
EXPORT-IMPORT BANK OF THE UNITED STATES
Chief FOIA Officer's Report
David Sena, Chief Financial Officer and Chief FOIA Officer
February 27, 2013

Section I – Steps Taken to Apply the Presumption of Openness

Shortly after President Obama issued the January 21, 2009 FOIA memorandum, and upon the issuance of Attorney General Holder's March 19, 2009 FOIA guidelines, Ex-Im Bank's Office of the General Counsel (OGC) provided guidance to the FOIA office, the Office of Communications, and other relevant senior staff on the content and legal significance of the memorandum. Bank staff involved in release determinations were notified of the need to shift Bank policy towards one of increased transparency and openness.

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

Yes. In 2012, Ex-Im Bank's FOIA Public Liaison conducted FOIA training to staff in conjunction with the Bank's annual Records Management training seminars. This training discussed types of records covered under the FOIA and records staff is required to produce in response to a FOIA request. Significantly, this training also explained that FOIA staff would be looking at specific types of documents with an eye towards making more discretionary releases. Ex-Im Bank's FOIA Team plans to conduct more in-depth training of this nature in 2013.

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

Yes. In 2012 as in previous years, Ex-Im Bank's FOIA Team attended and participated in such informational gatherings as DOJ Updates and American Society of Access Professionals' (ASAP) FOIA Training seminars, as well as the Annual Users' Group Conference, which describes updates to the Bank's automated FOIA request tracking and processing system.

Did your agency make any discretionary releases of otherwise exempt information? What exemptions would have covered the information that was released as a matter of discretion?

In 2012, Ex-Im Bank continued to exercise ever-greater discretion and further minimized the application of FOIA Exemption (b)(5), which encompasses the deliberative process privilege and is the second most common Exemption the Bank considers when processing FOIA requests.

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

When Ex-Im Bank receives applications for participation in its loan, guarantee and insurance programs, a great deal of E-Mail correspondence is traditionally generated as each potential transaction makes its way through the Bank's due diligence and decision-making processes. This correspondence contains candid discussion, comments and recommendations by Bank staff. Quite often, Bank staff attorneys are included in this correspondence, providing legal advice and recommendations to staff processing the applications. This dialog is especially sensitive because it often addresses matters of a high degree of business confidentiality, such as financial information that is being submitted to the Bank as part of the application process. In 2012, Ex-Im Bank continued to receive FOIA requests whose responses involved the Team's review of many such documents. Although these records had typically been withheld in full or in part in accordance with Exemption (b)(5), under both the deliberative process *and* the attorney-client privileges, Ex-Im Bank continued to apply the presumption of openness by releasing greater portions of these and other such documents.

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

In order to maximize discretionary releases, Ex-Im Bank's FOIA Specialists meet frequently with staff attorneys to review and discuss pending requests whose responsive documents include material that was previously withheld under Exemption (b)(5). And, the FOIA Team continues to consult more frequently with the Bank components that created/generated the records in question, in order to discuss the records' significance and determine any actual harm in disclosure. Ex-Im Bank is moving forward with its plans to update its FOIA regulations in the year ahead and will incorporate the "presumption of openness" principle into the new version.

Section II – Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests

Do FOIA professionals within your agency have sufficient IT support?

Ex-Im Bank's FOIA Team does, indeed, enjoy effective IT support. Specific members of the Bank's Information Technology (IT) Team have been assigned to serve as liaisons between the FOIA Team and the software vendor's IT staff; this support has proven to be integral to successful utilization of this software. Members of the Bank's FOIA and IT Teams regularly consult with the software vendor's IT staff in order to identify, discuss and effect updates and improvements.

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

Ex-Im Bank's FOIA and Open Government Teams work together to maintain its Open Government Initiative web page (www.exim.gov/open), which contains information previously unavailable to the public unless requested. The page contains charts and graphs of program activity in addition to detailed downloadable data sets of the information behind the charts and graphs. A link exists for the public to provide ongoing feedback on how the Bank can improve the availability and quality of information posted on the page.

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

Yes. Ex-Im Bank frequently assesses the staffing needs for FOIA and hires temporary employees to assist with backlogged FOIA requests. In Fiscal Year 2012, Ex-Im Bank hired one temporary employee to assist with processing backlogged FOIA requests.

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.

Ex-Im Bank's Chief FOIA Officer has taken the initiative to create and implement a system that will make document searches more expeditious and efficient, which will allow for more timely processing of FOIA requests. Specifically, staff requested to search for documents will be required to either complete searches or provide a status report within a specified time frame. Also, The Bank's FOIA and IT Teams regularly consult with the software vendor's IT staff to further enhance and fine-tune its FOIA software-processing package to Ex-Im Bank's specific needs. Ex-Im Bank is also investigating the purchase and use of "de-duplicating" software, which would be particularly useful in reducing request processing time. Additionally, more internal documents are being filed electronically at the time they are created, making it faster and easier to conduct searches for these documents.

Section III – Steps Taken to Increase Proactive Disclosures

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

In 2012, Ex-Im Bank proactively placed a large amount of statistical data related to Bank transactions on our FOIA Web site. These data files contain information on participants in the transactions, as well as on the transactions themselves, over the past six years, and are updated quarterly. To maximize use by the public, the files are downloadable and are posted in CSV format for the users' convenience; users may create custom reports using these files. Also included with each data file is a "key" that explains each column heading in every data file. These files are available on Ex-Im Bank's Web site at

<http://www.exim.gov/open/index.cfm#downdata>. The Bank has received a great deal of positive feedback from the public in response to this posting, from previous FOIA requesters as well as individuals who would have otherwise requested the data under the FOIA.

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.

If so, provide examples of such improvements.

Ex-Im Bank's FOIA Web site provides a feedback button for public comments and questions. Ex-Im Bank's FOIA Team is also working with the Web Team to enhance the site's search capabilities. The FOIA Team is investigating the possible use of social media such as Twitter and Facebook, on which Ex-Im Bank would place live links to proactive disclosures on our Web site, as well as information and updates on the Bank's FOIA process. The Bank is also considering the use of YouTube for disseminating information to the public about Ex-Im Bank's FOIA process, progress, request trends and recent disclosures.

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

The FOIA Team meets at least quarterly to review recent disclosures, identify request and disclosure trends as well as information that may be of interest to the public, and discusses placing that information on our FOIA Web site. And, Ex-Im Bank continues to update quarterly the downloadable statistical data relating to Bank transactions placed on our Web site.

Section IV – Steps Taken to Greater Utilize Technology

Can FOIA requests be made electronically to your agency?

Yes.

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

Not applicable; Ex-Im Bank's FOIA operation is centralized.

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

Not at the present time.

If so, describe the information that is provided to the requester through the tracking system.

Not applicable.

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

Not applicable.

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

Ex-Im Bank has investigated the costs involved with upgrading its current FOIA processing and tracking system to include on-line requester tracking, and will effect this upgrade when funding becomes available.

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.

If so, describe the technological improvements being made.

Ex-Im Bank is investigating the purchase and use of “de-duplicating” software, which would be particularly useful when processing lengthy E-Mail “threads” in response to FOIA requests. Additionally, more internal documents are being filed electronically at the time they are created, making it faster and easier to conduct searches for these documents.

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

Re: the Annual FOIA Report:

Does your agency utilize a separate track for simple requests?

Yes.

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?

No.

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.

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?

The backlog increased by 14 requests, from 24 to 38.

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

The backlog of appeals remained the same (one backlogged appeal).

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

No.

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

There was one administrative appeal pending at the close of Fiscal Year 2011; this appeal remains open.

Re: Request Backlog:

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

No.

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

Yes, in part. Ex-Im Bank's FOIA operation was suspended for three months in Fiscal Year 2012 due to the need for FOIA staff to review a large amount of documents in response to a Congressional inquiry. Specifically, the Bank's permanent full-time FOIA Specialist was reassigned to this project for three months in Fiscal Year 2012 and, since May of 2012, Ex-Im Bank's temporary FOIA contractor has been working almost exclusively on reviewing documents for that inquiry.

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

Yes, in part. Ex-Im Bank approved several high-profile transactions in the past year; this resulted in several FOIA requests requiring the search for and review of many documents from multiple Divisions within the Bank.

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

Not applicable.

Re: Administrative Appeal Backlog:

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

No.

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

Yes, in part. The attorney who was to review this appeal left the Bank and the backlog was transferred to another attorney who was also working on additional projects due to other loss of staff.

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

No.

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

Ex-Im Bank's attorneys who review FOIA requests and any appeals also work on other, non-FOIA-related assignments. Between that and the staffing shortage, priorities often fluctuated.

"Rolling Releases"

Two of Ex-Im Bank's backlogged FOIA requests have received substantive interim responses.

Use of FOIA's Law Enforcement "Exclusions"

Did your agency invoke a statutory exclusion during Fiscal Year 2012?

No.

If, so, what was the total number of times exclusions were invoked?

Not applicable; no exclusions were invoked.

Spotlight on Success

In Fiscal Year 2012, Ex-Im Bank continued to proactively place on its FOIA Web site data that provides specific details about Ex-Im Bank transactions. As a direct result of placing this data on line, Ex-Im Bank received a total of only 62 FOIA requests in Fiscal Year 2012. This represents an unprecedented low number of requests, as between Fiscal Years 1998 and 2011, Ex-Im Bank received an average of 110 FOIA requests annually.