



**2011 Report of the
Chief FOIA Officer
of the
Federal Communications Commission**

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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, television, 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 FCC's FOIA program is successfully applying the statutory presumption of openness through an effective system for responding to FOIA requests. In addition, the FCC is committed to increasing openness and transparency and to being a model of excellence in government. The Commission has taken substantial steps to make itself a more open and transparent organization. It has put in place mechanisms to allow citizens, the communications industry, and other constituents to learn about the FCC and increase public participation. Access to agency records will be further improved through, among other measures, the planned upgrade of the FCC's website in Spring 2011 to improve navigation, search capabilities, and accessibility of information.

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.

- 1. 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.**
 - a. Describe how the President's FOIA Memorandum and the Attorney General's FOIA Guidelines have been publicized throughout your agency.**

The [President's FOIA Memorandum](#), the [Attorney General's FOIA Guidelines](#), and the [Department of Justice Office of Information Policy \(DOJ/OIP\)](#) guidance have been distributed to all Bureau and Office heads and all staff involved in processing FOIA requests throughout the FCC. In addition, staff was notified of the [Memorandum on the Freedom of Information Act](#) issued this past year by former White House Chief of Staff Rahm Emanuel and White House Counsel Robert Bauer.

b. What training has been attended and/or conducted on the new FOIA Guidelines?

The FCC Office of General Counsel (OGC) conducted training available to all Commission staff concerning the presumption of openness embodied in the President's FOIA and Open Government Memoranda, the Attorney General's FOIA Memorandum, and the Department of Justice Office of Information Policy's FOIA Guidance.

The FCC's [FOIA Liaison](#) and OGC legal counsel to the FCC's FOIA program attended DOJ/OIP training in 2010 (Best Practices Working Group; Conference for Chief FOIA Officers and FOIA Professionals; and Refresher Training for Agency Annual FOIA Reports). OGC legal staff also attended two programs conducted by the American University Washington College of Law (*Transparency in the Obama Administration – A First Year Assessment*, and *The Third Annual Freedom of Information Day Celebration*). Finally, several FCC FOIA processing staff attended DOJ and other FOIA training courses.

c. How has your agency created or modified your internal guidance to reflect the presumption of openness?

When an initial FOIA request is circulated to the Bureau or Office that is custodian of the records sought, a reminder is included that if records are to be withheld, consideration should be given to releasing the records as a matter of discretion. In addition, as a matter of practice, when the Commission considers appeals (called "applications for review") of initial FOIA decisions, it examines whether a discretionary release of records should occur. *See, e.g., IBM Corporation*, FOIA Control No. 2008-048, FCC 10-138 at *5 and nn.55-56 (Aug. 3, 2010); *David A. Larson*, FOIA Control No. 2009-555, FCC 10-139 at *3 and nn. 18-19 (Aug. 3, 2010); *Council Tree Investors, Inc.*, FOIA Control No. 2009-413, FCC 10-136 at *2 and n.19 (Aug. 2, 2010); *Association for Maximum Service Television, Inc.*, FOIA Control No. 2009-048, FCC 10-140 at *4 and n.44 (Aug. 2, 2010). These Commission-level decisions are used as guidance by all FCC FOIA processing staff.

d. To what extent has your agency made discretionary releases of otherwise exempt information?

The FCC strives to make discretionary releases of records or partial releases when full disclosure is not possible. The Bureaus and Offices closely review all records located in response to a FOIA request to determine if the records contain any purely factual portions and if so, they release such portions after the records are reviewed to redact any personally private information, consistent with FOIA Exemptions 6 and 7(C), 5 U.S.C. § 552(b)(6) and (7)(C), and confidential commercial information, consistent with FOIA Exemption 4, 5 U.S.C. § 552(b)(4) and the Trade Secrets Act, 18 U.S.C. § 1905. As a result of this careful review, the FCC makes partial grants in at least eight times as many cases as it makes full denials. *See Table 1 below.*

Table 1						
Responses to Initial FOIA Requests*						
	FY 2009		FY 2010		FY 2011 (processed through Feb. 28, 2011)	
Total Number Of FOIA Requests Processed	659		598		200	
Number of FOIA Requests Addressed on the Merits	355		326		99	
Number of FOIA Requests Fully Granted	207	58.3%	188	57.6%	57	57.5%
Number of FOIA Requests Granted in Part	127	35.9%	123	37.7%		40.4%
Total FOIA Requests Granted in Full or in Part	334	94.2%	311	95.3%	97	97.9%
Number of FOIA Requests Denied in Full	21	5.8%	15	4.6%	2	2.0%
Number of FOIA Requests Disposed of for Other Reasons (<i>e.g.</i> , request withdrawn, no records, not FCC records, fee issues)	304		272		101	

*Percentages are based on decisions on the merits (*i.e.*, those granted or denied in whole or in part).

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

Discretionary releases most often occur with deliberative process material that could be withheld under Exemption 5, or with law enforcement records that might be withheld under Exemption 7(A).

f. How does your agency review records to determine whether discretionary releases are possible?

When records have been determined to be appropriately withheld under one or more FOIA exemptions, FCC FOIA processing staff then reviews these records in accordance with the [guidance issued by DOJ/OIP concerning discretionary release](#). Because many of the decisions to withhold all or part of a record are based on FOIA Exemptions 4, 6, and 7(C), 5 U.S.C. § 552(b)(4), (6), and 7(C), the Commission has little discretion to release the records. When records are withheld in full or in part based on Exemption 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 (C), staff reviews the records to ensure that the harm to law enforcement activities is not speculative or abstract.

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

The Commission's initiatives are described above.

2. Report the extent to which the numbers of requests where records have been released in full and the numbers of requests where records have been released in part has changed from those numbers as reported in your previous year's Annual FOIA Report.

See Table 1, *supra*.

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.”

Describe here the steps your agency has taken to ensure that your system for responding to requests is effective and efficient. 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. 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.

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

The Commission has an efficient, streamlined system for responding to FOIA requests it receives. As a result, the FCC responds to the vast majority of FOIA requests it receives within the statutory 20 working day period (or within the additional 10 working day extension permitted by the FOIA). To the extent the FCC has taken longer than the statutory time frames, the additional time generally has been necessary to resolve fee or confidentiality issues as permitted by the statute. In addition, resolution of the Commission's three oldest outstanding FOIA requests awaits the results of pending Supreme Court litigation.

Table 2			
Response Time for FCC Initial FOIA Requests (Business Days)			
	FY 2009	FY 2010	FY 2011 (through Feb 28, 2011)
Median	20	15	17
Average	32.62	23.72	31.17*
Lowest	1	1	<1
Highest	492	744	495

The Commission relies on its IT staff to provide the technology needed to efficiently process FOIA requests. The adequacy of this support is demonstrated by the Commission's prompt and timely processing of the vast majority of the FOIA requests it receives.

b. Describe how your agency's FOIA professionals interact with your Open Government Team.

Both OGC staff and the Office of Managing Director (OMD) FOIA staff meet regularly with the New Media staff of OMD 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 forthcoming redesigned FCC website can be used to process FOIA requests and increase information available to the public at large.

c. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to responding to FOIA requests.

OMD reviews FOIA staffing on an ongoing basis to address the response time for processing initial FOIA requests. Table 2, *supra*, indicates our success in timely processing of requests for FY 2009, FY 2010, and FY 2011 to February 28, 2011. The total number of FOIA staff for FY 2009 and FY 2010 was 16 and 18.48, respectively, indicating that the Commission increased FOIA processing staffing as part of its efforts to facilitate timely FOIA processing. See Table 3 below for details of FOIA staffing at the FCC:

Table 3			
Fiscal Year	No. of "Full time FOIA Employees"	No. of "Equivalent Full-Time FOIA Employees"	Total No. of "Full-Time FOIA Staff"
FY-2009	3	13	16
FY-2010	3	15.48	18.48

- d. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.**

The FCC is increasing the use of redaction software (Adobe 9 and Microsoft® Office Word 2003 Redaction Add-in) to mark redacted portions of records and note at the specific point on the document the FOIA exemption that is the basis for the redaction. In addition, to provide models for FOIA processing staff, responses to initial FOIA requests are posted to the Commission’s Intranet FOIA portal.

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 to increase the amount of material that is available on your agency website, including providing examples of proactive disclosures that have been made since issuance of the new FOIA Guidelines. In doing so, answer the questions listed below and describe any additional steps taken by your agency to make proactive disclosures of information.

- a. Has your agency added new material to your agency website since last year?**

Yes.

- b. What types of records have been posted?**

Since the last Chief FOIA Officer Report, the FCC had added a large number of records to its [website](#). Table 4 demonstrates the increase in pages posted to FCC websites.

Table 4.			
Increase in Pages of FCC Web Content*			
	Calendar Year		
	2008	2009	2010
Broadband Web Content	0	824	677
DTV Web Content	0	2,280	6
Web Content	42,455	62,474	86,584
Mobile Web Content	0	3	54
OpenInternet	0	416	418
Wireless Web Content	0	1	12,992
Total Pages	42,455	65,997	87,739

c. Give examples of the types of records your agency now posts that used to be available only by making a FOIA request for them.

Since September 2009 the Commission's [Office of Legislative Affairs](#) has posted congressional response letters that previously were obtained through FOIA requests. The Commission also released the [raw data files](#) that were the basis for "Broadband Adoption and Use in America" working paper.

d. What system do you have in place to routinely identify records that are appropriate for posting?

The FOIA staff of OMD has revised the form that accompanies initial FOIA processing to allow staff to indicate whether the records released are either frequently requested records requiring posting under 5 U.S.C. § 552(a)(2)(D), or otherwise should be posted to the Internet.

e. How do you utilize social media in disseminating information?

The FCC is at the forefront of Federal use of social media to both inform the public and provide access to agency records and information. In addition to [agency blogs](#), [Facebook](#), [Twitter](#), [YouTube](#), [MySpace](#), [Flickr](#), [Scribd](#), [SourceForge](#), and [Ideascale](#), the Commission uses 334 social media websites to enable the public to easily disseminate records and website updates from the Commission's website. The agency also uses web video to present insights into the official work of the Commission, including web videos, tutorials, behind-the-scene pieces, and posting of recorded videos of public events.

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

The Commission's initiatives are described above.

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 agencies reported widespread use of technology in handling FOIA requests. For this section of your Chief FOIA Officer Report for 2011, please answer the following more targeted questions:

1. Electronic receipt of FOIA requests:

a. What proportion of the components within your agency which receive FOIA requests have the capability to receive such requests electronically?

The FCC does not have separate components for purposes of FOIA processing. The FCC can receive 100% of FOIA requests electronically.

b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

N/A

c. What methods does your agency use to receive requests electronically?

FOIA requests may be filed via the [Internet](#), fax (202-418-0521), or email (to FOIA@fcc.gov).

2. Electronic tracking of FOIA requests:

a. What proportion of components within your agency which receive FOIA requests have the capability to track such requests electronically?

The FCC does not have separate components for purposes of FOIA processing. The FCC tracks 100% of FOIA requests electronically.

b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

N/A

c. What methods does your agency use to track requests electronically?

FOIA requests are entered into an off-the-shelf database which is accessible by FOIA processing staff. The Commission established an Intranet portal to act as a central electronic repository for all incoming FOIA requests, initial responses, and application for review decisions. The Intranet portal is available to all FCC employees, and also contains a weekly FOIA report of all new FOIA requests. The Commission currently scans all paper-based FOIA requests into a portable document format (PDF) and

electronically transmits copies of all FOIA requests to the appropriate Bureau or Office for processing. Bureaus and Offices receive reminders from the FOIA Liaison of upcoming FOIA deadlines and when deadlines have been missed.

3. Electronic processing of FOIA requests:

a. What proportion of components within your agency which receive FOIA requests have the capability to process such requests electronically?

The FCC does not have separate components for purposes of FOIA processing. The FCC processes 100% of FOIA requests electronically in whole or in part.

b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

N/A

c. What methods does your agency use to process requests electronically?

The FCC electronically distributes initial FOIA requests to the appropriate Bureau or Office. Many FOIA requests seek records maintained in databases managed by the Bureaus and Offices. Responsive components of the Commission are able to conduct electronic searches of the databases for the records sought. In addition, the FCC is increasing the use of off-the-shelf redaction software to mark redacted portions of records and note at the specific point on the document the FOIA exemption that is the basis for the redaction.

4. Electronic preparation of your Annual FOIA Report:

a. What type of technology does your agency use to prepare your agency Annual FOIA Report, i.e., specify whether the technology is FOIA-specific or a generic data-processing system.

FOIA requests are entered into an off-the-shelf database which provides the statistics necessary to complete the [FOIA Annual Report](#) for initial FOIA requests.

b. If you are not satisfied with your existing system to prepare your Annual FOIA Report, describe the steps you have taken to increase your use of technology for next year.

We are working on updating and improving the off-the-shelf database to provide more detailed statistics for our Annual Report. The database will also give each Bureau and Office better access for tracking individual FOIA requests. Also, the modifications underway will allow for similar tracking for FOIA applications for review.

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

Improvements to timeliness in responding to pending FOIA requests and reductions in backlogs are both ongoing agency efforts. The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. Section XII of your Annual FOIA Report includes figures that show your agency's backlog of pending requests and administrative appeals for the past two fiscal years. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In this section you should address the following elements.

- 1. If your agency has a backlog, report here whether that backlog is decreasing. That reduction should be measured in two ways. First, report whether the number of backlogged requests and backlogged administrative appeals that remain pending at the end of the fiscal year decreased or increased, and by how many, when compared with last fiscal year. Second, report whether your agency closed in Fiscal Year 2010 the ten oldest of those pending requests and appeals from Fiscal Year 2009, and if not, report how many of them your agency did close.**

The FCC's initial FOIA backlog is decreasing while the backlog of appeals has increased following a significant increase in applications for review. As Table 5 demonstrates, there has been a steady decrease in the number of backlogged initial FOIAs. Table 5 also shows that the number of backlogged FOIA appeals has increased.

Table 5		
Number of Backlogged FOIA Requests		
	Initial FOIAs	FOIA Appeals
FY 2009	27	5
FY 2010	23	11
FY 2011 (through Feb 28, 2011)	10	17

The age of the 10 oldest initial FOIA requests and appeals as reported in the [FY 2010 FOIA Annual Report](#) decreased from the 10 oldest initial FOIA requests and appeals

reported in the [FY 2009 Annual Report](#). See Table 6 below. Further, since the publication of the FY 2010 FOIA Annual Report, five of the ten oldest initial FOIA requests have been closed, and the remaining three remain open only because the Commission is awaiting the outcome of pending Supreme Court litigation concerning the scope of FOIA Exemption 7(C), *FCC v. AT&T*, No. 09-1279 (argued Jan. 19, 2011).

Table 6						
Age of Backlogged FOIAs						
	Initial FOIAs			FOIA AFRs		
	FY 09	FY 10	FY 11 (to 2/28/11)	FY 09	FY 10	FY 11 (to 2/28/11)
20 - 60 days	0	2	2	0	0	5
61 - 120 days	3	4	1	3	2	1
121 - 180 days	1	2	1	6	3	1
181 - 240 days	1	3	1	0	7	5
241 - 365 days	3	2	2	4	2	2
More than 1 year	2	2	2	3	3	3
More than 2 years	3	1	1	0	0	0

2. If there has not been a reduction in the backlog as measured by either of these metrics, describe why that has occurred. In doing so, answers the following questions and then include any other additional explanation:

a. Is the backlog increase a result of an increase in the number of incoming requests or appeals?

There has been a decrease in backlogged initial FOIA requests. The increase in backlogged FOIA appeals is a result of an increased number of filings (See Table 5, *supra*).

b. Is the backlog increase caused by a loss of staff?

No.

c. Is the backlog increase caused by an increase in the complexity of the requests received?

No.

d. What other causes, if any, contributed to the increase in backlog?

Backlogs of FOIA appeals are attributable in part to a provision of the Communications Act, [47 U.S.C. § 155\(c\)\(4\)](#), which requires that any FOIA applications

for review (appeals) be submitted to the five-member Commission for a decision. This function cannot be delegated to staff. The need for the Commissioners and their staffs to review and vote on application for review decisions adds to the time needed for processing FOIA appeals.

2. Describe the steps your agency is taking to reduce any backlogs and to improve timeliness in responding to requests and administrative appeals. In doing so answer the following questions and then also include any other steps being taken to improve timeliness.

a. Does your agency routinely set goals and monitor the progress of your FOIA caseload?

Yes, the Chief FOIA Officer regularly receives reports of the status of backlogged initial FOIAs and FOIA appeals. He as necessary contacts the appropriate Bureaus and Offices to expedite processing of these matters.

b. Has your agency increased its FOIA staffing?

As indicated in Table 3 above, the total number of full-time FOIA staffing processing FOIA requests and applications for review has increased by approximately 15.5% from 16 FTEs to 18.48 FTEs.

c. Has your agency made IT improvements to increase timeliness?

Yes, the Commission has increased the use of redaction software to expedite the production of redacted records.

d. Has your agency Chief FOIA Officer been involved in overseeing your agency's capacity to process requests?

The Chief FOIA Officer for the FCC is the agency's General Counsel, who is part of the senior management team for the Commission. He thus is involved in review of agency performance. In addition, the Chief FOIA Officer through his staff is daily in contact with both OMD's FOIA staff and FOIA processing staff through out the agency to keep track of FOIA processing. The Chief FOIA Officer contacts individual Bureaus and Offices when additional resources are needed to ensure timely processing of FOIA requests.

Spotlights on Success

Out of all the activities undertaken by your agency in this last year to increase transparency, describe here one success story that you would like to highlight as emblematic of your efforts.

A visible sign of increased transparency at the FCC is our increased use of new media platforms to expand public access to the Commission's activities. For example:

- [FCC Connect](#) provides FCC connections via Twitter, Facebook, YouTube, Myspace, Flickr, OI Discuss, Ideascale, Blogband, Open Internet Blog and RSS.
- [Developer](#) is the vehicle by which the FCC actively promotes the innovative application of agency data in the public and private sectors. FCC.gov/Developer connects citizen developers with the tools they need to unlock government data.
- [Spectrum Dashboard](#) allows the public to explore spectrum use in the United States. The Spectrum Dashboard allows new ways for citizens to search spectrum in the United States. The system allows the public to find out how spectrum is being used, who owns spectrum licenses around the country, and what spectrum is available in your county.
- [Consumer Broadband Test](#) provides statistics for US counties using latitude and longitude. The statistics are grouped into wireline and wireless broadband providers and contain the number of tests, average download speed, average upload speed, maximum download speed and maximum upload speed. These data are calculated nightly and include all tests to date performed through the consumer broadband test.

Because of these and many other examples of the FCC's use of new media and the Internet to provide access to the agency's records, a vast amount of information is now available to the public without having to file a FOIA request.