

FREEDOM OF INFORMATION ACT ANNUAL REPORT

**FOIA Data Submission Form for Federal Trade Commission
Fiscal Year 2006
(Oct. 1, 2005 - Sept. 30, 2006)**

I. Basic Information Regarding Report

A. Name, title, address, and telephone number of person to be contacted with questions about the report.

Caitlin Tobin
Paralegal Specialist
600 Pennsylvania Avenue, N.W., Room 585
Washington, D.C. 20580
(202) 326-3059

B. Electronic address for report on the World Wide Web.

www.ftc.gov/foia/2006r-fo.pdf

C. How to obtain a copy of the report in paper form.

Federal Trade Commission
Consumer Response Center
Room 130
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

II. How to Make a FOIA Request

All FOIA requests must be in the form of a written request precisely describing the records sought. Any request for nonpublic records will be handled as a FOIA request regardless of how it is identified, but requests should be identified as a "FOIA request" in order to avoid delays in processing.

FOIA requests should contain a precise description of the records sought, including the subject matter, relevant time period, and the name and address of any company to which the request pertains. Requests should also include an agreement to pay any FOIA processing fees, and the requestor's address and telephone number.

A. Names, addresses, and telephone numbers of all individual agency components and offices that receive FOIA requests.

Regardless of how submitted (via mail, fax, or e-mail) requests should be addressed as follows:

Freedom of Information Act Request
FOIA Branch
Office of the General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Facsimile number is 202-326-3709.
E-mail address is: FOIA@FTC.GOV

B. Description of the agency's response-time ranges.

Over 780 of the requests submitted were completed within 20 days.

C. Description of why some requests are not granted.

The majority of requests that are initially denied, or partially denied, are based on personal privacy concerns reflected in FOIA Exemption 6. Many denials are also due to statutory constraints on disclosure or because disclosure would interfere with ongoing law enforcement activities.

III. Definitions of Terms and Acronyms Used in the Report

A. Agency-specific acronyms or terms.

1. FOIA - Freedom of Information Act (5 U.S.C. § 552)
2. FTC - Federal Trade Commission
3. HSR - Hart Scott Rodino (Clayton Act)
4. FY - Fiscal Year
5. PA - Privacy Act (5 U.S.C. § 552a)

B. Basic Terms, expressed in common terminology.⁽¹⁾

1. *FOIA/PA request* – Freedom of Information Act/Privacy Act request. A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records concerning oneself; such requests are also treated as FOIA requests. (All requests for access to records, regardless of which law is cited by the requester, are included in this report.)

2. *Initial Request* – a request to a federal agency for access to records under the

Freedom of Information Act.

3. *Appeal* – a request to a federal agency asking that it review at a higher administrative level a full denial or partial denial of access to records under the Freedom of Information Act, or any other FOIA determination such as a matter pertaining to fees.
4. *Processed Request or Appeal* – a request or appeal for which an agency has taken a final action on the request or the appeal in all respects.
5. *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 in each track are processed on a first-in/first-out basis. A requester who has an urgent need for records may request expedited processing (see below).
6. *Expedited processing* – an agency will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier.
7. *Simple request* – a FOIA request that an agency using multi-track processing places in its fastest (nonexpedited) track based on the volume and/or simplicity of records requested.
8. *Complex request* – a FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.
9. *Grant* – an agency decision to disclose all records in full in response to a FOIA request.
10. *Partial grant* – an agency decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entirety, but to withhold others in whole or in part.
11. *Denial* – an agency decision not to release any part of a record or records in response to a FOIA request because all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA's exemptions, or for some procedural reason (such as because no record is located in response to a FOIA request).
12. *Time limits* – the time period in the Freedom of Information Act for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a "perfected" FOIA request).
13. *"Perfected" request* – a FOIA request for records which adequately describes the

records sought, which has been received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.

14. *Exemption 3 statute* – a separate federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA subsection (b)(3).

15. *Median number* – the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.

16. *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.

IV. Exemption 3 Statutes

A. List of Exemption 3 statutes relied on by agency during current fiscal year.

Federal Trade Commission Act, § 6(f), as amended, 15 U.S.C. § 46(f) -- prohibits the disclosure of "any trade secrets or any commercial or financial information which is obtained from any person and which is privileged or confidential." Its use was upheld in *Doherty v. FTC*, 1981-1 Trade Cas. (CCH) § 64,117 (D.D.C. June 24, 1981).

Federal Trade Commission Act, § 21(b), 15 U.S.C. § 57b-2(b) -- prohibits the disclosure of any materials received pursuant to compulsory process in a law enforcement investigation. Its use was upheld in *Dairymen, Inc. v. FTC*, 1980-2 Trade Cas. (CCH) ¶ 63,479 (D.D.C. July 9, 1980).

Federal Trade Commission Act, § 21(f), 15 U.S.C. § 57b-2(f) -- exempts from disclosure material obtained pursuant to process or voluntarily in lieu of process in a law enforcement investigation. Its use was upheld in *A. Michael's Piano v. FTC*, 18 F.3d 138 (2d Cir. 1994).

Clayton Act (Hart-Scott-Rodino Provisions), § 7A(h), 15 U.S.C. § 18a(h) -- prohibits the disclosure of material filed pursuant to the premerger (HSR) provisions of the Act. Its use was upheld in *Lieberman v. FTC*, 771 F.2d 32 (2d Cir. 1985).

Section 1114 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 –which is codified at 21 U.S.C. § 355 note –exempts any information or documentary material that may have been filed pursuant to the pharmaceutical agreement notification.

V. Initial FOIA/PA Access Requests

A. Number of initial requests.

1. Number of requests pending as of end of preceding fiscal year: **105¹**
2. Number of requests received during current fiscal year: **1023**
3. Number of requests processed during current fiscal year: **1109**
4. Number of requests pending as of end of current fiscal year: 19

B. Disposition of initial requests.

1. Total grants: **360**
2. Partial grants: **382**
3. Denials: **27**
 - a. Number of times each FOIA exemption used
(counting each exemption once per request)

Exemption 1	0
Exemption 2	3
Exemption 3	148
Exemption 4	44
Exemption 5	84
Exemption 6	325
Exemption 7(A)	37
Exemption 7(B)	0
Exemption 7(C)	6
Exemption 7(D)	8
Exemption 7(E)	0
Exemption 7(F)	0
Exemption 8	0

¹ One request was inadvertently omitted from the count last year.

Exemption 9 0

4. Other reasons for non-disclosure: **340**

a. no records	228
b. referrals	3
c. withdrawn	26
d. fee-related	13
e. records not reasonably described	8
f. not a proper request for some other reason	27
g. not an agency record	8
h. duplicate request	18
i. other (specify)	9

(1) materials on the public record

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Number of appeals.

1. Number of appeals received during fiscal year: **23**
2. Number of appeals processed during fiscal year: **23**

B. Disposition of appeals.

1. Number completely upheld: **20**
2. Number partially reversed: **0**
3. Number completely reversed: **0**
 - a. Number of times each FOIA exemption used

(counting each exemption once per appeal)

Exemption 1 0

Exemption 2 0

Exemption 3	8
Exemption 4	2
Exemption 5	7
Exemption 6	3
Exemption 7(A)	5
Exemption 7(B)	0
Exemption 7(C)	1
Exemption 7(D)	0
Exemption 7(E)	0
Exemption 7(F)	0
Exemption 8	0
Exemption 9	0
4. Other reasons for non-disclosure (total): 3	
a. no records	2
b. referrals	0
c. withdrawn	1
d. fee-related	0
e. records not reasonably described	0
f. not a proper request for some other reason	0
g. not an agency record	0
h. duplicate request	0
i. other (specify)	0

VII. Compliance with Time Limits/Status of Pending Requests

A. Median time for processing requests.

1. Simple requests:

- a. number of requests processed: **878**
- b. median number of days to process: **5**

2. Complex requests

- a. number of requests processed: **231**
- b. median number of days to process: **34**

3. Requests accorded expedited processing: **0**

B. Status of pending requests.

- 1. Number of requests pending at end of FY 06: **19**
- 2. Median number of days that such requests were pending as of that date: **27**

VIII. Expedited Processing

The agency did not receive any requests that satisfied the requirements for expedited processing.

IX. Costs/FOIA Staffing

A. Staffing levels.

- 1. Number of full-time FOIA personnel: **5**
- 2. Number of personnel with part-time or occasional FOIA duties (in work years): **2.65**
- 3. Total number of personnel (in work years): **7.65**

B. Total costs (staff and resources combined).

- 1. FOIA processing (including appeals): **\$513,160.58**
- 2. Litigation-related activities (estimated): **\$0**
- 3. Total Costs: **\$513,160.58**

X. Fees

A. Total fees collected FY 05: \$23,874.40

B. Percentage of total costs 4.65%

XI. FOIA Regulations (Including Fee Schedule)

A copy of the Commission rules (including fee schedule), 16 C.F.R. §§ 4.8-13 (2001), are available in electronic form at <http://www.ftc.gov/ftc/legal.htm>.

XII. Report on FOIA Executive Order Implementation

A. Description of supplementation/modification of agency improvement plan (if applicable)

The agency submitted a modification to its plan to address the issue of backlog reduction.

B. Report on agency implementation of its plan, including its performance meeting milestones, with respect to each improvement area

1. Dedicate Existing Staff Position to Program Assistant. The FOIA office hired a well-qualified program assistant who began work on August 7, 2006, ahead of our October 1, 2006 target date.

2. Troubleshooting any existing problems with respect to electronic tracking. The FOIA office reviewed its procedures and determined that a senior staff person should approve all assignments to the multi-track designation. At bi-weekly meetings with staff, the senior staff officer reviews the track designations, which are initially made by the staff, and determines whether the designation is appropriate. Additionally, at the review stage, senior staff again review the track determinations to ensure each track designation is correct.

3. Training. The FOIA office has finished training all FOIA contacts within the agency and has received positive initial feedback. The office has started scheduling agency-wide training for Headquarters staff and anticipate meeting our target completion date of April 30, 2007, for completing the training.

4. Process by which necessary cooperation is obtained from agency “program personnel.” The FOIA Office has solicited, received and implemented changes suggested by its internal contacts. As a consequence, the FOIA staff transmits each request for documents with a brief summary that highlights issues relevant to the request. Additionally, agency personnel work with their designated FOIA contacts to ensure timely and accurate responses.

5. Billing and Collection. FOIA staff and the agency’s Financial Management Office developed a plan to ensure timely reporting of billing and collection information. The FOIA office prepares weekly reports of all invoices and transmits the reports electronically to the Financial Management Office. That Office prepares reports weekly detailing all fees that have been collected. The FOIA office then enters the data into the FOIA Xpress database. This allows

FOIA staff to identify requesters who have not paid fees on prior requests. The FOIA office can then send notices to delinquent requesters stating that new requests cannot be processed until their outstanding debts are paid. The offices began implementing this plan November 20, 2006, ahead of the January 15, 1007 target date.

6. Overall FOIA website improvement. Three staff members have reviewed other agency websites and identified areas for improvement. The FOIA Office has created a survey form for staff and plan to distribute it in January to receive feedback by our February 15, 2007 target date.

7. Agency's FOIA Reference Guide. *See* Section C below.

8. Affirmative Disclosure under 5 U.S.C. § 552(a)(2). FOIA staff, working with the Office of the Secretary identified policy statements that were subsequently posted on the FOIA website <http://www.ftc.gov/foia/frequentrequest.htm>. The office continues to review historical records to ensure that all policy statements have been identified. If the historical records reveal additional policy statements, they will be promptly placed on the web site. Further, the FOIA office reviewed FOIA requests from the past two years and identified all frequently requested records. Those were posted to the website on December 26, 2007, meeting our December 31, 2006 target date.

9. Recycling of improvement information gleaned from FOIA Requester Service Centers. The FOIA Office has created a web page feedback form and modified all outgoing responses to include the link. This was completed on January 15, 2007, meeting our deadline.

10. Forms of communication with requesters. The FOIA Office has revised all template letters and is soliciting feedback via the web page noted in item 9 above.

11. Backlog Reduction. The agency only had 19 requests pending at the end of the Fy'06, down from 105 in FY'05. The median number of days pending dropped from 36 in FY'05 to 27 in FY'06. Additionally, the agency met its goal to address the ten oldest requests by December 31, 2006 and by completing these requests the median days for currently pending requests dropped to 12 days.

C. Identification and discussion of any deficiency in meeting plan milestones (if applicable)

7. Agency's FOIA Reference Guide. FOIA staff reviewed other agency guides and, based on that review, drafted changes to the Agency's FOIA Reference Guide. To ensure the changes are effective for people who are not familiar with FOIA, the FOIA Office had an independent staff member review the materials. This independent review resulted in further revision to the guide which were incorporated into the document and posted to the Agency's web site on January 26, 2007.

D. Additional narrative statement regarding other executive order-related activities (optional)

E. Concise description of FOIA Exemptions

The nine exemptions to the FOIA authorize federal agencies to withhold information covering: (1) classified national defense and foreign relations information; (2) internal agency rules and practices; (3) information that is prohibited from disclosure by another federal law; (4) trade secrets and other confidential business information; (5) inter-agency or intra-agency communications that are protected by legal privileges; (6) information involving matters of personal privacy; (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; (8) information relating to the supervision of financial institutions; and (9) geological information on wells.

F. Additional statistics:

1. Time range of requests pending, by date of request (or, where applicable, by date of referral to another agency) August 16, 2006 to January 24, 2007.

2. Time range of consultations pending with other agencies, by date of initial agency. None outstanding

G. Attachment: Agency Improvement plan (in current form)

The agency's FOIA Improvement Plan is attached and can also be found on the web at <http://www.ftc.gov/foia/ftcplan.pdf>.

Endnote

1. These definitions are taken from the Department of Justice Guidelines for Agency Preparation and Submission of Annual FOIA Reports, printed in the FOIA Update, Summer 1997, and updated in FOIA Post April 27, 2006.