

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Chief FOIA Officer Report



Office of Support Operations

February 28, 2024

2024 CHIEF FOIA OFFICER REPORT GUIDELINES - AGENCIES RECEIVING MORE THAN 50 REQUESTS IN FISCAL YEAR 2023

Section I: FOIA Leadership and Applying the Presumption of Openness

The guiding principle underlying the Attorney General's 2022 [FOIA Guidelines](#) is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

A. Leadership Support for FOIA

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. See 5 U.S.C. § 552(j)(1) (2018). Is your agency's Chief FOIA Officer at or above this level?

Yes, the SEC's Chief FOIA Officer serves as the Director of the Office of Support Operations, a Senior Officer position at the SEC.

2. Please provide the name and title of your agency's Chief FOIA Officer.

Olivier Girod, Director, Office of Support Operations.

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

During 2023 the FOIA Office added to the SEC's internal training system three audience specific FOIA modules that were developed by the Department of Justice's Office of Information Policy, which are available to all SEC employees.

During Sunshine Week each year, the SEC's Chair issues a notice to all SEC staff to commemorate National Freedom of Information Day. In 2023, the Chair emphasized the importance of open government and transparency and commended the SEC's FOIA professionals for their dedication to carrying out this vital service on behalf of the public.

B. Presumption of Openness

4. The Attorney General's 2022 FOIA Guidelines provide that "agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions." Does your agency provide such confirmation in its response letters?

Yes.

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interest

protected by a FOIA exemption. This is commonly referred to as a *Glomar* response. If your agency tracks *Glomar* responses, please provide:

- the number of times your agency issued a full or partial *Glomar* response (separate full and partial if possible);

The SEC issued either a full or partial Glomar response on 125 occasions during the reporting period.

- the number of times a *Glomar* response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).

The SEC tethered its Glomar responses to the following:

Exemption 6 in eight (8) instances.

Exemptions 6 and 7(C) jointly in 109 instances.

Exemption 7(A) in five (5) instances.

Exemptions 6, 7(C) and 8 in two (2) instances.

Exemptions 6, 7(A), 7(C) and 8 in one (1) instance.

6. If your agency does not track the use of *Glomar* responses, are you planning to track this information in the future?

N/A

7. Optional -- If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

Section II: Ensuring Fair and Effective FOIA Administration

The Attorney General’s 2022 [FOIA Guidelines](#) provide that “[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of FOIA obligations by the entire agency workforce.” The Guidelines reinforce longstanding guidance to “work with FOIA requesters in a spirit of cooperation.” The Attorney General also “urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency’s FOIA administration” as part of ensuring fair and effective FOIA administration.

A. FOIA Training

1. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

The FOIA Office provides mandatory in-house training each year to all FOIA professionals covering a range of topics including emerging issues in FOIA administration and judicial decisions as well as refresher topics. Specific topics covered during this reporting period included: FOIA records pertaining to Self-Regulatory Organizations (e.g. Financial Industry Regulatory Authority (FINRA), Municipal Securities Rulemaking Board (MSRB) and Public Company Accountability

Oversight Board (PCAOB)), SEC FOIA liaison training, SEC FOIA administrative intake processes, Exemptions and Exclusions most frequently used by the SEC and the SEC FOIA appeals process. SEC FOIA professionals were also encouraged to attend outside training, such as that offered by the Department of Justice and the American Society of Access Professionals.

2. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend substantive FOIA training during the reporting period such as that provided by the Department of Justice?

Yes.

3. If yes, please provide a brief description of the type of training attended or conducted and the topics covered.

- *SEC's Annual Whistleblower training*
- *SEC's Annual FOIA training*
- *OFS Training on Protecting Nonpublic Information*
- *OFS Annual FOIA Liaison Training*
- *OFS Training on Self-Regulatory Organizations*
- *Training offered by the Office of Information Policy, U.S. Department of Justice*
 - *Litigation Seminar*
 - *Advanced FOIA Training*
 - *Processing Requests from Start to Finish Workshop*
 - *Introduction to the FOIA Workshop*
 - *Procedural Requirements and Fees Training*
 - *Best Practices Workshop*
 - *Annual FOIA Report Refresher and Quarterly Report Training*
 - *Chief FOIA Officer Report Training*
- *American Society of Access Professionals 16th Annual National Training Conference*
- *FOIA Advisory Committee Meeting*
- *Chief FOIA Officers Council Meeting*
- *Webinar on Transparency and Public Access in Ukraine*

4. Please provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

100% of the SEC's full-time FOIA staff attended substantive FOIA training.

5. OIP has [directed agencies](#) to “take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year.” If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency’s plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

N/A

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and if senior leaders at your agency received a briefing on your agency’s FOIA resources, obligations and expectations during the FOIA process?

SEC FOIA liaisons within the components of the SEC are required to annually review the SEC’s “FOIA and Privacy Act Request Processing Guidance for Liaisons.” This guidance is posted to the SEC’s intranet and describes the basic processes and procedures for FOIA liaisons and other SEC staff so that they might better assist the FOIA office in processing requests. Revisions are periodically made to the guidance to address changing law and OIP guidance.

Newly appointed SEC FOIA liaisons are required to review the SEC’s “FOIA and Privacy Act Request Processing Guidance for Liaisons” and certify completion. Additionally, the FOIA Office provided training to all SEC FOIA Liaisons, which included a brief FOIA overview and discussion of the various FOIA obligations shared by all SEC employees and contractor personnel. The training also highlighted the important role that FOIA liaisons play in the process and their specific responsibilities.

The SEC’s Chief FOIA Officer and Chief Operating Officer are regularly briefed on the SEC’s resources, and expectations related to FOIA processing. Further, the SEC’s FOIA Officer provides briefings to newly appointed SEC Commissioners and other senior executives on the FOIA program at the SEC and the importance of leadership support.

All staff across the SEC are encouraged to contact FOIA Office staff for any FOIA related issues or questions. To provide accessible FOIA training to all SEC employees, the SEC’s eLearning platform has available the following interactive FOIA training modules that were developed by the Office of Information Policy:

- *Freedom of Information Act Training for Executives – A 15-minute course that provides a basic overview of the FOIA and explains how this law impacts agency leaders. Topics covered include an overview of the FOIA, proactive disclosure, reporting and accountability, and FOIA resources and support.*
- *Freedom of Information Act Training for Federal Employees – A 1-hour course that provides a primer on the FOIA and explains how employees can assist the agency in FOIA administration. Topics covered include who can make a request, the FOIA’s time limits, and searching for responsive records.*
- *Freedom of Information Act Training for FOIA Professionals – An in-depth course designed specifically for FOIA professionals and addressing all of the major procedural*

and substantive requirements of the law. Topics covered include receiving and acknowledging FOIA requests, statutory protections for sensitive information, working in a spirit of cooperation, and providing good customer service.

B. Outreach

7. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue and, if applicable, any specific examples.

Yes. For complex or voluminous requests, FOIA requesters are routinely contacted for clarification and to discuss narrowing the scope of the requests for more efficient processing. These discussions accomplish, among other things, identifying appropriate custodians, search terms, time frames, and particular offices and divisions which may have responsive records.

8. Outside of the standard request process or routine FOIA Liaison or FOIA Requester Service Center interactions, did your FOIA professionals engage in any outreach or dialogue, with the requester community or open government groups regarding your administration of the FOIA? For example, did you proactively contact frequent requesters, host FOIA-related conference calls with open government groups, or provide FOIA training to members of the public? Please describe any such outreach or dialogue and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

Throughout the reporting period FOIA Office staff routinely engaged the SEC FOIA requester community to process requests more efficiently. The FOIA Office routinely engages with individual requesters, including media outlets, law firms, and open government organizations to discuss, among other things, the scope of their requests and agency search capabilities. These communications afford requesters an opportunity to understand the types of records falling under the Commission's purview, the review process, confidentiality statutes, and the types of records and information that are generally released and withheld under FOIA. Additionally, the SEC met in-person with a high-volume requester to discuss its requests and processing.

9. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during Fiscal Year 2023 (please provide a total number or an estimate of the number for the agency overall).

Although the FOIA Office does not track this information, it is estimated that contact with SEC FOIA Public Liaisons occurred on ten (10) or fewer occasions. The FOIA Office includes an addendum page to response letters which notifies requesters of OGIS's dispute resolution services and the services provided by agency FOIA Public Liaisons. Additionally, SEC FOIA Professionals comprise the SEC's FOIA Requester Service Center and routinely receive inquiries for assistance from requesters regarding their requests or the FOIA in general.

C. Other Initiatives

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

Yes. The FOIA Office management team is aware that monitoring and addressing FOIA staffing levels is of paramount importance to maintaining efficiency and ensuring compliance. Indeed, the FOIA Office continually assesses resource allocation and staff utilization based on FOIA demand, making adjustments as necessary. The FOIA Office has recently devoted significant time and attention to the hiring process, and by the end of FY23 it had 27 full-time employees who collectively handle the day-to-day operations and work of the FOIA Office. Additionally, the FOIA Office has augmented its use of contractors to assist with the increasing complexity of requests. Specifically, the FOIA Office has onboarded 21 new contractors who provide critical staff support to meet programmatic objectives and is in the process of hiring additional contract staff. By the time the FOIA Office finishes the contracting processes, it will have 30 contractors available to assist the Research Specialists. The FOIA Office also hired an Attorney-Advisor in two of its five branches and is considering hiring an Attorney-Advisor in each of the other branches to assist with the demands caused by increased litigation.

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

The SEC relies upon quality control metrics that are constantly monitored and assessed. These metrics allow for more timely responses to requests for expedition and fee waivers, monitoring the backlog, managing staff workflows, more efficient complex track processing, and making adjustments in resource allocation and staff utilization to increase and manage production. The FOIA Office generates monthly reports that include statistical analyses, which provide the ability to compare and contrast with prior reporting. The FOIA Office management team continuously examines the FOIA process at the SEC to improve efficiency and to ensure compliance.

12. Optional -- If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.

Section III: Proactive Disclosures

The Attorney General's 2022 [FOIA Guidelines](#) emphasize that "proactive disclosure of information is . . . fundamental to the faithful application of the FOIA." The Guidelines direct agencies to post "records online quickly and systematically in advance of any public request" and reiterate that agencies should post records "in the most useful, searchable, and open formats possible."

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

Opinions, pleadings, and orders are all posted to the SEC's website from 1995 to the present. The website is regularly updated by the relevant program office with new items posted based on the actions of the program office(s). Similarly, administrative staff manuals, statements of policy and interpretations adopted by the SEC are also posted and intermittently updated by the

appropriate program offices. The FOIA Office tracks instances where records have been requested three or more times so that they can be posted accordingly.

2. How long after identifying a record for proactive disclosure does it take your agency to post it?

Posting of (a)(2) proactive disclosure records typically occurs within a few business days.

3. Does your agency post logs of its FOIA requests?

Yes. SEC FOIA logs are posted monthly.

- If so, what information is contained in the logs?

The following information is included in the SEC FOIA logs: Request ID, Requester Name, Organization, Requester Category, Request Description, Requested Date, Received Date, Request Status, Closed Date and Final Disposition.

- Are they posted in CSV format? If not, what format are they posted in?

SEC FOIA logs are posted in CSV format.

4. Provide examples of any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

During the reporting period the SEC proactively posted records to the FOIA Office's Frequently Requested Documents webpage at [SEC.gov | Frequently Requested Documents](#). Records requested three or more times can also be found here. The following are examples of records proactively posted on the FOIA Office's website:

- [SEC.gov | Ramesh "Sunny" Balwani Videos](#)
- [Ramesh "Sunny" Balwani Transcript \(sec.gov\)](#)
- [Mark Zuckerberg Transcript \(sec.gov\)](#)
- [SEC.gov | Form ADV Data](#)
- [SEC.gov | Closed-End Fund Information](#)
- [SEC.gov | Company Information About Active Broker-Dealers](#)
- [SEC.gov | Commission Votes](#)

5. 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?

Yes.

6. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

The public may subscribe to RSS feeds at [SEC.gov | RSS Feeds](#) to be apprised of the most recent materials posted to the SEC website.

The SEC also has a separate web page where high value data sets are available. [SEC.gov | SEC and Markets Data](#). Descriptions of the most recently published data sets can be found on the SEC's main web page. Individuals may sign up to receive SEC email updates as well.

In promoting proactive disclosures, the SEC's FOIA webpage includes a "What's New" section that lists the five most recent postings to the FOIA page. Additionally, FOIA logs are posted quarterly. Many divisions and offices within the SEC make records available on their specific page of the SEC's website.

The Office of Structured Disclosure (OSD), within the Division of Economic and Risk Analysis ([SEC.gov | Office of Structured Disclosure](#)), supports the SEC's efforts to make data accessible and easy to use. OSD works closely with other SEC Divisions and Offices to design data structuring approaches for required disclosures and supports the SEC's data collections and data usage by designing taxonomies, validation rules, data quality assessments, and tools for conducting data analyses. OSD also works with investors, regulated entities, and the public to support the submission and use of structured data.

In addition, policy teams across Divisions take steps to structure existing unstructured collections of data, with the aim of incorporating open, machine-readable, and machine-actionable formats.

7. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

Yes. For proactive disclosures made by the FOIA Office there is typically coordination with the Office of the Secretary for purposes of posting. In some instances, the FOIA Office will provide notice of disclosure to the SEC's Office of Public Affairs for situational awareness. Additionally, where the FOIA Office is recommending proactive disclosure of certain records, there is collaboration with the program office that maintains the records. Depending on the nature of the records, the program office's webpage may host the information – or the records may be posted to the FOIA Office webpage.

For example, specialized data may be hosted by the relevant office or division. This would include records on the SEC's Division of Economic and Risk Analysis webpage at [SEC.gov | DERA Data Library](#), which offers investors access to aggregated data from filings for research and analysis. The SEC's Division of Investment Management's Analytics Office makes similar records available at [SEC.gov | Analytics Office](#).

8. Optional -- Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.

Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's 2022 [FOIA Guidelines](#) emphasize the importance of making FOIA websites easily navigable and complying with the [FOIA.gov](#) interoperability

requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

Yes.

2. Please briefly describe any new types of technology your agency uses to support your FOIA program.

The FOIA Office utilizes FOIAXpress, an electronic document management and tracking system. This system is updated intermittently to account for anticipated FOIA issues and demands – and to simply make processing more efficient.

In support of FOIA litigation, the SEC's Office of the General Counsel utilizes an eDiscovery platform called Casepoint, which allows for de-duplication to reduce the number of potentially responsive records. It also provides search functions to enable staff to work with requesters to identify records of interest and to narrow the scope of requests.

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.

The FOIA Offices uses FOIAXpress to automate its record processing. Records are integrated into this platform and search and redact functions are employed for record processing. Upgrades are consistently implemented to the SEC's FOIA processing system, FOIAXpress. The FOIAXpress application undergoes regular updates to enhance current features and implement security patches.

4. OIP issued [guidance](#) in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

Yes.

5. Did all four of your agency's [quarterly reports](#) for Fiscal Year 2023 appear on FOIA.gov?

Yes.

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2024.

N/A

7. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2022 Annual FOIA Report and, if available, for your agency's Fiscal Year 2023 Annual FOIA Report.

Raw statistical data used to compile the SEC's Fiscal Years 2022 and 2023 Annual FOIA Reports can be found on the FOIA Office's webpage [SEC.gov | SEC FOIA Reports](#) at [FY2022 SEC FOIA Annual Report Raw Data and FY2023 SEC FOIA Annual Report Raw Data](#).

8. In February 2019, DOJ and OMB issued joint [Guidance](#) establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

Yes.

9. Optional -- Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness in Responding to Requests, and Reduce Backlogs

The Attorney General's 2022 [FOIA Guidelines](#) instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

A. Remove Barriers to Access

1. Has your agency established alternative means of access to first-party requested records, outside of the typical FOIA or Privacy Act process?

No. Members of the public must file a Privacy Act request with the SEC to gain access to first-party records. The SEC's website allows for submission of first party requests. First party requests received by the SEC, whether for access, amendment or accounting, are assigned tracking numbers indicating that processing will be initiated under the Privacy Act. To the extent that the records are not exempt under the Privacy Act, access will be granted to a first party request. First party requests are processed under both the FOIA and the Privacy Act to provide maximum access to records.

2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.

N/A

3. Please describe any other steps your agency has taken to remove barriers to accessing government information.

The SEC accepts FOIA requests submitted in multiple ways to ensure that all requesters can access government information. Members of the public may submit FOIA requests via the SEC website, the Public Access Link, FOIA.gov, at the foiapa@sec.gov email address, via fax, or via paper mail. During the reporting period, the SEC adopted amendments to procedural provisions of its Privacy Act rules. The amendments act to clarify and streamline processes for submitting and receiving responses to Privacy Act inquiries, requests, and administrative appeals. The amendments also allow for electronic submission of requests and verification of identity through webforms on the Commission's website.

B. Timeliness

4. For Fiscal Year 2023, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2023 Annual FOIA Report.

The SEC took an average of 3.39 days to adjudicate requests for expedited processing.

5. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2023 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

N/A

6. Does your agency utilize a separate track for simple requests?

Yes.

7. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2023?

Yes. Simple track requests were processed in an average of 5.9 days.

8. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?

N/A

9. Please provide the percentage of requests processed by your agency in Fiscal Year 2023 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100.

45.5% of the requests processed by the SEC in Fiscal Year 2023 were placed in the simple track.

10. If your agency does not track simple requests separately, was the average number of days to process all non-expedited requests twenty working days or fewer?

N/A

C. Backlogs

Backlogged Requests

11. If your agency had a backlog of requests at the close of Fiscal Year 2023, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2022?

No.

12. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2023 than it did during Fiscal Year 2022?

No.

13. If your agency's request backlog increased during Fiscal Year 2023, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming requests
- A loss of staff
- An increase in the complexity of the requests received (if possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase)
- Litigation
- Any other reasons – please briefly describe or provide examples when possible

Although the FOIA Office had a lower number of FOIA requests to process from the prior reporting year, there was a precipitous decline in the number of simple requests with a simultaneous increase in the overall complexity of the requests received. Further, the SEC experienced a marked increase in FOIA litigation. FOIA litigations are labor-intensive for FOIA Office staff because they typically involve complex requests, consultations with other offices and agencies, and/or the SEC's confidential treatment process. FOIA Office staff must coordinate with the Office of the General Counsel so that records can be processed to meet deadlines set by courts or agreements between plaintiffs and the SEC.

14. If you had a request backlog, please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2023. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A."

The percentage of requests that made up the backlog out of the total number of requests received by the SEC in FY2023 was 8.63%.

Backlogged Appeals

15. If your agency had a backlog of appeals at the close of Fiscal Year 2023, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2022?

No.

16. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2023 than it did during Fiscal Year 2022?

Yes.

17. If your agency's appeal backlog increased during Fiscal Year 2023, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming appeals
- A loss of staff
- An increase in the complexity of the requests received (if possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase)
- Litigation
- Any other reasons – please briefly describe or provide examples when possible

The appeals backlog was caused primarily by an increase in the complexity of the requests received. The 2 backlog appeals for FY 2023 involved complex issues and required coordination with multiple office and divisions within the SEC.

18. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2023. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2023 and/or has no appeal backlog, please answer with "N/A."

The percentage of appeals that made up the appeals backlog in FY2023 was 0.32%

D. Backlog Reduction Plans

19. In the 2023 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2022 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2023?

N/A

20. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2023, please explain your agency's plan to reduce this backlog during Fiscal Year 2024.

N/A

E. Reducing the Age of Requests, Appeals, and Consultations

Ten Oldest Requests

21. In Fiscal Year 2023, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2022 Annual FOIA Report?

No.

22. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2022 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

The SEC closed three (3) of its ten oldest requests.

23. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

To reduce the overall age of pending requests, the FOIA Office observes best practices that include consistent and meaningful communication with requesters, conducting regular training for FOIA and non-FOIA staff, and attempting to maintain a high degree of employee satisfaction. FOIA Office management consistently monitors the age of pending requests and takes steps to reengineer processes and address the human capital needed for making positive impacts on reducing the backlog.

The FOIA Office has made substantial efforts to reduce the overall age of pending requests, hiring qualified Research Specialists to replace departed staff, recently adding 21 new contractors to its workforce, and creating new Attorney-Advisor positions in the FOIA Office. The FOIA Office expects that these actions and associated reorganization efforts will allow for better workload management and a resultant reduction in the age of pending requests.

Ten Oldest Appeals

24. In Fiscal Year 2023, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2022 Annual FOIA Report?

Yes.

25. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2022 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A

26. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

The SEC's Office of the General Counsel (OGC) processes all FOIA appeals. Adjudicating appeals can present complex issues that require further consultation with staff in other divisions and offices and review of voluminous documents. To reduce the overall age of pending appeals, OGC observes the best practices emphasized by the FOIA Office, which are articulated in Section V.E., Question 23.

Ten Oldest Consultations

27. In Fiscal Year 2023, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2022 Annual FOIA Report?

Yes.

28. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2022 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

N/A

Additional Information Regarding Ten Oldest

29. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2024.

As noted in responses above, the FOIA Office has filled vacant Research Specialists positions, employed contractors, and created FOIA Attorney-Advisor positions. In addition, the FOIA Office continues to evaluate new technologies to improve current processes. It is anticipated that these efforts will act to address FOIA issues such as closing the “ten oldest” requests, appeals and consultations.

F. Additional Information about FOIA Processing

30. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency’s overall FOIA request processing and backlog. If possible, please indicate:

- The number and nature of requests subject to litigation
- Common causes leading to litigation
- Any other information to illustrate the impact of litigation on your overall FOIA administration

Yes. There were 38 requests subject to litigation during the reporting period. The SEC’s Office of the General Counsel represents the SEC in all FOIA litigation. The FOIA Office is tasked with providing litigation support, which often includes review and production of records subject to court ordered deadlines.

The increasing volume of litigation received in FY2023, and the amount of time and staffing required to respond to these litigation requests, adversely affected both processing times and backlog.