

THE FEDERAL HOUSING FINANCE AGENCY
2011 CHIEF FOIA OFFICER REPORT
MARCH 8, 2011

PREFACE

The Federal Housing Finance Agency (FHFA) was created on July 30, 2008, when the President signed into law the Housing and Economic Recovery Act of 2008 (Act). The Act empowered the FHFA with all the authorities necessary to oversee and regulate vital components of the nation's secondary mortgage market – Fannie Mae, Freddie Mac, and the Federal Home Loan Banks. As of September 2010, the combined debt and obligations of these entities totaled \$6.7 trillion, which is \$2.7 trillion below the total publicly held debt of the USA. Freddie Mac and Fannie Mae also purchased or guaranteed 65% of new mortgage originations.

FHFA's mission is to provide effective supervision, regulation and housing mission oversight of Fannie Mae, Freddie Mac and the Federal Home Loan Banks to promote their safety and soundness, support housing finance and affordable housing, and support a stable and liquid mortgage market.

In managing its FOIA program, FHFA is committed to achieving the principles set forth by the President and Attorney General.

The President's FOIA Memorandum, dated January 21, 2009, directed agencies to:

- Administer the FOIA with a clear presumption in favor of disclosure, remove doubts in favor of openness, and not withhold information based on speculative or abstract fears; and
- 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.

The Attorney General Counsel's FOIA Memorandum, dated March 19, 2009, provided additional guidance to agencies. That memorandum:

- Underscored and elaborated on 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.

In 2010, FHFA created a FOIA Working Group that was chaired by the Acting Chief Operating Officer, and consisted of FHFA executives from the Office of the Director, Office of General

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Counsel and Office of Technology and Information Management. The working group reviewed FOIA practices of FHFA's predecessor agencies, met with FOIA professionals from other Federal financial regulators, and prepared recommendations consistent with the President's and Attorney General's principles.

To date the following recommendations have been implemented in creating FHFA's FOIA program:

- Reorganized the FOIA Office and moved the program to the Office of General Counsel;
- Created and filled a full-time, executive level, Chief FOIA Officer position in the Office of General Counsel; and
- Created and filled a full-time FOIA Officer position in the Office of General Counsel.

The working group also recommended that FHFA purchase a commercial off-the-shelf (COTS) FOIA tracking/processing software package. In fiscal year 2011 FHFA budgeted for such an acquisition and will implement this recommendation.

FHFA is committed to providing access to agency records through a citizen-centered and results-oriented FOIA program. To facilitate this access, FHFA adopted the plain language question and answer format for its FOIA regulation which is typically preferred by the general public. The FOIA Office, which is comprised of the Chief FOIA Officer, FOIA Officer and FOIA Liaison, is also reviewing other changes that could improve the efficiency, effectiveness, and transparency of FHFA's FOIA program.

PART 1: STEPS TAKEN TO APPLY THE PRESUMPTION OF OPENNESS

1. Describe the steps taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

a. Describe how the President's FOIA Memorandum and the Attorney General's FOIA Guidelines have been publicized throughout the agency?

These guidelines have been incorporated into FHFA's FOIA Reference Guide and day-to-day operations, which is available on FHFA's website.

b. What training has been attended and/or conducted on the new FOIA Guidelines?

The FOIA Officer attended all training provided by the Department of Justice. Training of agency staff was not conducted in fiscal year 2010, but will be in fiscal year 2011.

c. How has your agency created or modified your internal guidance to reflect the presumption of openness?

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FHFA is in the process of drafting internal guidance which will be circulated for approval in fiscal year 2011. This draft guidance will reflect the presumption of openness embodied in the President's and Attorney General's memoranda by encouraging partial and discretionary disclosures, and using technology, such as the Agency's website, to post information for the public.

- d. To what extent has your agency made discretionary releases of otherwise exempt information?

Given the nature of the type of information that FHFA maintains (primarily confidential business information, and financial regulatory information and examination reports) there have been few opportunities to make discretionary releases. However, when a situation arises whereby information may be released on a discretionary basis because the presumption of openness outweighs any foreseeable harm of disclosure, records have been disclosed. As an example, FHFA released some documents that involved one of FHFA's predecessor agencies. The documents contained deliberative process information about the predecessor agency's financial management system. Since these documents were over 15 years old, and the system being discussed was no longer in use, a determination to make a discretionary release was made on the presumption that openness outweighed any foreseeable harm of disclosing the internal deliberative information.

- e. What exemptions would have covered the information that was released as a matter of discretion?

Exemption 5.

- f. How does your agency review records to determine whether discretionary releases are possible?

The FOIA Officer reviews records to determine whether an exemption applies to the records and whether the records should be withheld under the FOIA. A secondary review is then conducted by the Chief FOIA Officer to determine whether any withheld records can be discretionarily released.

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

FHFA 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;

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- Increasing the number of partial disclosures when full disclosure is not possible by segregating and releasing all nonexempt information;
 - Applying the foreseeable harm standard to information that could properly be withheld under Exemptions 2, 4, 5, and 8, as appropriate; and
 - When multiple FOIA requests for the same information are made, posting that information on its website so that the information is readily available to the public.
2. Report the extent to which the numbers of requests where records have been released in full and the numbers of requests where records have been released in part has changed from those numbers as reported in your previous year's Annual FOIA Report.

In fiscal year 2010 FHFA issued 15 partial releases, compared with 16 partial releases in fiscal year 2009. FHFA issued 13 full releases in fiscal year 2010 compared with 15 full releases in fiscal year 2009.

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

Describe here the steps your agency has taken to ensure that your system for responding to requests is effective and efficient. This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support.

- a. Do FOIA professionals within your agency have sufficient IT support?

Yes. FOIA professionals are provided with the latest technology. New laptops were issued in calendar year 2011 with the latest operating system and office suite software products. In addition, HelpDesk staff is available to assist the FOIA office in conducting electronic searches of records and the Information Technology Office is currently identifying and reviewing additional automated tools to assist in performing electronic searches.

- b. Describe how your FOIA professionals interact with your Open Government Team.

FHFA's FOIA program personnel and the Open Government team collectively work to enhance the transparency of FHFA decisions and actions and to develop the agency's Open Government Plan. The Plan outlines FHFA's goals, timelines and objectives in support of the Open Government Directive.

The Open Government Team is responsible for:

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- Creating the Open Government webpage (www.fhfa.gov/Default.aspx?Page=287);
 - 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 input on information that the public would like posted online.
- c. Describe the steps taken to assess whether adequate staffing is being devoted to responding to FOIA requests.

In August 2010, FHFA created and filled a full-time, executive level, Chief FOIA Officer position, and in January 2011, FHFA hired a full-time FOIA Officer. In addition, the Chief FOIA Officer and FOIA Officer periodically review the number of requests received and the time needed to respond to these requests to ensure that adequate staff levels are maintained, and to determine whether additional resources are needed.

- d. Describe any other steps you have undertaken to ensure that your FOIA system operates efficiently and effectively.

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:

- Providing requesters with a more detailed explanation of how the search was conducted, and if applicable, why the agency does not have responsive records, and why a particular exemption was cited when withholding documents;
- Maintaining more complete data on each request to facilitate easier reporting, analysis and monitoring of the number of denials, partial disclosures, and full disclosures and the types of information disclosed;
- Reviewing and purchasing COTS FOIA tracking software in 2011 to ensure better reporting of FOIA requests;
- Developing correspondence templates to ensure that requesters receive confirmation of receipt of their request and responses to their requests in an expeditious manner;
- 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: 1) a FOIA Reference Guide; 2) a Frequently Asked Questions page to provide tools for requesters who need

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information on filing a FOIA request or an appeal; and 3) a link to the Department of Justice's FOIA page;

- Providing IT support to the FOIA program to improve efficiency in searching for responsive electronic records;
- Adding a dedicated phone line and dedicated FOIA email account (foia@fhfa.gov) specifically to receive inquiries from FOIA requesters;
- Developing standard internal protocols for searches, use of exemptions, and processing and authorizing responses, disclosures and denials;
- Developing training and educational materials for agency staff to understand roles and responsibilities under FOIA; and
- Assessing ways to improve the responsiveness and efficiency of its processes for responding to requests.

PART III: STEPS TAKEN TO INCREASE PROACTIVE DISCLOSURES

Describe here the steps your agency has taken to increase the amount of material that is available on your agency website, including providing examples of proactive disclosures that have been made since issuance of the new FOIA Guidelines.

- a. Has your agency added new material to your agency website since last year?

Yes. New material is posted to FHFA's website on a daily basis.

- b. What types of records have been posted?

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:

- Press Releases;
- Monthly interest rate survey data;
- Regulations, notices, and public comments;
- Capital disclosures;
- FHLBank Membership data;
- Supervision handbooks and guidance;
- Research papers;
- Agency reports, such as Advisory Council Reports, Collateral Securing Advances Reports, Quarterly Conservator's Reports (new), Federal Property Managers Reports, Foreclosure Prevention Reports, Enterprise Guarantee Fees Reports, FHLB Securitization Reports, and Refinance Reports, to name a few; and
- Housing Price Index data.

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- c. Give examples of the types of records your agency now posts that used to be available only by making a FOIA request for them.

- FHLBank Membership data

- d. What system do you have in place to routinely identify records that are appropriate for posting?

FHFA evaluates the content and organization of the electronic reading room on a regular basis and expects its Divisions and Offices to identify new and refreshed information that can be posted without requiring FOIA requests.

- e. How do you utilize social media in disseminating information?

Currently, FHFA does not utilize social media to disseminate information.

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

FHFA's disclosures are primarily made through its FOIA electronic reading room and other relevant locations on its public website. The electronic reading room is periodically reviewed to ensure that it is updated with the following records:

- Advisory Bulletins;
- Final Opinions and Orders
- Statements of Policy and Interpretations (Not published in the Federal Register);
- Policy and Administrative Staff Manuals;
- Frequently Requested Records; and
- Reports.

PART IV: STEPS TAKEN TO GREATER UTILIZE TECHNOLOGY

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. In 2010 agencies reported widespread use of technology in handling FOIA requests. FHFA has used and continues to use technology in handling FOIA requests.

1. Electronic receipt of FOIA requests:

- a. What proportion of the components within your agency which receive FOIA requests have the capability to receive such requests electronically?

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There are no separate components within FHFA that receive FOIA requests. However, FHFA, as a whole, has the capability to receive FOIA requests electronically.

- b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

Not applicable as there are no “components” within the meaning of this question at FHFA.

- c. What methods does your agency use to receive requests electronically?

A separate FOIA email account has been established and access has been given to the FOIA Officer, Chief FOIA Officer and the FOIA Liaison. The email account is checked multiple times on a daily basis.

2. Electronic tracking of FOIA requests:

- a. What proportion of components within your agency which receive FOIA requests have the capability to track such requests electronically?

There are no separate components within FHFA that receive FOIA requests. However, FHFA, as a whole, has the capability to track all such requests electronically.

- b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

Not applicable as there are no “components” within the meaning of this question at FHFA.

- c. What methods does your agency use to track requests electronically?

FHFA uses a COTS spreadsheet, a COTS collaborative software program, individual electronic folders, and a dedicated FOIA email mailbox to track FOIA requests.

3. Electronic processing of FOIA requests:

- a. What proportion of components within your agency which receive FOIA requests have the capability to process such requests electronically?

There are no separate components within FHFA that receive FOIA requests. However, FHFA, as a whole, has the capability to process such requests electronically.

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- b. To what extent have you increased the number of components doing so since the filing of your last Chief FOIA Officer Report?

Not applicable as there are no “components” within the meaning of this question at FHFA.

- c. What methods does your agency use to process requests electronically?

FHFA is using a duplicate file finder tool to locate and eliminate duplicate electronic records responsive to FOIA requests, as well as a COTS search tool to search electronic records responsive to FOIA requests. FHFA also provides electronic responses to requesters.

4. Electronic preparation of your Annual FOIA Report:

- a. What type of technology does your agency use to prepare your agency Annual FOIA Report, i.e., specify whether the technology is FOIA-specific or a generic data-processing system.

FHFA utilizes COTS spreadsheet and word processing software products to prepare the Annual FOIA Report.

- b. If you are not satisfied with your existing system to prepare your Annual FOIA Report, describe the steps you have taken to increase your use of technology for next year.

Spreadsheet and word processing software products are not the most efficient methods for preparing the Annual FOIA Report. Therefore, FHFA is evaluating FOIA COTS software products to improve the efficiency of preparing the annual report as well as to further improve its use of technology to enhance transparency. FHFA is:

- Evaluating software products to improve the efficiency of tracking FOIA requests, redacting exempt information, maintaining statistics, and preparing confirmation and response letters;
- Developing or acquiring a document management and records management application to more efficiently search for electronic records responsive to FOIA requests; and
- Evaluating tools to improve the efficiency of electronic searching.

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

Improvements to timeliness in responding to pending FOIA requests and reductions in backlogs are both ongoing agency efforts. The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. Section XII of FHFA's Annual FOIA Report includes figures that show our backlog of pending requests and administrative appeals for the past two fiscal years.

Our backlog reflects the increased complexity of FOIA requests received by FHFA over the course of the fiscal year. FHFA's backlog increased in 2010 due to a number of factors including more complex requests, and not having a full-time FOIA Officer and Chief FOIA Officer for most of the fiscal year.

1. If you have a backlog, report on whether your backlog is decreasing.

The backlog increased in 2010.

- a. Number of cases, i.e., whether the number of backlogged requests and backlogged administrative appeals that remain pending at the end of the fiscal year decreased or increased, and by how many, when compared with last fiscal year.

At the end of fiscal year 2010, FHFA had 12 backlogged requests. At the end of fiscal year 2009 there were 5 backlogged requests. There were no backlogged appeals in fiscal year 2010.

- b. Age of the oldest cases, i.e., whether you closed in Fiscal Year 2010 the ten oldest of those pending requests and appeals from Fiscal Year 2009, and if not, report how many of them you did close.

All backlogged requests from 2009 were closed in 2010. There were no backlogged appeals.

2. If there has not been a reduction in the backlog as measured by either of these metrics, describe why that has occurred.

- a. Is the backlog increase a result of an increase in the number of incoming requests or appeals?

No.

- b. Is the backlog increase caused by a loss of staff?

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No.

- c. Is the backlog increase caused by an increase in the complexity of the requests received?

Yes.

- d. What other causes, if any, contributed to the increase in the backlog?

In addition to the increase in the complexity of the requests received, the volume of documents responsive to these complex requests has increased, which has led to longer search and review times to determine whether the documents are responsive, and whether and to what extent any documents can be released.

3. Describe steps taken to reduce any backlogs and to improve timeliness in responding to requests and administrative appeals.

The steps FHFA has taken and intends to take to reduce the backlog and 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 locations on FHFA's website;
- 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;
- Assessing and defining 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;
- Increasing the use of electronic search technologies and software to speed request processing; and
- Implementing additional recommendations for re-structuring FHFA's FOIA program.

- a. Does your agency routinely set goals and monitor the progress of your FOIA caseload?

Yes. Goals are established in individual performance plans and are reviewed on a regular basis. In addition, weekly reports are provided to the Chief FOIA Officer on the status of FOIA requests and appeals.

- b. Has your agency increased its FOIA staffing?

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Yes. The Chief FOIA Officer and the FOIA Officer are now full-time positions.

- c. Has your agency made IT improvements to increase timeliness?

Yes. FHFA proactively involves the IT HelpDesk staff to improve searches and has acquired and deployed new and faster laptops with the latest operating and office suite software packages.

- d. Has your agency Chief FOIA Officer been involved in overseeing FHFA's capacity to process requests?

Yes. The Chief FOIA Officer is involved in all aspects of the day-to-day operations of the FOIA program which includes oversight of requests, staffing, contract support, and IT support.

SPOTLIGHT ON SUCCESS

Out of all the activities undertaken by your agency in this last year to increase transparency, describe here one success story that you would like to highlight as emblematic of your efforts.

A success story in 2010 involves implementing the recommendations from FHFA's FOIA Working Group. The working group reviewed various FOIA practices at other agencies and made recommendations to the Acting Director. Those recommendations included moving the FOIA Office and Program to the Office of General Counsel from the Office of Information Management and Technology, and hiring full-time staff for the FOIA Office. At the time these recommendations were made, the duties of the Chief FOIA Officer and the FOIA Officer were performed on a collateral basis.

In order to implement the President's and Attorney General's principles of having a robust and transparent FOIA program, FHFA created and filled full-time Chief FOIA Officer and FOIA Officer positions. This has resulted in a more transparent, open and citizen-oriented FOIA program that is focused on a spirit of cooperation, timely responses and disclosures, and use of technology to make information available to the public.