# Chief FOIA Officer Report

High-volume receiving more than 50 requests in Fiscal Year 2020



# Message from the Chief FOIA Officer

The Consumer Financial Protection Bureau (Bureau) was established on July 21, 2010 under Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act Public Law No. 111-203 (Dodd-Frank Act). The establishment of the Bureau consolidated most Federal consumer financial



protection authority in one place. Our mission is to help consumer finance markets work by regularly identifying and addressing outdated, unnecessary, or unduly burdensome regulations, by making rules more effective, by consistently enforcing federal consumer financial law, and by empowering consumers to take more control over their economic lives through economic initiatives.

It is the Bureau's pleasure to submit our ninth annual report and highlight our accomplishments over the past year. During the reporting period, the Bureau's FOIA team created agility in order to significantly reduce the backlog. Weekly reporting and frequent communications created accountability across the Bureau and resulted in a more efficient and effective document review process. As a result, in Fiscal Year 2020, the FOIA team reduced the backlog by 31%, more than three times the 10% target recommended by the Department of Justice<sup>1</sup>.

The Bureau strives to lead by example by being transparent with respect to its own activities. The Bureau utilizes its website as the primary vehicle for sharing information on the Bureau's work and operations. This past year, the Bureau refocused its efforts on the proactive release of information and frequently requested records, including posting leadership calendars, budget updates, general reports, guidance, and FOIA request logs to demonstrate transparency and reduce the need for FOIA requests on these topics. This past year, the Bureau enhanced its interactive enforcement database on the website, a self-service tool for the public to explore documents related to the Bureau's enforcement actions. The public can now search for administrative proceedings and civil actions and access documents such as consent orders, stipulations, and Bureau press releases.

The Bureau will continue to find ways to increase public transparency and make it easier for consumers and stakeholders to timely locate and access essential materials and information

<sup>&</sup>lt;sup>1</sup> See OMB's M-10-06 Open Government Directive.

about the Bureau's activities, while ensuring the protection of personal privacy, as well as confidential, privileged, and proprietary information.

Inquiries about this report may be directed to the Bureau's FOIA team at (855) 444-FOIA (3642) or FOIA@consumerfinance.gov.

Sincerely,

Donna Roy

Laura Also

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# Steps taken to apply the presumption of openness

A key aspect of the Bureau's mission is to make the financial products and services that consumers use more transparent. Transparency is at the core of the Bureau agenda and an essential part of how the Bureau operates. The public deserves to know what the Bureau is doing and how it is doing it. The Bureau is ensuring that FOIA activities are fully integrated in the work of the agency.

## 1.1 FOIA leadership

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.

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

Donna Roy, Chief Operating Officer

## 1.2 FOIA training

3. 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 team participates in the onboarding training provided by the Bureau for new employees and coordinates refresher training for agency personnel. The FOIA team also routinely provides training in staff and cross Bureau working group meetings. Additionally, the FOIA team introduced Brown Bag training sessions designed to give the FOIA Analysts strategic tools to improve their organizational skills and provide additional techniques to apply exemptions and process requests more efficiently to reduce the FOIA request backlog.

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

Yes.

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

The Bureau's FOIA team attended several different trainings including:

#### **Department of Justice**

- DOJ Annual FOIA Report Training October 15, 2020
- DOJ Introduction to FOIA July 9, 2020
- DOJ Continuing FOIA Education April 24, 2019
- DOJ Advanced FOIA Seminar May 14, 2019
- DOJ FOIA for Attorneys and Access Professionals June 11 and June 12, 2019
- FOIA Litigation Seminar (DOJ OIP) June 25, 2019
- DOJ FOIA Processing From Start to Finish Checklist May 2019
- DOJ All FOIA Exemptions Overview June 2019
- DOJ Exemption 4, 5, 6 & 7 June 2019
- DOJ OIP Guidance on "Still Interested Inquiries" July 2019

#### **FOIAXpress**

- FOIA EDR Training July 24, 2020
- FOIAXpress user conference (virtual) October 28-29, 2020
- FOIAXpress Electronic Document Review Training July 24, 2019

#### **Brown Bag Training**

- FOIA Exemption b4 August 12, 2020
- FOIA Exemption b5- August 19, 2020
- FOIA Exemptions b6 and b7 and b8-August 26, 2020
- FOIA Express Cradle-to-Grave- November 13, 16 and 17, 2020
- Quality Control Training- November 18, 2020
- 6. 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%

7. 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

## 1.3 Outreach

8. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA? 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.

Yes. The FOIA team promptly reached out to requesters to resolve any questions about requests before searches were initiated, and encouraged requesters to contact the FOIA team if they had any questions. Additionally, the FOIA team leveraged relationships with the requester community to coordinate prioritization with frequent requesters resulting in a 72% reduction in requests from our most frequent requester in Fiscal Year 2020. These negotiations led to the closure of all ten oldest requests. This ongoing dialogue helped the FOIA team build the credibility required to down scope voluminous requests that otherwise would have remained backlogged.

## 1.4 Other initiatives

9. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA.

The Covid-19 pandemic required the FOIA team to ensure ongoing engagement with non-FOIA professionals at the Bureau. Messaging and support from leadership around each employees' duties proved effective, and the FOIA team created an updated FOIA training that was rolled out through our new online employee orientation. Additionally, the team offered training to Bureau program office FOIA liaisons. The FOIA team compiled and circulated a Weekly Update to the Director, senior management, and FOIA

liaisons with a series of charts and metrics that highlighted ongoing progress as well as stakeholder contributions to Bureau FOIA releases.

10. 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.

The FOIA team coordinated focused equity review meetings with relevant stakeholders to facilitate the timely processing of requests. The FOIA team also introduced a new Bureau notification process to encourage Bureau-wide awareness of requests prior to release. As a part of this process, relevant stakeholders receive a message 24 hours in advance to ensure awareness of the upcoming releases.

# Steps taken to ensure that your agency has an effective system in place for responding to requests

1. For Fiscal Year 2019, what was the average number of days your agency reported for adjudicating requests for expedited processing? (Section VIII.A. of your agency's Fiscal Year 2019 Annual FOIA Report.)

The average number of days to adjudicate requests for expedited processing was one calendar day. This represents a substantial reduction from 17 days in our last 2019 Chief FOIA Officer Report.

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, 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

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program?

The FOIA team routinely conducted workflow analysis calculated to optimize productivity and identify opportunities to streamline processes.

- 4. Standard Operating Procedures (SOPs): Having SOPs can improve the consistency and quality of an agency's FOIA process. In addition, describing an agency's standard practices for handling FOIA requests on agency FOIA websites can help requesters better understand how their request will be handled.
  - a) Does your agency have SOPs that outline general processes for handling FOIA requests and appeals?

Yes, the Bureau has standard protocols that communicate the FOIA team standard operating procedures.

b) If not, does your agency have plans to create FOIA SOPs?

N/A

- c) If yes, how often are they reviewed/updated to account for changes in law, best practices, and technology?
  - The staff discusses novel or routine issues in weekly staff meetings. Protocol emails are created and circulated to address process changes, explain complex issues and provide concrete guidance.
- d) In addition to having SOPs, does your agency post or otherwise describe your standard processes for handling requests on your website?
  - Yes. The <u>Freedom of Information Act and Privacy Act Guidebook</u> is posted on the Bureau's website as a resource and describes the process for handling requests. Additionally, the FOIA team published a <u>website update</u> to notify requesters of COVID-19 processing changes to ensure smooth continued operations.
- 5. 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 2019 (please provide a total number or an estimate of the number).
  - During Fiscal Year 2020, the FOIA Public Liaison responded to approximately 140 inquiries.
- 6. Does your agency frequently receive common categories of first-party requests? If so, please describe the types of requests and if your agency has explored establishing alternative means of access to these records outside of the FOIA process?
  - Yes. Consumer complaints are a common category of first-party requests which can be accessed through the <u>Consumer Complaint Database</u> outside of the FOIA process. This database is a collection of complaints about consumer financial products and services that we sent to companies for response.
- 7. The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within 180 days. Has your agency updated its FOIA regulations in

accordance with the FOIA Improvement Act of 2016? If not, what is your agency's plan to update your regulations?

Yes.

8. Please explain how your agency worked to mitigate the impact of the COVID-19 pandemic on FOIA processing. Examples could include, but are not limited to: altering workflows, implementing new technology, providing notices and instructions or otherwise communicating directly with requesters.

Workplace flexibilities authorized by the Bureau in response to the COVID-19 pandemic enabled telework. As a result, the FOIA team published a <u>website update</u> to notify requesters of COVID-19 processing changes to ensure smooth continued operations. In a June 2020 publication, the federally designated Ombudsman – Office of Government Information Services highlighted the Bureau FOIA team's external outreach efforts to inform the public about COVID 19's effects in its <u>assessment of over 300 agencies' FOIA websites</u>.

# 3. Steps taken to increase proactive disclosures

The Bureau strives to lead by example by being transparent with respect to its own activities. The Bureau utilizes its website as the primary vehicle to share information on the operations and work of the Bureau. These initiatives include posting leadership calendars; budget updates; general reports; guidance updates; FOIA request logs; and much more.

1. Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.

#### **Enforcement actions**

The Bureau may enforce the law by filing an action in federal district court or by initiating an administrative adjudication proceeding. Administrative proceedings are conducted by an Administrative Law Judge, who holds hearings and issues a recommended decision. Proceedings are conducted in accordance with the <u>Rules of Practice for Adjudication Proceedings</u>.

#### **Consumer complaint narratives**

With consumers' consent, the Bureau publishes de-identified narratives about their experiences with consumer products such as mortgages, bank accounts and services, credit cards, debt collection, credit reporting, and more. These consumer narratives provide a firsthand account of the consumer's experience and provide context to the associated complaints.

#### Leadership calendars

The Bureau is committed to keeping the public informed about the daily work of senior leadership, including Acting Director David Uejio, by sharing his calendar. Given the level of public interest in the Director's and Deputy Director's calendars, this proactive disclosure reduces the number of potential incoming requests for this information. The calendars of past leaders, including: Richard Cordray, Elizabeth Warren, Raj Date, Steven Antonakes, Mick Mulvaney, Kathleen Kraninger, Brian Johnson, and Tom Pahl are archived on the website for the public to view as well.

#### **FOIA logs**

The FOIA team continues to publish FOIA logs to its electronic reading room to assist the public with making requests.

2. 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.

3. If yes, please provide examples of such improvements.

The FOIA team revised the 2018 FOIA logs to align with new posting protocol which includes closed requests.

- 4. Optional -- Please describe:
  - a) the best practices used to improve proactive disclosures and;

The FOIA team collaborates with divisions to identify information that can be proactively released. Additionally, the FOIA staff has received targeted training on the provisions requiring proactive disclosure. To mitigate the likely impact on increased requests related to the ongoing presidential transition, the FOIA team collaborated across teams to develop ways to identify categories of records and reaffirm the requirements to proactively disclose records likely to become the subject of frequent FOIA requests. Identifying and notifying the appropriate stakeholders has proven to expedite the posting of records of interest to the public. The equity review process is more collaborative and includes both a subject matter expert and FOIA analyst. The FOIA team circulates responsive records prior to the equity review meeting to provide stakeholders more time for review.

b) any challenges your agency faces in this area.

The Bureau's regulatory activities requires the collection of personally identifiable information. These records are often the subject of FOIA requests. Identifying ways to alleviate the administrative burden of posting sensitive information in an accessible format remains a challenge.

# Steps taken to greater utilize technology

The Bureau is a data-driven agency that utilizes current technologies to ensure that the Bureau is transparent with the public and appropriately disclosing information through the FOIA program. The Bureau uses technology in the overall management of the FOIA process to conduct searches for responsive records and review responsive records for release in an electronic format.

- 1. Is your agency leveraging technology to facilitate efficiency in conducting searches, including searches for emails? If so, please describe the type of technology used. If not, please explain why and please describe the typical search process used instead.
  - Yes. The Bureau has a dedicated e-discovery team, the Legal Technology Support Team (LTST) within the Office of Technology & Innovation, that uses Veritas (formerly Clearwell) and Relativity platforms to conduct searches of email and other electronically-stored records on behalf of the FOIA team. The FOIA team has an embedded LTST expert to assist the FOIA team with its use of this technology and LTST has become an integral part of the FOIA workflow in Fiscal Year 2020, collaborating on complex issues impacting the FOIA process. Most notably, this effort included a restructure of the way records are transmitted between divisions. This partnership resulted in a more streamlined and efficient process, while improving access controls.
- 2. 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.

- 3. Did your agency successfully post all four quarterly reports for Fiscal Year 2020?
  - Yes: https://www.consumerfinance.gov/foia-requests/foia-electronic-reading-room/cfpb-foia-quarterly-reports/.
- 4. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2020.

N/A

5. 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 2019 Annual FOIA Report and, if available, for your agency's Fiscal Year 2020 Annual FOIA Report.

**2019:** https://www.consumerfinance.gov/foia-requests/foia-electronic-reading-room/cfpb-annual-foia-report-fy2019/

**2020:** https://www.consumerfinance.gov/foia-requests/foia-electronic-reading-room/cfpb-annual-foia-report-fy2020/

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

At the start of Fiscal Year 2020, the FOIA team was moved into the newly established Office of the Chief Data Officer (OCDO). This new office integrated the Bureau's information management programs, including Records, Paperwork Reduction Act, Privacy, Data Policy and Governance, and Knowledge Management. One of the goals of the OCDO is to prioritize the use of automation to improve processes and workflow management across its teams and programs.

# Steps taken to improve timeliness in responding to requests and reducing backlogs

# 5.1 Simple track

The Bureau understands the importance of responding to requests within the timelines outlined in the FOIA statute. Additionally, the Bureau strives to respond to appeals within the same amount of time (20 working days) to provide requesters with a determination in a timely manner.

- 1. Does your agency utilize a separate track for simple requests?
  - Yes.
- 2. If your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2020?
  - Yes. The average number of days to process simple requests was 11.8 working days.
- 3. Please provide the percentage of requests processed by your agency in Fiscal Year 2020 that were placed in your simple track.
  - 46% of requests processed were in the simple track.
- 4. 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

# 5.2 Backlogs

### 5.2.1 Backlogged requests

5. If your agency had a backlog of requests at the close of Fiscal Year 2020, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

Yes. The Bureau reduced the backlog 31% from 179 requests in Fiscal Year 2019 to 124 requests in Fiscal Year 2020.

6. If not, did your agency process more requests during Fiscal Year 2020 than it did during Fiscal Year 2019?

N/A

7. If your agency's request backlog increased during Fiscal Year 2020, 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. Loss of staff. An increase in the complexity of requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase. Any other reason – please briefly describe or provide examples when possible.

N/A

8. 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 2020. If your agency has no request backlog, please answer with "N/A."

The FOIA team had a backlog of 124 requests in Fiscal Year 2020 and a total of 330 requests received in Fiscal Year 2020. The backlog was 37.6% of the FOIA requests received.

### 5.2.2 Backlogged appeals

9. If your agency had a backlog of appeals at the close of Fiscal Year 2020, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

N/A

10. If not, did your agency process more appeals during Fiscal Year 2020 than it did during Fiscal Year 2019?

N/A

11. If your agency's appeal backlog increased during Fiscal Year 2020, 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:

N/A

12. 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 2020. If your agency did not receive any appeals in Fiscal Year 2020 and/or has no appeal backlog, please answer with "N/A."

N/A

# 5.3 Backlog reduction plans

13. In the 2020 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2019 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 2020?

Yes. The FOIA team submitted a Backlog Reduction Plan to our Director and worked throughout the year to implement this comprehensive plan that resulted in a 31% decrease in the backlog. This plan set specific monthly goals for the FOIA team and the backlog was reported to the Director on a weekly basis.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2020, what is your agency's plan to reduce this backlog during Fiscal Year 2021?

N/A

### Ten oldest requests

15. In Fiscal Year 2020, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2019 Annual FOIA Report?

Yes.

16. 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 2018 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

N/A

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

Following the completion of a comprehensive portfolio review, requests were redistributed to increase productivity. The team focused on multitrack processing and prioritized closing simple track requests.

### Ten oldest appeals

18. In Fiscal Year 2020, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2019 Annual FOIA Report?

Yes, all outstanding appeals were closed.

19. 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 2019 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

N/A

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

The FOIA team continued to streamline communication with the Legal Division and purchased additional licenses to ensure access to the centralized system which maintains the administrative record.

#### Ten oldest consultations

21. In Fiscal Year 2020, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2019 Annual FOIA Report?

No consultations were reported pending in Fiscal Year 2019, nor in Fiscal Year 2020.

22. 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 2019 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

N/A

# 5.4 Additional information on ten oldest requests, appeals, and consultations & plans

23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2019.

Each of the Bureau's 10 oldest requests were complex and presented unique challenges. Specifically, many of the requests were broad in scope and required complex reviews of voluminous record sets; negotiations on scope with requesters; and extensive coordination with both internal and external stakeholders.

24. If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

N/A

25. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2021.

N/A

## 5.5 Success stories

Out of all the activities undertaken by your agency since March 2020 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come

from any one of the five key areas, but should not be something that you have reported in a prior year. As noted above, OIP will highlight these agency success stories during Sunshine Week. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

The FOIA team developed a comprehensive Backlog Reduction Plan resulting in an unprecedented 31% reduction in the Bureau's backlog in Fiscal Year 2020. To achieve this success:

- Weekly meeting between the FOIA team and Director's Front Office advisors ensured that the FOIA work with divisions was prioritized, while creating efficiencies in the review process.
- The FOIA team increased communications with leadership and stakeholders through a comprehensive Weekly FOIA Update that includes metrics and developing trends.
- To address feedback from internal stakeholders, the FOIA team tailored weekly stakeholder updates to include a detailed account of all outstanding deliverables.
- The team coordinated regular portfolio reviews using intelligent case management to spot trends and identify overlapping requests.
- To increase capacity, additional, highly skilled contractors were obtained and deployed to focus on backlog reduction.
- The FOIA team prioritized improving the business submitter notification process, revising template communications, and taking steps to ensure coordination with Bureau program office FOIA liaisons.

The below graph illustrates the FOIA team's progress in addressing pending request and backlog reduction from March 2020 through February 2021. The Total Pending line (yellow) is inclusive of all requests pending with the Bureau at the end of the calendar month. The Backlog line (blue) is the number of open requests that are past their statutory deadline at the end of the calendar month. The backlog numbers reflect an improvement in our case management system's reporting of the backlog.

#### Backlog and Pending Requests Reduction - March 2020 through February 2021

