



# THE FEDERAL HOUSING FINANCE AGENCY 2012 CHIEF FOIA OFFICER REPORT MARCH 12, 2012

## 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 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. 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.

FHFA is committed, through its Freedom of Information Act (FOIA) Program, 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.

FHFA is committed to providing access to agency records through a citizen-centered and results-

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oriented FOIA program. To facilitate this, FHFA adopted the plain language question and answer format for its FOIA regulation which is typically preferred by the general public. FHFA recently updated our FOIA regulation to address how FOIA requests for Office of Inspector General records will be handled as well as to issue clarifications and updates. 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.

*Name and Title of Agency Chief FOIA Officer:*

*David A. Lee  
Managing Associate General Counsel  
Chief Freedom of Information Act Officer  
Chief Privacy Officer*

## **Section I: Steps Taken to Apply the Presumption of Openness**

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

*Answer: Yes. All new employees received FOIA training.*

2. Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?

*Answer: Yes. The Chief FOIA Officer and FOIA Officer attended Department of Justice training as well as training sponsored by commercial vendors.*

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

3. Did your agency make any discretionary releases of otherwise exempt

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information?

*Answer: Yes.*

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

*Answer: Exemption 5.*

5. Describe your agency's process to review records to determine whether discretionary releases are possible.

*Answer: The FOIA Officer reviews records to determine whether an exemption applies to the records and whether the records should be released using our discretionary release authority. The FOIA Officer then recommends to the Chief FOIA Officer that a discretionary release be made. The Chief FOIA Officer then reviews the documents and makes a determination whether any records which are exempt from disclosure nonetheless can be discretionarily released.*

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

*Answer: FHFA has taken the following steps to ensure that the presumption of openness is being applied.*

- *Reviewing requested records with the objective of identifying any records 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 non-exempt information;*
- *Working with requesters to better define or narrow requests to better understand what the requester seeks and whether any responsive records can be located and released;*
- *Applying the foreseeable harm standard to information that could be properly withheld under Exemptions 2 and 5; and*
- *Proactively posting information on FHFA's website when multiple FOIA requests are made for the same information so that the information is readily available to the public.*

In Section V.B.(1) of your agency's Annual FOIA Report, entitled "Disposition of FOIA Requests – All Processed Requests" the first two columns list the "Number of Full Grants" and the "Number of Partial Grants/Partial Denials." Compare your agency's 2011 Annual FOIA Report with last year's Annual FOIA Report, and answer the following questions:

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7. Did your agency have an increase in the number of responses where records were released in full?

*Answer: Yes*

8. Did your agency have an increase in the number of responses where records were released in part?

*Answer: Yes*

## **Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests**

As the Attorney General emphasized in his FOIA Guidelines, "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests."

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.

Describe here the steps your agency has taken to ensure that its system for responding to requests is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

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

*Answer: 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 for records. In January 2012 a commercial-off-the shelf (COTS) FOIA tracking software package was implemented. Further, the FOIA Office, in conjunction with the Information Technology Office, is currently identifying and reviewing additional automated tools to assist in performing electronic searches.*

2. Is there regular interaction between agency FOIA professionals and the Chief FOIA Officer?

*Answer: Yes. On a daily basis the FOIA Officer interacts with the Chief FOIA Officer.*

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3. Do your FOIA professionals work with your agency's Open Government Team?

*Answer: 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.*

4. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to FOIA administration.

*Answer: In January 2011 a full-time FOIA Officer was hired. This full-time position replaced a part-time FOIA Officer (collateral duties). On a regular basis the FOIA Officer and the Chief 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.*

5. Describe any other the steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.

*Answer: FHFA is taking or has taken 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 each search was conducted, and if applicable, why the agency does not have responsive records, and why a particular exemption was cited when withholding documents;*
- *Updated FHFA's FOIA regulation to include language on how requests for Office of Inspector General records will be processed and to clarify and update the regulation;*
- *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;*
- *Purchased and implemented a COTS FOIA tracking software in Fiscal Year 2012 to ensure better processing, tracking and reporting of FOIA requests;*
- *Developed 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;*

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- *Updated the agency's public website to include updating : 1) the FOIA Reference Guide; 2) Frequently Asked Questions page; and 3) providing links to the Department of Justice's FOIA page;*
- *Providing IT support to the FOIA program to improve efficiency in searching for responsive electronic records;*
- *Maintaining a dedicated phone line and dedicated FOIA email account ([foia@fhfa.gov](mailto:foia@fhfa.gov)) specifically to receive inquiries from FOIA requesters;*
- *Continuing to developing standard internal protocols for searches, use of exemptions, and processing and authorizing responses, disclosures and denials;*
- *Developed 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.*

### **Section III: Steps Taken to Increase Proactive Disclosures**

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Describe here the steps your agency has taken both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2011 to March 2012). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

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

*Answer: Yes.*

2. Provide examples of the records, datasets, videos, etc, that have been posted this past year.

*Answer:*

- *Press Releases;*
- *Monthly interest rate survey data;*
- *Regulations, notices, and public comments;*
- *Capital disclosures;*
- *Federal Home Loan Bank Membership data;*
- *Supervision handbooks and guidance;*
- *Research papers;*

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- *Agency reports, such as Federal Home Loan Bank Advisory Bulletins, Advisory Council Reports, Resources for Consumers, Regulatory Interpretations, Collateral Securing Advances Reports, Quarterly Conservator's Reports, Federal Property Managers Reports, Foreclosure Prevention Reports, Orders, Enterprise Guarantee Fees Reports, Federal Home Loan Bank Securitization Reports, and Refinance Reports; and*
- *Housing Price Index data.*

3. Describe the system your agency uses to routinely identify records that are appropriate for posting.

*Answer: FHFA evaluates the content and organization of the electronic reading room on a regular basis. Offices are responsible for proactively identifying information that can be posted on the website so that FOIA requests do not need to be made for this information.*

4. Beyond posting new material, is your agency taking steps to make the information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities, providing explanatory material, etc.?

*Answer: Yes.*

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

*Answer: FHFA's disclosures are primarily through the FOIA electronic reading room and other relevant locations on the public website – such as the Public Information link which has links to FOIA, News Center, Information Quality and other publicly available information.*

## **Section 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 and 2011, agencies reported widespread use of technology in handling FOIA requests. For 2012, the questions have been further refined and now also address different, more innovative aspects of technology use.

*Electronic receipt of FOIA requests:*

1. Can FOIA requests be made electronically to your agency?

*Answer: Yes.*

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2. If your agency processes requests on a decentralized basis, do all components of your agency receive requests electronically?

*Answer: Not applicable.*

*Online tracking of FOIA requests:*

3. Can a FOIA requester track the status of his/her request electronically?

*Answer: No.*

4. If not, is your agency taking steps to establish this capability?

*Answer: Yes. FHFA acquired and implemented a COTS FOIA Tracking/Processing software system that has the capability of doing so. This functionality has not been activated, but will be during the 2<sup>nd</sup> quarter of Fiscal Year 2012.*

*Use of technology to facilitate processing of requests:*

5. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

*Answer: Yes.*

6. If so, describe the technological improvements being made.

*Answer: The FOIA Office, in conjunction with the Office of Information Technology and Management is working on developing the requirements for an e-Discovery tool to be utilized by the Office of General Counsel, the FOIA Office and others within the agency to search for electronic versions of agency records.*

## **Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs**

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests and appeals. For the



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figures required in this Section, please use those contained in the specified sections of your agency's 2011 Annual FOIA Report.

1. Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.

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

*Answer: Yes.*

b. If so, for your agency overall, for Fiscal Year 2011, was the average number of days to process simple requests twenty working days or fewer?

*Answer: Yes.*

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

*Answer: Not applicable.*

2. Sections XII.D.(2) and XII.E.(2) of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report – Backlogged Requests/Appeals," show the numbers of any backlog of pending requests or pending appeals from Fiscal Year 2011 as compared to Fiscal Year 2010. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition, Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," and Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," from both Fiscal Year 2010 and Fiscal Year 2011 should be used for this section.

a. If your agency had a backlog of requests at the close of Fiscal Year 2011, did that backlog decrease as compared with Fiscal Year 2010?

*Answer: Yes.*

b. If your agency had a backlog of administrative appeals in Fiscal Year 2011, did that backlog decrease as compared to Fiscal Year 2010?

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*Answer: Not applicable.*

c. In Fiscal Year 2011, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2010?

*Answer: Yes.*

d. In Fiscal Year 2011, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2010?

*Answer: Not applicable.*

3. If you answered “no” to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation:

*Request Backlog: Not applicable.*

a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?

*Answer: Not applicable.*

b. Was the lack of a reduction in the request backlog caused by a loss of staff?

*Answer: Not applicable.*

c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?

*Answer: Not applicable.*

d. What other causes, if any, contributed to the lack of a decrease in the request backlog?

*Answer: Not applicable.*

*Administrative Appeal Backlog:*

a. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?

*Answer: Not applicable.*

b. Was the lack of a reduction in the appeal backlog caused by a loss of staff?

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*Answer: Not applicable.*

c. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received?

*Answer: Not applicable.*

d. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?

*Answer: Not applicable.*

All agencies should strive to both reduce any existing backlogs or requests and appeals and to improve their timeliness in responding to requests and appeals. Describe the steps your agency is taking to make improvements in those areas. In doing so, answer the following questions and then also include any other steps being taken to reduce backlogs and to improve timeliness.

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

*Answer: Yes. FHFA's goals are to 1) respond to FOIA requests within the statutory 20 day time frame for responding to requests; 2) implement the President's and Attorney General's memoranda on openness and transparency; and 3) make discretionary releases of records when appropriate. Towards that end, the FOIA Officer and Chief FOIA Officer meet on a weekly basis to discuss the status of open FOIA requests to ensure that FOIA requests are responded to in a timely fashion. In addition, where appropriate, the FOIA Officer and Chief FOIA Officer meet to discuss and determine what records can be released on a discretionary basis, even if they might otherwise be exempt from disclosure under one of the FOIA exemptions.*

2. Has your agency increased its FOIA staffing?

*Answer: No.*

3. Has your agency made IT improvements to increase timeliness?

*Answer: Yes.*

4. If your agency receives consultations from other agencies, has your agency taken steps to improve the efficiency of the handling of such consultations, such as utilizing IT to share the documents, or establishing guidelines or agreements with other agencies on the handling of particular information to speed up or eliminate the need for consultations?

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*Answer: Not applicable.*

## **Use of FOIA’s Law Enforcement “Exclusions”**

In order to increase transparency regarding the use of the FOIA’s statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to “treat the records as not subject to the requirements of [the FOIA],” 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. Did your agency invoke a statutory exclusion during Fiscal Year 2011?

*Answer: No.*

2. If so, what is the total number of times exclusions were invoked?

*Answer: Not applicable.*

## **Spotlight on Success**

Out of all the activities undertaken by your agency since March 2011 to increase transparency and improve FOIA administration, describe here one success story that you would like to highlight as emblematic of your agency’s efforts.

*Success Story (Stories): A success story in 2011 involves the acquiring and implementation of a commercial off-the-shelf FOIA processing/tracking software system that will enable FHFA to better track, monitor and process FOIA requests in a more efficient and effective manner. The software system allows requesters to check the status of their requests. This will result 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.*