

Freedom of Information Act Annual Report for THE EXPORT-IMPORT BANK OF THE UNITED STATES

10/01/2009
TO
09/30/2010

Wednesday, January 19, 2010

The following **Annual Freedom of Information Act** report covers the Period 10/01/2009, through 09/30/2010, as required by 5 U.S.C. 552.

I. BASIC INFORMATION REGARDING REPORT

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

John F. Simonson, Chief FOIA Officer
Export-Import Bank of the United States
811 Vermont Avenue, NW
Washington, DC 20571
(202) 565-3952

Dawn R. Kral, FOIA Public Liaison
Export-Import Bank of the United States
811 Vermont Avenue, NW
Washington, DC 20571
(202) 565-3248

2. Electronic link for access to the report on Ex-Im Bank's Web site:

www.exim.gov/about/disclosure/foia2010.cfm

3. To receive a hard copy of this report, mail a request to either of the contacts shown above.

II. MAKING A FOIA REQUEST

1. All FOIA requests are received and processed at the following address:

Export-Import Bank of the United States

Freedom of Information Act Office
811 Vermont Avenue, NW
Washington, DC 20571
(202) 565-3248

Guidance on how to make a FOIA request can be found at www.exim.gov/about/disclosure/foiahowto.cfm.

2. **Brief description of why some requests are not granted.**

Ex-Im Bank most commonly withholds information pursuant to FOIA Exemptions (b)(4) and (b)(5). The (b)(4) exemption is mostly applied to information received as part of Ex-Im Bank's review of credit applications. The information is received from buyers, commercial financial institutions, suppliers, and other private sector entities and is sensitive and business confidential in nature. The (b)(5) exemption is generally applied to staff correspondence generated during the credit review process and pre-decisional memoranda prepared for the Bank's Board of Directors and Credit Committee containing staff analysis and recommendations.

III. **ACRONYMS, DEFINITIONS, AND EXEMPTIONS**

1. Agency-specific acronyms or terms used in this report: None
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. The FOIA now requires that agencies include in their Annual FOIA Report data for both the agency overall and for each principal component of the agency.
 - 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 entireties 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. **Perfect 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. 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

NOTE: All FOIA requests are received and processed at Ex-Im Banks headquarters at the address shown in II. 1. above. The following tables reflect that there are no other individual reporting components within Ex-Im Bank other than the agency in total.

IV. Exemption 3 Statutes

A. For Initial Requests				
Statute	Type of Information Withheld	Case Citation	Number of Times Relied upon per Component	Total Number of Times Relied upon by Agency

B. For Appeals				
Statute	Type of Information Withheld	Case Citation	Number of Times Relied upon per Component	Total Number of Times Relied upon by Agency

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
HQ	Discrepancy in number of pending requests FY 2009 v FY 2010 – due to incomplete data migration for new FOIA processing software. 28	96	95	29
AGENCY OVERALL	28	96	95	29

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
				Records not reasonably described	Fee-related reason	Request withdrawn	No records	Duplicate Request	Other *Explain in chart below	
HQ	37	41	2	-	-	3	12	-	-	95
AGENCY OVERALL	37	41	2	-	-	3	12	-	-	95

B.(2) Disposition of FOIA Requests Other Reasons for Full Denials Based on Reasons Other than Exemptions		
Component	Description of Other Reasons for Denials from Chart B (1) & Number of Times Those Reasons Were Relied upon	TOTAL

B.(3) Disposition of FOIA Requests Number of Times Exemptions Applied														
	(b)(1)	(b)(2)	(b)(9)	(b)(8)	(b)(7)(F)	(b)(7)(E)	(b)(7)(D)	(b)(7)(C)	(b)(7)(B)	(b)(7)(A)	(b)(6)	(b)(3)	(b)(4)	(b)(5)
HQ	-	3	-	-	1	1	-	2	-	2	8	-	36	9
AGENCY OVERALL	-	3	-	-	1	1	-	2	-	2	8	-	36	9

VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS

A. Received, Processed and Pending Administrative Appeals				
	Number of	Number of	Number of	Number of

HQ	21	21	17	25	-	-	-	-	-	-	-	-
AGENCY OVERALL	21	21	17	25	-	-	-	-	-	-	-	-

C.(5) Ten Oldest Pending Administrative Appeals												
	10th Oldest Appeal and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Appeal and Number of Days Pending		
HQ												
AGENCY OVERALL												

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
HQ	28	31.98	<1	68	85	115.1	1	333	-	-	-	-
AGENCY OVERALL	28	31.98	<1	68	85	115.1	1	333	-	-	-	-

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
HQ	28.5	33.4	<1	68	101.5	142.78	58	333	-	-	-	-
AGENCY OVERALL	28.5	33.4	<1	68	101.5	142.78	58	333	-	-	-	-

C. Processed Requests Response Time in Day Increments															
Simple Requests															
	< 1 Day	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
HQ	1	20	26	12	7	-	-	-	-	-	-	-	-	-	66
AGENCY OVERALL	1	20	26	12	7	-	-	-	-	-	-	-	-	-	66
Complex Requests															
	< 1 Day	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

HQ	-	2	-	5	6	4	3	3	-	1	-	3	2	-	29
AGENCY OVERALL	-	2	-	5	6	4	3	3	-	1	-	3	2	-	29
Requests Granted Expedited Processing															
	< 1 Day	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
HQ	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
AGENCY OVERALL	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

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
HQ	9	37	44.44	20	49	65.15	-	-	-
AGENCY OVERALL	9	37	44.44	20	49	65.15	-	-	-

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
HQ	06/24/2010 68	06/21/2010 71	06/15/2010 75	05/27/2010 87	05/17/2010 95	05/17/2010 95	05/03/2010 105	02/24/2010 153	02/22/2010 155	02/16/2010 159
AGENCY OVERALL	06/24/2010 68	06/21/2010 71	06/15/2010 75	05/27/2010 87	05/17/2010 95	05/17/2010 95	05/03/2010 105	02/24/2010 153	02/22/2010 155	02/16/2010 159

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
HQ	-	-	-	-	-
AGENCY OVERALL	-	-	-	-	-

B. Requests for Fee Waiver				
	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate

HQ	4	2	0	11.17
AGENCY OVERALL	4	2	0	11.17

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
HQ	1	0.95	1.95	\$316,908.70	\$0.00	\$316,908.70
AGENCY OVERALL	1.00	0.95	1.95	\$316,908.70	\$0.00	\$316,908.70

X. FEES COLLECTED FOR PROCESSING REQUESTS

	Total Amount of Fees Collected	Percentage of Total Costs
HQ	\$3,328.00	1.05
AGENCY OVERALL	\$3,328.00	1.05

XI. FOIA Regulations (Including Fee Schedule)

These can be found at: <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=ada39b1b53af6f927701d536f82c8d5b&rqn=div5&view=text&node=12%3A4.0.2.3.3&idno=12#12%3A4.0.2.3.3.1.4.1>

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
HQ	22	-
AGENCY OVERALL	22	-

Discuss/Explain the backlog here (Optional)

Ex-Im Bank has one full-time FOIA Specialist. This past Fiscal Year, Ex-Im Bank received several FOIA requests which involved review of an exceptionally large number of documents, including many E-Mails; limited resources and a greater amount of documents to review resulted in a backlog of FOIA requests.

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

	Number of	Number of	Number of	Number of
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	Consultations Received from Other Agencies that Were <u>Pending</u> at Your Agency as of <u>Start</u> of the Fiscal Year	Consultations <u>Received</u> from Other Agencies During the Fiscal Year	Consultations Received from Other Agencies that Were <u>Processed</u> by Your Agency During the Fiscal Year	Consultations Received from Other Agencies that Were <u>Pending</u> at Your Agency as of <u>End</u> of the Fiscal Year
HQ	-	-	-	-
AGENCY OVERALL	-	-	-	-

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

	10th Oldest Consultation and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Consultation and Number of Days Pending
HQ										
AGENCY OVERALL										

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 Years Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Years Annual Report	Number Processed During Fiscal Year from Current Annual Report
HQ	108	96	96	95
AGENCY OVERALL	108	96	96	95

	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
HQ	Note: This figure was erroneously reported as 29 in last year's report. 16	22
AGENCY OVERALL	16	22

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	Number Received During Fiscal Year	Number Processed During Fiscal Year	Number Processed During Fiscal Year

	from Last Years Annual Report	from Current Annual Report	from Last Years Annual Report	from Current Annual Report
HQ	2	2	2	2
AGENCY OVERALL	2	2	2	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
HQ	-	-
AGENCY OVERALL	-	-

F. Discussion of Other FOIA Activities (Optional)

Ex-Im Bank has hired temporary FOIA Specialists on an as-needed basis to assist with reducing a backlog of requests.