

**FEDERAL HOUSING FINANCE AGENCY
CHIEF FOIA OFFICER REPORT**



Approved: Edward J. DeMarco Date: 3/18/2010
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PREFACE

The Housing and Economic Recovery Act of 2008 (HERA), signed into law on July 30, 2008, established the Federal Housing Finance Agency (FHFA). HERA empowered the FHFA with all of the authorities necessary to oversee and regulate vital components of the nation's secondary mortgage markets – Fannie Mae, Freddie Mac, and the Federal Home Loan Banks. FHFA was created by combining the staffs of the Office of Federal Housing Enterprise Oversight (OFHEO), the Federal Housing Finance Board (FHFB), and the GSE mission office of the Department of Housing and Urban Development (HUD). As a result, FHFA had to develop a unified Freedom of Information Act (FOIA) program from three distinct entities. In early 2009, the agency published its new FOIA regulation.

FHFA is committed to achieving the principles set forth by President Obama and Attorney General Holder. President Obama's FOIA Memorandum, dated January 21, 2009:

- Directed all agencies to administer the FOIA with a clear presumption in favor of disclosure, to remove doubts in favor of openness, and to not withhold information based on speculative or abstract fears; and
- Called on agencies to ensure that requests are responded to in “a spirit of cooperation” that disclosures are timely, and that modern technology is used to make information available to the public even before a request is made.

Subsequent guidance provided in Attorney General Holder's FOIA Memorandum, dated March 19, 2009:

- Addressed principles applicable to applying the presumption of openness;
- Encouraged agencies to make discretionary disclosures; to not withhold information simply because they may do so legally; and to consider making partial disclosures;
- Addressed the need for each agency to establish effective systems for improving transparency;
- Emphasized that each agency must be fully accountable for its administration of the FOIA;
- Emphasized that improving FOIA performance requires active participation by the Chief FOIA officer; and
- Directed Chief FOIA Officers to review all aspects of their agencies' FOIA administration and report on the steps taken to improve FOIA operations and facilitate information disclosure.

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A working group chaired by the Acting Chief Operating Officer and including agency executives from the Office of the Director, Office of General Counsel and Office of Technology and Information Management reviewed FOIA practices of FHFA's predecessor agencies, met with other regulators, and prepared recommendations consistent with the President's and Attorney General's principles. The goal of the working group is to establish a sound, coordinated, responsive, and efficient FOIA program for the agency.

PART 1: STEPS TAKEN TO APPLY THE PRESUMPTION OF OPENNESS

1. Description

FHFA is committed to providing access to agency records through a citizen-centered and results-oriented FOIA program. Its unified FOIA regulation adopted the plain language question and answer format that often is preferred for general public audiences. As a new independent agency, its FOIA working group also is thoroughly reviewing changes that could improve the efficiency, effectiveness, and transparency of the agency's FOIA program.

In FY09 FHFA issued 16 partial releases under the new FOIA Guidelines and is taking the following steps to ensure that the presumption of openness is applied to FOIA decisions:

- Reviewing requested records with the objective of identifying any documents that can be released in advance of determining applicable exemptions;
- Increasing the number of partial disclosures when full disclosure is not possible by segregating and releasing all nonexempt information; and
- Applying the foreseeable harm standard to information that could properly be withheld under Exemptions 2, 4, 5, and 8, as appropriate.

2. Disclosure Comparisons

In FY09, FHFA increased the number of partial releases. FHFA issued 16 partial releases, compared with 10 partial releases for FHFBS and OFHEO combined in FY08. The agency issued 15 full releases in FY09 compared with 26 full releases for FHFBS and OFHEO combined in FY08.

Since Fannie Mae and Freddie Mac were placed into conservatorship, there has been a notable increase in FOIA requests for mortgage information on specific properties. Because FHFA does not maintain such records, the agency is working with Fannie Mae and Freddie Mac to develop a process to refer to them citizen's requests for mortgage-related records.

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PART II: STEPS TAKEN TO ENSURE FHFA HAS AN EFFECTIVE SYSTEM FOR RESPONDING TO FOIA REQUESTS

FHFA recognizes that open government requires an effective system for responding to FOIA requests. FHFA is taking the following steps to ensure that the system for responding to FOIA requests is effective and efficient while safeguarding sensitive and confidential records in accordance with Federal laws and regulations:

- Giving requesters explanations of how the search was conducted and, where appropriate, why the agency does not have responsive records;
- Maintaining more complete data on each request to facilitate easier reporting, analysis and monitoring of the number of partial disclosures versus full disclosures and the types of information disclosed;
- Developing a correspondence template for confirmation letters to ensure that requesters receive confirmation of receipt of their request as quickly as possible;
- Assigning individual tracking numbers to each request to make it easier for requesters to inquire about their request;
- Using multi-track processing in order to respond more rapidly to simple requests on a separate track from complex requests;
- Posting on the agency's public website a FOIA Reference Guide, Frequently Asked Questions and a FOIA Fact Sheet to provide tools for requesters who need information on filing a FOIA request or an appeal;
- Providing IT support to the FOIA program to improve efficiency in searching for responsive electronic records;
- Adding a dedicated phone line specifically to receive inquiries from FOIA requesters;
- Developing standard internal protocols for searches, using exemptions, processing and authorizing responses, disclosure and denials; and
- Developing training and educational materials for agency staff to understand roles and responsibilities under FOIA.

FHFA regularly assesses ways to improve the responsiveness and efficiency of its processes for responding to requests.

PART III: STEPS TAKEN TO INCREASE PROACTIVE DISCLOSURES

FHFA considers proactive disclosure important to administering its FOIA program. These disclosures inform the public and reduce the burden of responding to easily answered requests. FHFA's disclosures are primarily made through its FOIA electronic

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reading room and other relevant locations on its public website. FHFA's FOIA electronic reading room includes:

- Final opinions and orders;
- Statements of policy and interpretations not published in the Federal Register;
- Administrative staff manuals and instructions that affect a member of the public; and
- Records likely to become the subject of subsequent requests.

FHFA evaluates the content and organization of the electronic reading room quarterly and expects its divisions and offices to identify new and refreshed information that can be posted without requiring requests.

FHFA uses listservs and other electronic distribution methods to timely inform interested citizens of FHFA releases of information and regularly updates its public website to include information such as:

- Monthly interest rate survey data;
- Regulations, notices, and public comments;
- Capital disclosures;
- Examination guidance manuals;
- Supervision handbooks or guidance;
- Research papers;
- Agency reports; and
- Housing Price Index data.

Since the issuance of the Administration's new FOIA Guidelines and Open Government Memorandum, FHFA created an Open Government team that is responsible for:

- Creating an Open Government webpage;
- Developing procedures to proactively disseminate more information to the public by publishing it online;
- Publishing information online in an open format that can be retrieved, downloaded, indexed and searched;
- Publishing high value datasets; and
- Soliciting public input on information that the public would like posted online.

FHFA's FOIA program personnel and the Open Government team work in concert to enhance the transparency of FHFA decisions and actions.

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PART IV: STEPS TAKEN TO GREATER UTILIZE TECHNOLOGY

Question 1: Does your agency currently receive requests electronically?

Answer 1: Yes, FHFA accepts and responds to public requests by email and facsimile. FHFA also responds electronically to requests in file formats such as Excel or PDF and discloses records on DVDs.

Question 2: If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically?

Answer 2: N/A

Question 3: Does your agency track requests electronically?

Answer 3: Yes, FHFA electronically tracks and links requests in SharePoint.

Question 4: If not, what are the current impediments to your agency utilizing a system to track requests electronically?

Answer 4: N/A

Question 5: Does your agency use technology to process requests?

Answer 5: Yes, FHFA uses technology to process requests. Currently FHFA is using a Duplicate File Finder tool to locate and eliminate duplicate electronic records responsive to FOIA requests, as well as a Microsoft Windows Search tool to search electronic records responsive to FOIA requests.

Question 6: If not, what are the current impediments to your agency utilizing technology to process requests?

Answer 6: N/A

Question 7: Does your agency utilize technology to prepare your agency Annual FOIA Report?

Answer 7: Yes, FHFA utilizes technology to prepare the Annual FOIA Report and is evaluating FOIA COTS software products to improve the efficiency of preparing the annual report.

Question 8: If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report?

Answer 8: N/A

FHFA also is exploring several possibilities to further improve its use of technology to enhance transparency. The agency is:

- Evaluating software products to improve the efficiency of tracking FOIA requests, redacting exempt information, maintaining statistics, and preparing confirmation and response letters; and

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- Developing or acquiring a document management and records management application to more efficiently search for electronic records responsive to FOIA requests.

**PART V: STEPS TAKEN TO REDUCE BACKLOGS AND IMPROVE
TIMELINESS IN RESPONDING TO REQUESTS**

1. Backlog Status

At the end of FY09, FHFA had five backlogged requests. There were no backlogged appeals. The oldest backlogged request at the end of FY09 was perfected on February 5, 2009. This backlog reflects the first year of FHFA's unified FOIA program administration. In FY08, neither of FHFA's principal predecessor agencies (FHFB and OFHEO) had a backlog.

2. Backlog Reduction Steps

The existence of five backlogged requests at FHFA is a result of the need to integrate three separate entities and their information and records systems as well as the increased demand for information accompanying the conservatorships of Fannie Mae and Freddie Mac. Recommendations for re-structuring FHFA's FOIA program are under consideration and should address processing, staffing, and procedural issues that contributed to some delays in 2009. The backlog should be cleared by the end of the 2010 fiscal year, through some actions already described in this report, such as standardized acknowledgments and referrals and more expansive website disclosures, and resolution of structural, staffing and process issues.

3. Steps to Improve Timeliness

FHFA seeks to improve its timeliness in responding to pending FOIA requests because timely disclosure of information is an essential component of transparency in government agencies. The steps FHFA intends to take to improve timeliness include:

- Streamlining internal operating procedures in the FOIA program;
- Using web site disclosures when possible and referring requesters to the agency's FOIA Reading Room, Open Government webpage, or other location on FHFA's web site;
- Establishing protocols for consistent processing of different types of requests based on complexity and subject matter;
- Improving records on disclosures made and exemptions claimed to reduce future duplication of effort for subsequent requests;

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- Defining better the respective roles of FOIA, records management and information technology staffs in making the FOIA program effective;
- Improving training for agency executives and all employees with respect to FOIA responsibilities; and
- Increasing the use of electronic search technologies and software to speed request processing.