

FOIA ANNUAL REPORT

FOR
10/01/2011
THROUGH
09/30/2012

Tuesday, February 5, 2013

The following **Annual Freedom of Information Act** report covers the Period 10/01/2011 through 09/30/2012 as required by 5 U.S.C. 552.

I. BASIC INFORMATION REGARDING REPORT

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

David M. Sena, Chief FOIA Officer
Export-Import Bank of the United States
811 Vermont Avenue, N.W.
Washington, D.C. 20571
(202) 565-3272
david.sena@exim.gov

Dawn R. Kral, FOIA Public Liaison
Export-Import Bank of the United States
811 Vermont Avenue, N.W.
Washington, D.C. 20571
(202) 565-3248
dawn.kral@exim.gov

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

<http://www.exim.gov/about/library/foia/foiaannualreports/>

3. **To receive a "hard copy" of this Report, contact either of the above-named individuals.**

II. MAKING A FOIA REQUEST

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

Export-Import Bank of the United States
811 Vermont Avenue, N.W.
Washington, D.C. 20571

Guidance on making a FOIA request can be found at <http://www.exim.gov/about/library/foia/index.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). Exemption (b)(4) 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. Exemption (b)(5) is generally applied to staff correspondence generated during the credit review process, and to pre-decisional memoranda prepared for the Bank's Board of Directors and Credit Committee containing staff analyses 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 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. **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

IV. Exemption 3 Statutes

| A. For Initial Requests | | | |
|-------------------------|------------------------------|---------------|---|
| Statute N/A | Type of Information Withheld | Case Citation | Total Number of Times Relied upon by Agency |

| B. For Appeals | | | |
|----------------|------------------------------|---------------|---|
| Statute N/A | Type of Information Withheld | Case Citation | 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 |
| AGENCY OVERALL | 29 | 62 | 47 | 44 |

| 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 | Referrals | Request withdrawn | Fee-related reason | Records not reasonably described | Not a proper FOIA request for some other reason | Not an agency record | Duplicate Request | Non-Responsive | Cancelled. | *Explain in chart below | |
| AGENCY OVERALL | 19 | 15 | - | 6 | - | 3 | 1 | - | - | - | - | - | 3 | - | 47 |

| 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 |
| AGENCY OVERALL | | 0 |

| B.(3) Disposition of FOIA Requests Number of Times Exemptions Applied | | | | | | | | | | | | | | |
|--|--------|--------|--------|--------|--------|--------|-----------|-----------|-----------|-----------|-----------|-----------|--------|--------|
| | (b)(1) | (b)(2) | (b)(3) | (b)(4) | (b)(5) | (b)(6) | (b)(7)(A) | (b)(7)(B) | (b)(7)(C) | (b)(7)(D) | (b)(7)(E) | (b)(7)(F) | (b)(8) | (b)(9) |
| AGENCY OVERALL | - | - | - | 12 | 4 | 7 | 1 | - | 3 | - | 1 | - | - | - |

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 |
| AGENCY OVERALL | 1 | 1 | - | 2 |

| 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 |
| AGENCY OVERALL | - | - | - | - | - |

| C.(1) Reasons for Denial on Appeal Number of Times Exemptions Applied | | | | | | | | | | | | | | |
|--|--------|--------|--------|--------|--------|--------|-----------|-----------|-----------|-----------|-----------|-----------|--------|--------|
| | (b)(1) | (b)(2) | (b)(3) | (b)(4) | (b)(5) | (b)(6) | (b)(7)(A) | (b)(7)(B) | (b)(7)(C) | (b)(7)(D) | (b)(7)(E) | (b)(7)(F) | (b)(8) | (b)(9) |
| AGENCY OVERALL | - | - | - | - | - | - | - | - | - | - | - | - | - | - |

| C.(2) Reasons for Denial on Appeal Reasons Other than Exemptions | | | |
|---|--|-------|-------|
| | | | TOTAL |
| | | Other | |

| | | | | | | |
|----------------|--|--|--|--|--------------------------------|---|
| | | | | | * Explain in chart below | |
| AGENCY OVERALL | | | | | | - |

| C.(3) Reasons for Denial on Appeal Other Reasons | | |
|--|--|-------|
| Component | Description of Other Reasons for Denials from Chart C (2) & Number of Times Those Reasons Were Relied upon | TOTAL |
| AGENCY OVERALL | | 0 |

| C.(4) Response Time for Administrative Appeals | | | | | | | | | | | | |
|--|-----------------------|------------------------|-----------------------|------------------------|-----------------------|------------------------|-----------------------|------------------------|-----------------------|------------------------|-----------------------|------------------------|
| | 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 |
| AGENCY OVERALL | - | - | - | - | - | - | - | - | - | - | - | - |

| 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 |
| AGENCY OVERALL | | | | | | | | | 10/20/2011 237 | 11/15/2010 471 |

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 |
| AGENCY OVERALL | 22 | 49.68 | <1 | 235 | 241 | 223.58 | 28 | 427 | - | - | - | - |

| | Days Pending | | | | | | | | | |
|----------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| AGENCY OVERALL | 05/31/2011 336 | 05/31/2011 336 | 05/19/2011 343 | 05/09/2011 351 | 05/05/2011 353 | 02/01/2011 419 | 01/14/2011 430 | 10/01/2010 500 | 08/09/2010 538 | 07/30/2010 544 |

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 |
| AGENCY OVERALL | - | - | - | - | - |

| B. Requests for Fee Waiver | | | | |
|----------------------------|----------------|---------------|-------------------------------------|--------------------------------------|
| | Number Granted | Number Denied | Median Number of Days to Adjudicate | Average Number of Days to Adjudicate |
| AGENCY OVERALL | 8 | - | 0.5 | 55.5 |

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 |
| AGENCY OVERALL | 0.75 | 0.50 | 1.25 | \$173,812.00 | \$0.00 | \$173,812.00 |

X. FEES COLLECTED FOR PROCESSING REQUESTS

| | Total Amount of Fees Collected | Percentage of Total Costs (Rounded to nearest hundredth decimal) |
|----------------|--------------------------------|--|
| AGENCY OVERALL | \$960.00 | 0.55 |

XI. FOIA Regulations (Including Fee Schedule)

Ex-Im Bank's FOIA Regulations can be found at the following Web address:

<http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&rgn=div6&view=text&node=12:5.0.2.3.3.1&idno=12>

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 |
|----------------|--|---|
| AGENCY OVERALL | 38 | 2 |

Discuss/Explain the backlog here (Optional)

Ex-Im Bank's FOIA operations were suspended for several months in FY 2012 due to the need for staff to review a voluminous amount of E-Mails in response to a Congressional inquiry; this resulted in an increased backlog of FOIA requests.

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 |
|----------------|--|--|---|--|
| 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 |
|----------------|---|-----|-----|-----|-----|-----|-----|-----|-----|--|
| 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 |
|----------------|--|---|---|--|
| AGENCY OVERALL | 100 | 62 | 100 | 47 |

| | 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 |
|----------------|--|---|
| AGENCY OVERALL | 24 | 38 |

E. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report Appeals Received, Processed, and Backlogged

| | NUMBER OF APPEALS RECEIVED | | NUMBER OF APPEALS PROCESSED | |
|----------------|--|---|---|--|
| | 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 |
| AGENCY OVERALL | 1 | 1 | - | - |

| | 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 |
|----------------|---|--|
| AGENCY OVERALL | 1 | 2 |

F. Discussion of Other FOIA Activities (Optional)

Ex-Im Bank hired one FOIA Contractor in FY 2012 to assist with processing requests and reducing the backlog.