

COMMODITY FUTURES TRADING COMMISSION FOIA ANNUAL REPORT

FOR
10/01/2011
THROUGH
09/30/2012

Wednesday, January 16, 2013

The following **Annual Freedom of Information Act** report covers the
Period 10/01/2011, through 09/30/2012, as required by 5 U.S.C. 552.

I. BASIC INFORMATION REGARDING REPORT

1. Provide name, title, address, and telephone number of person(s) to be contacted with questions about the Report.

Linda Mauldin
Paralegal Specialist
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581
Tel.: (202) 418-5497

2. A copy of this report can be found on our website at:

http://www.cftc.gov/foi/foiareference/foia_annrept11.html

3. To obtain a copy of this report in paper form, please submit the Electronic FOIA Request Form found on our website at:

<https://www.cftc.gov/FOI/request/index.htm>

Or send a written request to:

Mail:

FOIA Office
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581
Tel.: (202) 418-5497

or

Email:

FOIASubmissions@cftc.gov

II. MAKING A FOIA REQUEST

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

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

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

Freedom of Information Act Request
Commodity Futures Trading Commission

Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

E-mail address is: FOIAsubmissions@cftc.gov

2. The CFTC receives requests for records regarding a company's business practices and requests for records relating to the CFTC's law enforcement investigations and regulatory activity. The majority of requests that are initially denied, or partially denied, are due to statutory constraints on disclosure or because disclosure would interfere with ongoing law enforcement activities.

III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

1. Provide any agency-specific acronyms or terms used in this Report.
 - a. **CFTC or Commission** - Commodity Futures Trading Commission
 - b. **Section 8** - Section 8 of the Commodity Exchange Act
2. Include the following definitions of terms used in this Report:
 - a. **Administrative Appeal** - a request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.
 - b. **Average Number** - the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.
 - c. **Backlog** - the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.
 - d. **Component** - for agencies that process requests on a decentralized basis, a "component" is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in their Annual FOIA Report data for both the agency overall and for each principal component of the agency.
 - e. **Consultation** - the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.
 - f. **Exemption 3 Statute** - a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.
 - g. **FOIA Request** - a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., "first-party" requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act "systems of records" or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require the agency to utilize the FOIA in responding to the requester are included in this Report.

Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this Report.)
 - h. **Full Grant** - an agency decision to disclose all records in full in response to a FOIA request.
 - i. **Full Denial** - an agency decision not to release any records in response to a FOIA request because the records are exempt in their entirety under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.
 - j. **Median Number** - the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
 - k. **Multi-Track Processing** - a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet

another track. Requests in each track are processed on a first in/first out basis.

- i. **Expedited Processing** - an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.
- ii. **Simple Request** - a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.
- iii. **Complex Request** - a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.
- l. **Partial Grant/Partial Denial** - in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.
- m. **Pending Request or Pending Administrative Appeal** - a request or administrative appeal for which an agency has not taken final action in all respects.
- n. **Perfected Request** - a request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.
- o. **Processed Request or Processed Administrative Appeal** - a request or administrative appeal for which an agency has taken final action in all respects.
- p. **Range in Number of Days** - the lowest and highest number of days to process requests or administrative appeals.
- q. **Time Limits** - the time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).
3. Include the following concise descriptions of the nine FOIA exemptions:
 - a. **Exemption 1:** classified national defense and foreign relations information
 - b. **Exemption 2:** internal agency rules and practices
 - c. **Exemption 3:** information that is prohibited from disclosure by another federal law
 - d. **Exemption 4:** trade secrets and other confidential business information
 - e. **Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges
 - f. **Exemption 6:** information involving matters of personal privacy
 - g. **Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual
 - h. **Exemption 8:** information relating to the supervision of financial institutions
 - i. **Exemption 9:** geological information on wells

IV. Exemption 3 Statutes

A. For Initial Requests				
Statute	Type of Information Withheld	Case Citation	Number of Times Relied upon per Component	Total Number of Times Relied upon by Agency

7 U.S.C. §12 (CEA)	[D]ata and information that would separately disclose the business transactions of any person and trade secrets or names of customers gathered in the course of the Commissions investigations under the Commodity Exchange Act	Hunt v. CFTC, 484 F. Supp. 47, 49 (D.D.C. 1979)	HQ : 13	13
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B. For Appeals

Statute	Type of Information Withheld	Case Citation	Number of Times Relied upon per Component	Total Number of Times Relied upon by Agency
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V. FOIA REQUESTS

A. Received, Processed and Pending FOIA Requests

	Number of Requests Pending as of Start of Fiscal Year	Number of Requests Received in Fiscal Year	Number of Requests Processed in Fiscal Year	Number of Requests Pending as of End of Fiscal Year
HQ	<u>41</u> 41	175	170	46
AGENCY OVERALL	41	175	170	46

B.(1) Disposition of FOIA Requests All Processed Requests

	Number of Full Grants	Number of Partial Grants/Partial Denials	Number of Full Denials Based on Exemptions	Number of Full Denials Based on Reasons Other than Exemptions								TOTAL
				No records	Request withdrawn	Fee-related reason	Records not reasonably described	Not a proper FOIA request for some other reason	Not an agency record	Duplicate Request	Other *Explain in chart below	
HQ	45	64	11	34	9	1	1	1	2	1	1	170
AGENCY OVERALL	45	64	11	34	9	1	1	1	2	1	1	170

B.(2) Disposition of FOIA Requests Other Reasons for Full Denials Based on Reasons Other than Exemptions

Component	Description of Other Reasons for Denials from Chart B (1) & Number of Times Those Reasons Were Relied upon	TOTAL
HQ	Public Records 1	1

B.(3) Disposition of FOIA Requests Number of Times Exemptions Applied

	(b) (1)	(b) (3)	(b) (4)	(b) (5)	(b) (6)	(b) (7) (A)	(b) (7) (B)	(b) (7) (C)	(b) (7) (D)	(b) (7) (E)	(b) (7) (F)	(b) (8)	(b) (9)
HQ	-	13	35	27	40	13	-	1	-	-	-	-	-
AGENCY OVERALL	-	13	35	27	40	13	-	1	-	-	-	-	-

VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS

A. Received, Processed and Pending Administrative Appeals

	Number of Appeals Pending as of Start of Fiscal Year	Number of Appeals Received in Fiscal Year	Number of Appeals Processed in Fiscal Year	Number of Appeals Pending as of End of Fiscal Year
HQ	2	6	3	5

AGENCY OVERALL	2	6	3	5
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B. Disposition of Administrative Appeals All Processed Appeals					
	Number Affirmed on Appeal	Number Partially Affirmed & Partially Reversed / Remanded on Appeal	Number Completely Reversed / Remanded on Appeal	Number of Appeals Closed for Other Reasons	TOTAL
HQ	1	1	1	-	3
AGENCY OVERALL	1	1	1	-	3

C.(1) Reasons for Denial on Appeal Number of Times Exemptions Applied													
	(b) (1)	(b) (3)	(b) (4)	(b) (5)	(b) (6)	(b) (7) (A)	(b) (7) (B)	(b) (7) (C)	(b) (7) (D)	(b) (7) (E)	(b) (7) (F)	(b) (8)	(b) (9)
HQ	-	-	-	-	1	-	-	-	-	-	-	-	-
AGENCY OVERALL	-	-	-	-	1	-	-	-	-	-	-	-	-

C.(2) Reasons for Denial on Appeal Reasons Other than Exemptions											
	No records	Request withdrawn	Fee-related reason	Records not reasonably described	Not a proper FOIA request for some other reason	Not an agency record	Duplicate Request or Appeal	Request in Litigation	Appeal Based Solely on Denial of Request for Expedited Processing	Other *Explain in chart below	TOTAL
HQ	-	-	-	-	-	-	-	-	-	-	-
AGENCY OVERALL	-	-	-	-	-	-	-	-	-	-	-

C.(3) Reasons for Denial on Appeal Other Reasons		
Component	Description of Other Reasons for Denials from Chart C (2) & Number of Times Those Reasons Were Relied upon	TOTAL

C.(4) Response Time for Administrative Appeals												
	SIMPLE				COMPLEX				EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
HQ	25	197.33	22	545	-	-	-	-	-	-	-	-
AGENCY OVERALL	25	197.33	22	545	-	-	-	-	-	-	-	-

C.(5) Ten Oldest Pending Administrative Appeals										
	10th Oldest Appeal and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Appeal and Number of Days Pending
HQ						09/06/2012 16	03/12/2012 141	12/21/2011 195	11/07/2011 225	09/14/2011 262
AGENCY OVERALL						09/06/2012 16	03/12/2012 141	12/21/2011 195	11/07/2011 225	09/14/2011 262

VII. FOIA REQUESTS: RESPONSE TIME FOR PROCESSED AND PENDING REQUESTS

A. Processed Requests Response Time for All Processed Perfected Requests												
	SIMPLE				COMPLEX				EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
HQ	18	46.52	<1	333	108	146.47	3	471	-	-	-	-

AGENCY OVERALL	18	46.52	<1	333	108	146.47	3	471	-	-	-	-
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B. Processed Requests Response Time for Perfected Requests in Which Information Was Granted

	SIMPLE				COMPLEX				EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
HQ	26	55.9	<1	333	122	138.97	29	346	-	-	-	-
AGENCY OVERALL	26	55.9	<1	333	122	138.97	29	346	-	-	-	-

C. Processed Requests Response Time in Day Increments

Simple Requests															
	< 1 Day	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
HQ	3	57	21	5	8	4	6	5	-	1	3	3	1	-	117
AGENCY OVERALL	3	57	21	5	8	4	6	5	-	1	3	3	1	-	117
Complex Requests															
	< 1 Day	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
HQ	-	2	4	5	8	5	4	3	2	4	1	9	5	1	53
AGENCY OVERALL	-	2	4	5	8	5	4	3	2	4	1	9	5	1	53
Requests Granted Expedited Processing															
	< 1 Day	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
HQ	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
AGENCY OVERALL	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

D. Pending Requests All Pending Perfected Requests

	SIMPLE			COMPLEX			EXPEDITED PROCESSING		
	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days
HQ	16	30	36	30	89.5	139	-	-	-
AGENCY OVERALL	16	30	36	30	89.5	139	-	-	-

E. Pending Requests Ten Oldest Pending Perfected Requests

	10th Oldest Request and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Request and Number of Days Pending
HQ	02/27/2012 151	02/07/2012 164	12/08/2011 204	11/11/2011 221	10/14/2011 241	10/06/2011 246	10/05/2011 247	09/14/2011 262	11/02/2010 479	05/27/2010 588
AGENCY OVERALL	02/27/2012 151	02/07/2012 164	12/08/2011 204	11/11/2011 221	10/14/2011 241	10/06/2011 246	10/05/2011 247	09/14/2011 262	11/02/2010 479	05/27/2010 588

VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER

A. Requests for Expedited Processing

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
HQ	-	1	13	13	0

AGENCY OVERALL	-	1	13	13	0
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B. Requests for Fee Waiver				
	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
HQ	-	-	-	-
AGENCY OVERALL	-	-	-	-

IX. FOIA PERSONNEL AND COSTS

	PERSONNEL			COSTS		
	Number of Full-Time FOIA Employees	Number of Equivalent Full-Time FOIA Employees	Total Number of Full-Time FOIA Staff	Processing Costs	Litigation-Related Costs	Total Costs
HQ	1	0.3	1.3	\$151,000.00	\$0.00	\$151,000.00
AGENCY OVERALL	1.00	0.3	1.3	\$151,000.00	\$0.00	\$151,000.00

X. FEES COLLECTED FOR PROCESSING REQUESTS

	Total Amount of Fees Collected	Percentage of Total Costs (Rounded to nearest hundredth decimal)
HQ	\$574.00	0.38
AGENCY OVERALL	\$574.00	0.38

XI. FOIA Regulations (Including Fee Schedule)

XII. BACKLOGS, CONSULTATIONS, AND COMPARISONS

A. Backlogs of FOIA Requests and Administrative Appeals		
	Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
HQ	42	4
AGENCY OVERALL	42	4

Discuss/Explain the backlog here(Optional)

B. Consultations on FOIA Requests Received, Processed, and Pending Consultations				
	Number of Consultations Received from Other Agencies that Were <u>Pending</u> at Your Agency as of <u>Start</u> of the Fiscal Year	Number of Consultations <u>Received</u> from Other Agencies During the Fiscal Year	Number of Consultations Received from Other Agencies that Were <u>Processed</u> by Your Agency During the Fiscal Year	Number of Consultations Received from Other Agencies that Were <u>Pending</u> at Your Agency as of <u>End</u> of the Fiscal Year
HQ	-	-	-	-
AGENCY OVERALL	-	-	-	-

C. Consultations on FOIA Requests Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency										
	10th Oldest Consultation and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Consultation and Number of Days Pending

HQ										
AGENCY OVERALL										

D. Comparison of Numbers of Requests from Previous and Current Annual Report Requests Received, Processed, and Backlogged

	NUMBER OF REQUESTS <u>RECEIVED</u>		NUMBER OF REQUESTS <u>PROCESSED</u>	
	Number Received During Fiscal Year from Last Years Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Years Annual Report	Number Processed During Fiscal Year from Current Annual Report
HQ	[2] 168	175	145	170
AGENCY OVERALL	168	175	145	170

	Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report
HQ	28	42
AGENCY OVERALL	28	42

E. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report Appeals Received, Processed, and Backlogged

	NUMBER OF APPEALS <u>RECEIVED</u>		NUMBER OF APPEALS <u>PROCESSED</u>	
	Number Received During Fiscal Year from Last Years Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Years Annual Report	Number Processed During Fiscal Year from Current Annual Report
HQ	4	6	3	3
AGENCY OVERALL	4	6	3	3

	Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report
HQ	1	4
AGENCY OVERALL	1	4

F. Discussion of Other FOIA Activities (Optional)

[1]

After reviewing our data base we have revised last year's numbers.

[2]

After reviewing our data base we have revised last year's numbers.