

**FEDERAL COMMUNICATIONS COMMISSION
FREEDOM OF INFORMATION ACT ANNUAL REPORT
FISCAL YEAR 2012
(October 1, 2011 to September 30, 2012)**

I. BASIC INFORMATION REGARDING REPORT

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

Stephanie Kost
Office of the Managing Director
Federal Communication Commission
Room 1-A827
445 12th Street, SW
Washington, DC 20554
Telephone Number: 202-418-0440
Fax Number: 202-418-0521
Email: Stephanie.Kost@fcc.gov

2. Electronic address for Report on the agency website.

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

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

Paper copies can be requested by request from the person at the address listed above:

II. MAKING 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 Communication Commission must be sent to the Office of 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 Appeals must be submitted to Sean Lev, 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 2, 4, 5, 6 and 7. The type of information most often withheld involves internal personnel records (Exemption 2), materials that are related solely to trade secrets and other confidential business information (Exemption 4); inter- or intra-agency privileged records (Exemption 5); information if released would result in an unwarranted invasion of personal privacy (Exemption 6); and 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.

AFR – Applications for Review (administrative appeals)

2. The following definitions of terms are 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. These are called an Application for Review (AFR) at the FCC.
- 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 which 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 the greatest possible access. All requests which require the agency to utilize 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 entirety under one or more of the FOIA exemptions, or because of 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. Requests in each track 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** – in response to a FOIA request, an agency decision 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 which 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 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. Include the following concise descriptions of the nine FOIA exemptions:

- a. **Exemption 1:** classified national defense and foreign relations information
- b. **Exemption 2:** internal agency personnel 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
41 USC 4702	Contractor proposals	Sinkfield v. HUD, No. 10-885, 2012	2

(b) (formerly 41 USC 253b(m)(1))	that have not been set forth or incorporated by reference into the contract	U.S. Dist. LEXIS 35233, at *13-15 (S.D. Ohio Mar. 15, 2012); Hornbostel v. U.S. Dep't of the Interior, 305 F. Supp. 2d 21, 30 (D.D.C. 2003), summary affirmance granted, No. 03-5257, 2004 WL 1900562 (D.C. Cir. Aug. 25, 2004)	
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V. FOIA REQUESTS

A. Received, Processed and Pending FOIA 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
FCC	44 ¹	501	478	67

¹ After an audit of the FCC FOIA Tracking System, we found that four requests should have been marked as completed prior to the beginning of FY 2012. Therefore, the number of requests pending at the start of the fiscal year should be 44, rather than the 48 indicated in last year's report.

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	
FCC	112	143	11	90	1	55	14	26	4	3	1	18	478

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
FCC	Records routinely available without need to file a FOIA request	18

B. (3) Disposition of FOIA Requests – 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
FCC	2	78	2	23	22	114	11	0	13	4	8	0	0	0

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
15 ²	18	23	10

² After an audit of the FCC’s FOIA appeals, we found two additional appeals that require processing. Therefore, the number of appeals pending at the start of the fiscal year should be 15, rather than the 13 indicated in last year’s report.

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
9	5	1	8³	23

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	1	4	2	1	2	1	1	0	0	0	0	0

³ Two AFRs were dismissed as improperly filed; four AFRs were withdrawn; and two AFRs were closed when the requester sought judicial review before the FCC could act on the appeals.

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
3	0	0	5	0	3	0	0	2	0	0

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
	N/A

C. (4) Response Time (in business days⁴) for Administrative Appeals

Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
154	231	95	593

C. (5) Ten Oldest Pending Administrative Appeals (in business days)

	10th Oldest Appeal	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Appeal
Date of Receipt of Ten Oldest Appeals	9/27/12	8/22/12	8/9/12	7/30/12	7/18/12	6/21/12	5/4/12	3/12/12	2/24/12	11/16/11
Number of Days Pending	1	26	35	43	51	70	103	142	153	220

⁴ Our previous FOIA Annual Reports utilized calendar days for statistics on administrative appeals. Upon advice by the Department of Justice, we are now using business days.

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

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

	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
FCC	18	26	<1	1175	0	0	0	0	0	0	0	0

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
FCC	20	33	<1	1175	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
FCC	351	84	19	8	4	3	3	0	0	1	2	0	3	478

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
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
FCC	0	0	0	0	0	0	0	0	0	0	0	0	0	0

D. Pending Requests – All Pending Perfected Requests

	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
FCC	57	59	94	10	248	255	0	0	0

E. Pending Requests – Ten Oldest Pending Perfected Requests

	10th Oldest Request and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Request and Number of Days Pending
FCC	9/19/11 260 days	9/19/11 260 days	9/1/11 272 days	8/5/11 291 days	6/2/11 337 days	6/2/11 337 days	5/2/11 360 days	12/2/10 467 days	9/30/10 512 days	3/24/10 648 days

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
FCC	0	2	12.5	12.5	0

B. Requests for Fee Waiver

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
FCC	2	3	10	12.8

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”	Processing Costs	Litigation- Related Costs	Total Costs
FCC	4	10.66	14.66	\$1,638,109.94	\$75,679.00	\$1,713,788.94

X. FEES COLLECTED FOR PROCESSING REQUESTS

	Total Amount of Fees Collected	Percentage of Total Costs
FCC	\$14,557.67	0.89%

XI. FOIA REGULATIONS

- FCC FOIA Regulations -- <http://transition.fcc.gov/foia/cfr.html>
- FCC FOIA Fee Schedule -- http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-10-97A1.pdf

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
FCC	38	9 ⁵

⁵ One decision disposing of three AFRs was released by the FCC on October 26, 2012.

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

	Number of Consultations Received from Other Agencies that Were <u>Pending</u> at Your 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 Your Agency During the Fiscal Year	Number of Consultations Received from Other Agencies that Were <u>Pending</u> at Your Agency as of <u>End</u> of the Fiscal Year
FCC	1 ⁶	3	3	1

⁶ Our FY 2011 Report reported no consultations pending at the end of that year. However, an audit of our FOIA database indicates that one consultation was pending at the end of FY 2011.

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

	10 th Oldest Consultation and Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Consultation and Number of Days Pending
FCC	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	11/1/12 230

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
FCC	590	501	594	478

	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
FCC	19	38

E. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report –

	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
FCC	17	18	17	23

	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
FCC	9	9 ⁷

⁷ One decision disposing of three AFRs was released by the FCC on October 26, 2012.