



EXPORT-IMPORT BANK
of the **UNITED STATES**

INSPECTOR GENERAL

August 25, 2015

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Johnson:

In response to your June 23, 2015 request, our office analyzed the involvement of non-career officials in the Export-Import Bank of the United States' ("Ex-Im Bank" or "the Bank") Freedom of Information Act (FOIA) process. Specifically, we reviewed whether non-career officials were involved in Ex-Im Bank's FOIA response process for the period of January 1, 2007 to the present. We also assessed if the non-career officials' involvement resulted in any undue delay of a response to any FOIA request or the withholding of any document or portion of any document that would have otherwise been released.

To respond to your inquiry within the timeframe you requested, we conducted a limited analysis based on interviews of Bank officials and a review of certain FOIA documentation. This analysis was not an audit and therefore was not conducted in accordance with generally accepted government auditing standards. Furthermore, the scope of our analysis was limited to your request regarding the involvement of non-career officials in the Bank's FOIA process and did not include a review of the Bank's general compliance with FOIA requirements.

To perform our analysis, we reviewed the Bank's FOIA policies and procedures and conducted interviews with the current and former Chief FOIA Officer; and the FOIA team, which includes the Public FOIA Liaison and FOIA Analyst. We judgmentally selected and reviewed supporting documentation for seven FOIA requests that were processed between January 1, 2007 and the present. The seven selected requests had longer response times and covered the time period of January 1, 2007 to the present. During the course of our review, we became aware of one open FOIA request which had received recent media attention and involved a non-career official. Therefore, we also reviewed the supporting documentation for this open FOIA request as part of our analysis. Finally, we requested and obtained a written certification from the Chief FOIA Officer regarding non-career officials' involvement in the Bank's FOIA process.

Ex-Im Bank's FOIA Process

The FOIA process at Ex-Im Bank begins with the receipt of a FOIA request via the online form, email, U.S. mail or fax. The FOIA team sends an acknowledgment letter to the requester. Before processing the request, the FOIA team computes a fee estimate based on the time required for search and review of documents as well as any duplication expenses. The estimate is provided to the requester. Once the requester agrees to pay the fees, the FOIA liaison will begin processing the request. The request is forwarded to the division(s) responsible for maintaining the requested records. The records are then sent to the FOIA team, who reviews and redacts the information based upon appropriate FOIA exemptions. The FOIA team then prepares the response package which includes: the request letter, draft response letter, reviewed documents, all FOIA related communications, and the FOIA review form. Next, the Office of General Counsel (OGC) reviews the response for legal sufficiency and makes its recommendations. After OGC's review, a notification is provided one to two days prior to the release of the FOIA response to the following five individuals:

- Chief Financial Officer and Chief FOIA Officer
- Senior Vice President for Congressional Affairs (non-career official)
- Senior Vice President of Communications (non-career official)
- Senior Vice President and General Counsel (non-career official)
- Assistant General Counsel for Administrative Law

The notification to the non-career officials is for informational purposes only. Per the Chief FOIA Officer, he is the only one that may provide comments. Within one to two days of the notification, the FOIA team provides the requestor with a final response that includes: the redacted documents, final response letter, and applicable appeal rights.

Prior to 2010, the FOIA process was the same as described above with the exception that it did not include the notification to the Congressional, Communication and General Counsel offices. This notification process was added in September 2013 to keep the Senior Vice Presidents informed.

Results of our Analysis

We found that non-career officials have limited involvement in the Bank's FOIA process. For six of the seven processed FOIA requests we reviewed, non-career officials were involved only to the extent that (1) they were responsible for requested records, or (2) they were notified of the release of information as part of the standard process. For these six FOIA requests, we did not find evidence that the non-career official involvement resulted in any undue delay of a response or the withholding of any document or portion of any document that would have otherwise been released. For the last FOIA request in our sample, we determined that the Senior Vice President for Congressional Affairs, a non-career official, was more heavily involved because a congressional request involving the same or substantially the same subject matter was received while the FOIA request was being processed. We did not find evidence that the involvement of the non-career official in this FOIA request resulted in any undue delay of a response or the withholding of any document or portion of any document that would have otherwise been

released. Rather, we determined that the response to this FOIA request was postponed by the Chief FOIA Officer because he redirected FOIA resources to prepare the congressional response first. The details of this FOIA request are described below.

FOIA case number 201200019F received on January 30, 2012 requested all communication related to Ex-Im Bank's loan guarantee for Solyndra's sale of solar panels to Belgium. On May 4, 2012, the Bank received a congressional request from the House Committee on Oversight and Government Reform for the Bank's decision-making process related to the Solyndra transaction and green energy financing. Responding to the congressional request was a collaborative effort between the Office of Congressional Affairs, General Counsel and the FOIA office. During a nine month period, the Bank provided over 50,000 pages in response to the congressional request. According to the Chief FOIA Officer, he redirected FOIA resources to address the congressional request before processing existing open FOIA requests. The FOIA office coordinated with the Office of Congressional Affairs to ensure the congressional request was fulfilled prior to the release of the response to the FOIA request and the Bank used a segment of the congressional responses to respond to the FOIA request. The FOIA response was provided on September 30, 2014.

During the course of our review, we also became aware of a FOIA request submitted to Ex-Im Bank on November 20, 2014 for all text messages, Blackberry messenger chats and SMS messages sent or received between November 1 and November 8, 2014 from five Ex-Im Bank officials. This FOIA request had received recent media attention because the Chief of Staff, a non-career official, was unable to produce the requested text messages as they were deleted from his Ex-Im Bank issued cell phone. Ex-Im Bank provided the requested information for the other Ex-Im Bank officials on or about May 4, 2015, but was unable to provide the text messages of the Chief of Staff. In lieu of the missing text messages, the Bank provided an affidavit from the Chief of Staff stating under the penalty of perjury, he mistakenly deleted the messages for the period in question on approximately January 1, 2015. Subsequent to the release of the information and the affidavit, the Bank acquired software that permitted the retrieval of the deleted text messages. The messages were provided on July 3, 2015. While the circumstances of this case caused a delay in providing a complete response, the delay was caused by an error by a non-career official in maintaining his own records, not improper involvement with the FOIA process.

As demonstrated above, our analysis did not identify non-career official involvement in FOIA requests that resulted in undue delay of a response or the withholding of any document or portion of any document that would have otherwise been released. The results of our analysis support the certification by the Chief FOIA Officer that "from 2007 to the present, the Chief FOIA Officer has been filled by career staff and non-career officials have not been substantially involved in the FOIA response process and efforts by the Bank to respond to the requests have not been frustrated or compromised by their involvement." The entire certification by the Chief FOIA Officer is included herein as Attachment 1.

We want to thank Ex-Im Bank staff for their cooperation. If you have any questions, please contact me at 202-565-3169 or mike.mccarthy@exim.gov. You can obtain additional information about the Export-Import Bank Office of Inspector General and the Inspector General Act of 1978 at www.exim.gov/oig.

Sincerely,



Michael T. McCarthy
Deputy Inspector General

cc: The Honorable Thomas R. Carper, Ranking Member
The Honorable Fred Hochberg, Chairman and President
C.J. Hall, Executive Vice President and Chief Risk Officer Audit Committee
David Sena, Chief Financial Officer and Chief FOIA Officer
Angela Freyre, General Counsel
Inci Tonguch-Murray, Deputy Chief Financial Officer
Cristopolis Dieguez, Business Compliance Analyst



EXPORT-IMPORT BANK
OF THE UNITED STATES

July 31, 2015

Mr. Mike McCarthy
Deputy Inspector General
Office of the Inspector General
Export-Import Bank of the United States

The Ex-Im Bank's position of Chief FOIA Officer has been filled by career staff from 2007 to present. During my time as the Chief FOIA Officer, 2011 to present, non-career officials have not been substantially involved in the FOIA response process and efforts by the Bank to respond to FOIA requests have not been frustrated or compromised by the involvement of non-career officials in the FOIA response process.

The Bank has from time to time received Congressional requests involving the same or substantially the same subject matter as FOIA requests. Subject to the approval of the Chief FOIA Officer, the Bank has in the past redirected FOIA resources to first address Congressional requests.

In addition, during my time as the Chief FOIA Officer, 2011 to present, no non-career officials have been involved in the agency's response to any FOIA request except to the extent that records were requested from those officials. When such involvement occurred, it has never resulted in the undue delay of a response to a FOIA request or the provision of less information than would have been provided but for the involvement of the non-career officials.

To the best of my knowledge, the above is also accurate for the 2007-2011 time period as well.

Sincerely,

A handwritten signature in blue ink, appearing to read "David M. Sena".

David M. Sena
Chief FOIA Officer