Year 2012 should be used for this section.

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

No. The backlog increased from 19 in FY 2011 to 38 in FY 2012. The backlog of complex initial FOIAs, however, dropped more than 44% during the first five months of FY 2013.

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

The number was the same, but during FY 2012 the FCC processed 33% more FOIA appeals. Three backlogged appeals were disposed of shortly after the closing of the FOIA Annual Report reporting period, at which point the backlog decreased. We further note that the FCC has had great success in reducing the backlog of FOIA appeals. During FY 2012 the Commission completed work on all of its 10 oldest FOIA appeals. Our track record of success continues in the first 5 months of FY 2013 (October 2012 through February 2013) – during that time the Commission has released six more FOIA appeal decisions. As of February 28, 2013, only five FOIA requesters have appeals pending at the FCC, none of which has been pending more than 8 months.

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

Seven of the ten oldest requests from the end of FY 2011 were closed by the end of FY 2012.

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

Yes.

If you answered “no” to any of the above questions, describe why that has occurred. In doing so, answer the following questions, then include any additional explanation.

Request Backlog:

- 1. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?***

No.

2. Was the lack of a reduction in the request backlog caused by a loss of staff?

The reduction in FOIA staff from 17.80 FTEs to 14.66 FTEs contributed to the increased backlog of initial FOIA requests.

3. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?

Yes.

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

Most of the Commission's staff that handle and approve FOIA responses also have demanding non-FOIA responsibilities.

Administrative Appeal Backlog:

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

The backlog of administrative appeals was the same at the end of FY 2012 as it had been at the end of FY 2011, but has decreased through the date of this report. The lack of reduction was due in part to a slight increase in the number of incoming appeals.

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

No.

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

No.

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

Substantial FOIA resources were devoted to several complex initial FOIAs.

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. If your agency had a backlog in Fiscal Year 2012, please provide an estimate of the number of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

Of the 38 requests in the backlog at the end of Fiscal Year 2012, substantive interim responses were provided in five cases during the fiscal year.

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 2012?**

No.

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

Not applicable.

Spotlight on Success

Out of all the activities undertaken by your agency since March 2012 to increase transparency and improve FOIA administration, describe here 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.

One success story in 2012 has been the modernizing of the 40 year-old public inspection file rules, which, for the first time, placed over 550,000 public disclosure documents associated with TV Stations into one easy to use portal. Over 250,000 of these documents have not been available anywhere online previously. These files, along with key information about the stations, can be accessed through a web service API and RSS feeds. The information in these files has been used for numerous articles, as well as web and mobile applications developed by third parties.