



Federal Trade Commission Chief FOIA Officer Report

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Federal Trade Commission
Fiscal Year 2023 Chief FOIA Officer Report

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**Federal Trade Commission
Fiscal Year 2023
Chief FOIA Officer Report**

**Kathleen Daffan, Acting Deputy General Counsel for Legal Counsel and
Chief FOIA Officer**

Introduction

The Federal Trade Commission (FTC) is an independent law enforcement agency established in 1914. The FTC's dual mission is to promote competition and protect consumers in broad sectors of the economy. The FTC's work is performed by the Bureau of Consumer Protection, Competition, and Economics, along with eight regional offices and several program offices.

The FTC administers its FOIA program through its Office of General Counsel, which processes all record requests made to the agency. The FOIA program employs four attorneys, five government information specialists, and one paralegal, with occasional support of contractors and other staff. As Chief FOIA Officer, I am proud to report that in Fiscal Year 2023, the agency processed 1,812 requests – an increase of more than 233 from the prior fiscal year – as well as 39 administrative appeals. The FOIA program successfully managed this heavy workload while providing training to senior leaders, implementing new processes to accommodate a rising caseload, and continuing the transition from mandatory telework to a hybrid environment.

Below we respond to the questions set forth in DOJ's [Guidelines for 2023 Chief FOIA Officer Reports](#).

SECTION I: FOIA LEADERSHIP AND APPLYING THE PRESUMPTION OF OPENNESS

The guiding principle underlying DOJ's [FOIA Guidelines](#) is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

A. Leadership Support for FOIA

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?

Answer: Yes. According to the Government Accountability Office (GAO), the FTC Chief FOIA Officer should be at the assistant secretary level or equivalent. (GAO-18-365, June 25, 2018.) The assistant secretary level is comparable to senior executive positions at levels III, IV, and V. The FTC designated an Acting Deputy General Counsel, a senior executive position, as the agency’s Chief FOIA Officer.

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

Answer: Kathleen Daffan, Acting Deputy General Counsel for Legal Counsel.

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

Answer: The FOIA request process intersects with every FTC Bureau and Office and is an integral part of the fabric of the agency’s workplace environment. The FTC’s Office of the General Counsel (OGC) and its FOIA office engage in ongoing conversations with agency staff on FOIA matters to inform non-FOIA professionals of their obligations under the FOIA Act. FOIA staff routinely advise FTC bureaus and offices of their responsibilities under FOIA and closely work with custodians in those bureaus and offices whose records are the subject of FOIA requests, appeals, or litigation. Additionally, FOIA unit staff have provided training and information on FOIA to FTC staff; this training involves both informal training as requested and formal training events, including a presentation to one of the FTC’s litigating bureaus. During fiscal year 2023, the agency continued to see an uptick in FOIA litigation, which increased actual FOIA litigation costs. Acknowledging the immense toll that these court proceedings can impose on agency resources, the FTC’s Annual Performance Report for Fiscal Year 2022, and Annual Performance Plan for Fiscal Year 2023 and 2024 included a FOIA matrix to measure the percentage of increase in FOIA litigation costs. See https://www.ftc.gov/system/files/ftc_gov/pdf/p859900fy22apr_fy23-24app.pdf, at 60. The agency continues to track these litigation costs.

B. Presumption of Openness

4. The Attorney General’s 2022 FOIA Guidelines provide that “agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.” Does your agency provide such confirmation in its response letters?

Answer: Yes.

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interested protected by a FOIA exemption. This is commonly referred to as a *Glomar* response. If your agency tracks *Glomar* responses, please provide:
 - the number of times your agency issued a full or partial *Glomar* response (separate full and partial if possible);

- the number of times a *Glomar* response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times)

Answer:

- We issued 78 *Glomar* responses in FY 2023.
 - In each of these 78 responses, we cited Exemption 7(A).
6. If your agency does not track the use of *Glomar* responses, what would your agency need to do to track in the future? If possible, please describe the resources and time involved.

Answer: N/A

SECTION II: Ensuring Fair and Effective FOIA Administration

A. FOIA Training

1. 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.

Answer: The FOIA team has biweekly meetings to assess the need for training. The lead attorney updates the FOIA manuals and guidance periodically to ensure the team follows proper guidelines. Upcoming trainings are always discussed and often circulated to the team. Additionally, FOIA training offered by OIP is placed on a shared team calendar for awareness.

2. 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?

Answer: Yes, FOIA professionals attended and conducted FOIA training during this reporting period.

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

Answer: The FOIA professionals attended several trainings over the course of the fiscal year including the following events:

- Virtual Exemption 4 and Exemption 5 Training – 1/18/23
- Virtual Privacy Considerations Training – 1/25/23
- Virtual Advanced FOIA Training – 2/8/23
- Virtual Procedural Requirements and Fees – 5/3/2023
- Virtual Litigation Workshop – 5/10/23
- Virtual Administrative Appeals, FOIA Compliance, and Customer Service – 5/17/23

- Virtual Exemption 4 and 5 – 6/21/2023
- Virtual New OIP Developments and Significant New Decisions – 7/11/2023
- OIP Specialized Training for FTC – 10/19/2023

The FOIA professionals also conducted trainings over the course of the fiscal year, including a presentation by a FOIA attorney to staff of the Bureau of Consumer Protection on March 22, 2023. See also response to question II.A.6., below.

4. Please provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

Answer: 90%.

5. 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.

Answer: N/A.

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and if senior leaders at your agency received a briefing on your agency’s FOIA resources, obligations, and expectations during the FOIA process?

Answer: The members of the FOIA team conduct virtual trainings for incoming office liaisons across the agency on an individual or group basis as needed. These virtual training courses provided liaisons with the knowledge and support they needed to conduct proper searches for files and understand the overall FOIA process. The FOIA team has also provided recordings of the training sessions along with accompanying PowerPoint slides and in-house flowcharts of the internal FOIA process to non-FOIA staff in continued support of their learning and understanding of the agency’s FOIA process. Additional internal events are described in response to questions I.A.3 and II.A.3, above. The FOIA team conducts regular personal training of the agency’s FOIA process to agency senior managers and other non-FOIA staff who facilitate record searches in their divisions or offices when requested and when new personnel enter those roles.

B. Outreach

7. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue and, if applicable, any specific examples.

Answer: The FOIA Office routinely communicates with requesters and other members of the public on an individual basis and is available to answer questions regarding FOIA policies and procedures. A non-perfected request or a request for records that are not within the purview of the agency would prompt the FOIA staff to contact the requester. In addition, the FOIA team engaged with the requesters through the FTC's FOIA Hotline (at 202-326-2430) and the agency's FOIA email inbox (FOIA@FTC.GOV). In addition, the FTC also provides contact information for its Chief FOIA Officer and FOIA Public Liaison online (at <https://www.ftc.gov/about-ftc/foia/freedom-information-act-contacts>), and the Public Liaison works to resolve questions.

8. Outside of the standard request process or routine FOIA Liaison or FOIA Requester Service Center interactions, did your FOIA professionals engage in any outreach or dialogue, with the requester community or open government groups regarding your administration of the FOIA? For example, did you proactively contact frequent requesters, host FOIA-related conference calls with open government groups, or provide FOIA training to members of the public? 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.

Answer: The FTC's FOIA Unit primarily engaged in outreach through its FOIA Public Liaison, who responded to questions from the public about the agency and the FOIA process.

9. 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 2023 (please provide a total number or an estimate of the number).

Answer: 200.

C. Other Initiatives

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

Answer: This fiscal year, the FTC experienced peak levels of requests, some of which were particularly complex. For the second year in a row, FOIA requests rose by more than 200 requests to a record level. In Fiscal Year 2023, the FTC received 1,820 requests, an increase of 12.4% over the 1,619 requests received in Fiscal Year 2022 and processed 1,579. This high demand has required the FTC to evaluate the allocation of agency personnel resources.

In response to the rising demand, the FTC has taken several steps:

- Provided training to FOIA liaison personnel in FTC bureaus and offices to better explain FOIA obligations and record-gathering processes in order to streamline these processes and proactively avoid internal bottlenecks that may clog FOIA staff's request dockets;

- Obtained additional personnel resources through a combination of hiring, flexible assignments, and contractor support. At present, the FTC FOIA Unit comprises four attorneys (including one lead attorney), five Government Information Specialists, and a dedicated paralegal. In addition, the Unit can draw on assistance from a litigation technology specialist and two other paralegals as necessary. Finally, the Unit has obtained contractor support to assist with document review relating to ongoing FOIA litigation tasks.
- Avoided attrition by reclassifying attorney and Government Information Specialist positions to better reflect the job assignments and to provide increased salary and promotion opportunities; and
- Obtained and deployed technological tools to assist in processing FOIA requests and responding to FOIA litigation demands.

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

Answer: The FOIA team lead continues to use the FOIAXpress reporting tool weekly to monitor the status of all requests. This weekly report displays all request information, including the status, request description, and remaining days to process. The FOIA lead attorney utilizes the report to manage incoming FOIA request to ensure a balanced workload for all FOIA staff. The team has a biweekly meeting where data from the reporting tool is used to highlight trends, recognize productivity, and discuss any overdue or challenging requests.

12. Optional: If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.

Answer: Pursuant to the principles set forth in OMB’s 2009 Open Government Directive and the U.S. Chief Information Office’s 2016 Open Plan Guidance, the FTC created its Open Government Plan. In keeping with that plan, the FTC continues to take steps to improve its transparency and enable customers and website visitors to locate information more easily. For example, the FTC has made available online: business guidance, economic reports, speeches, consumer robocall reports, FOIA responses, and a wide range of other information and datasets that would otherwise require a FOIA request to access. More information is available at <https://www.ftc.gov/site-information/open-government>.

SECTION III: PROACTIVE DISCLOSURES

The Attorney General’s 2022 [FOIA Guidelines](#) emphasize that “proactive disclosure of information is . . . fundamental to the faithful application of the FOIA.” The Guidelines direct agencies to post “records online quickly and systematically in advance of any public request” and reiterate that agencies should post records “in the most useful, searchable, and open formats possible.”

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

Answer: FOIA staff are trained to identify instances of related requests, and routinely meet with management to discuss trends in requests to determine those records that might qualify for proactive disclosure under the FOIA. The number of frequently requested records or subjects is currently 52, and they can be found on the FTC's website at <https://www.ftc.gov/legal-library/frequently-requested-foia-records>.

2. How long after identifying a record for proactive disclosure does it take your agency to post it?

Answer: The FTC continues to update the Frequently Requested Records once we receive a request 3 or more times for the same subject matter. After closure of the request, we contact our web team to have the records posted as expeditiously as possible, given normal workloads.

3. Does your agency post logs of its FOIA requests?

- If so, what information is contained in the logs?
- Are they posted in CSV format? If not, what format are they posted in?

Answer: Yes, we post logs describing our pending requests and closed requests within 5 months.

- The FOIA logs contain the following information: Received date; Request ID; Requester name; Requester category; Request description; and Organization. You can find our FOIA Logs here: <https://www.ftc.gov/foia/make-foia-request>.
- The Logs are posted in PDF format.

4. Provide examples of any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

Answer: Yes, the FOIA office regularly collaborates with the agency's web team to post frequently requested FOIA record(s) on the agency's reading room. Recently we updated the following topics:

- Congressional Correspondence ([LINK](#));
- Twitter ([LINK](#));
- Leadership Calendars Chair Khan ([LINK](#));
- Leadership Calendars Commissioner Bedoya ([LINK](#)); and
- Leadership Calendars Commissioner Slaughter ([LINK](#)).

5. 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?

Answer: Yes

6. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

Answer: The FTC continues to provide information in various file formats to make the information more accessible and useful to the public. The agency identifies datasets that can be made available via an Application Programming Interface (API) or in machine-readable format, which allows data users and developers to query, gather, and manipulate the FTC's data. Providing data in this format facilitates broad dissemination of its content to the public, and it corresponds with the FTC's Open Government Plan and Strategic Plan. More information on the FTC API is available at <https://www.ftc.gov/developer>.

7. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

Answer: Yes, The FOIA Team interacts with the FTC's WebTeam to ensure FOIA postings are accurate and published in the correct location of the website. The FOIA staff will publish on the internal system and then the WebTeam reviews the content before approving that post for the external facing website.

SECTION IV: STEPS TAKEN TO GREATER UTILIZE TECHNOLOGY

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

Answer: Yes.

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program.

Answer: During Fiscal Year 2023, the FOIA office acquired additional licenses for FOIAXpress that included an Electronic Document Review (EDR) tool. This software tool built into FOIAXpress allows the FOIA team to upload, review, tag, and cluster large datasets. This tool offers the FOIA team the capability to manage a large volume of data and identify duplicates.

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.

Answer: The agency does not currently use such technology but is considering use of such a solution in FOIAXpress. This solution would assist in automating review and processing of FOIA requests.

4. 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?

Answer: Yes.

5. Did all four of your agency's quarterly reports for Fiscal Year 2023 appear on FOIA.gov?

Answer: Yes.

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2024

Answer: N/A.

7. 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 2022 Annual FOIA Report and, if available, for your agency's Fiscal Year 2023 Annual FOIA Report.

Answer: The raw statistical data for FY 2022 is included in the FTC's 2022 FOIA Annual Report, which is posted here: <https://www.ftc.gov/policy/reports/foia-annual-reports>. The raw data for FY23 will also be made available on the FTC's website once that data has been confirmed and is available.

8. In February 2019, DOJ and OMB issued joint Guidance establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

Answer: Yes.

SECTION V: STEPS TAKEN TO REMOVE BARRIERS TO ACCESS, IMPROVE TIMELINESS IN RESPONDING TO REQUESTS, AND REDUCE BACKLOGS

A. Remove Barriers to Access

1. Has your agency established alternative means of access to first-party requested records outside of the FOIA process?

Answer: No, these records are generally accessible only through FOIA. However, to promote accessibility, the agency has developed multiple channels for submitting FOIA requests, including online through a portal as well as via email and mail. The agency is also continuing to work to enable easier identity verification for first-party records requesters.

2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.

Answer: The FTC continues to explore different means of providing consumers with copies of their complaints though we have not seen a substantial demand for alternative access options.

3. Please describe any other steps your agency has taken to remove barriers to accessing government information.

Answer: We continue to update the records and information we make available online in our FOIA Reading Room and Frequently Requested Records page.

B. Timeliness

4. For Fiscal Year 2023, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2023 Annual FOIA Report.

Answer: 8.3

5. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2023 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Answer: N/A.

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

Answer: Yes, the FTC uses a multi-track processing system, which places simple requests on a different processing track than more complex requests and those granted expedited processing.

7. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2023?

Answer: Yes.

8. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?

Answer: N/A.

9. Please provide the percentage of requests processed by your agency in Fiscal Year 2023 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100.

Answer: 53.5%.

10. 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?

Answer: N/A.

C. Backlogs

C. 1. Backlogged Requests

11. If your agency had a backlog of requests at the close of Fiscal Year 2023, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2022?

Answer: No.

12. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2023 than it did during Fiscal Year 2022?

Answer: Yes. We processed 233 more requests in Fiscal Year 2023 than Fiscal Year 2022.

13. If your agency's request backlog increased during Fiscal Year 2023, 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 requests
- A loss of staff
- An increase in the complexity of the requests received (if possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase)
- Litigation
- Any other reasons – please briefly describe or provide examples when possible

Answer: The reasons the backlog increased in Fiscal Year 2023 were:

- An increase in the number of incoming requests. The FTC saw an increase in FOIA requests received, from 1,690 in Fiscal Year 2022 to 1,820 in Fiscal Year 2023;
- An increase in the complexity of the requests received. A high portion of the requests we received were complex and required consultation with multiple offices throughout the agency; and
- Litigation. We had five FOIA requests become the subject of litigation, a record-high number for the FTC. As discussed below, these litigation matters prove resource-intensive and divert staff away from ordinary request processing.

14. 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 2023. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with “N/A.”

Answer: 2%.

C. 2. Backlogged Appeals

15. If your agency had a backlog of appeals at the close of Fiscal Year 2023, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2022?

Answer: No, the FTC had no backlogged appeals at the close of either fiscal year.

16. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2023 than it did during Fiscal Year 2022?

Answer: No, the number of processed appeals in FY 2023 was less than FY 2022.

17. If your agency’s appeal backlog increased during Fiscal Year 2023, 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
- A loss of staff
- An increase in the complexity of the requests received (if possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase)
- Litigation
- Any other reasons – please briefly describe or provide examples when possible.

Answer: N/A.

18. 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 2023. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2023 and/or has no appeal backlog, please answer with “N/A.”

Answer: N/A.

D. Backlog Reduction Plans

19. In the 2023 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2022 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 2023?

Answer: N/A.

20. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2023, please explain your agency's plan to reduce this backlog during Fiscal Year 2023.

Answer: N/A.

E. Reducing the Age of Requests, Appeals, and Consultations

E.1. Ten Oldest Requests

21. In Fiscal Year 2023, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2022 Annual FOIA Report?

Answer: The FTC closed 10 of 10 oldest pending requests from Fiscal Year 2022.

22. 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 2023 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

Answer: N/A.

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

Answer: N/A.

E.2. Ten Oldest Appeals

24. In Fiscal Year 2023, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2022 Annual FOIA Report?

Answer: N/A. We reported no backlogged appeals for Fiscal Year 2022.

25. 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 2022 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

Answer: N/A.

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

Answer: N/A.

E.3. Ten Oldest Consultations

27. In Fiscal Year 2023, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2022 Annual FOIA Report?

Answer: N/A. The FTC did not have any pending consultations at the end of the fiscal year.

28. 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 2022 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Answer: N/A.

29. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2024.

Answer: N/A.

F. Additional Information about FOIA Processing

30. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency’s overall FOIA request processing and backlog. If possible, please indicate:

- the number and nature of requests subject to litigation,
- common causes leading to litigation,
- Any other information to illustrate the impact of litigation on your overall FOIA administration.

Answer: Yes, the FTC had five requests become the subject of litigation during the period from October 1, 2022, to September 30, 2023. Those requests and the resulting cases are:

- FOIA 2022-01204: *Bloomberg, L.P. v. FTC*, No. 1:22-cv-3309 (D.D.C. filed Oct. 28, 2022);
- FOIA 2022-01401: *Functional Government Initiative v. FTC*, No. 1:22-cv-3273 (CKK) (D.D.C. filed Oct. 26, 2022);
- FOIA 2022-01402: *Functional Government Initiative v. FTC*, No. 1:23-cv-0403 (D.D.C. filed Feb. 13, 2023);

- FOIA 2023-00282: *Judicial Watch, Inc. v. FTC*, No. 1:23-cv-0692 (D.D.C. filed Mar. 14, 2023); and
- FOIA-2023-00927: *America First Legal Foundation v. FTC*, No. 1:23-cv-2765 (D.D.C. filed Sept. 21, 2023).

Several of these matters remain active. Accordingly, the FTC refers to the allegations in the complaints for descriptions of the causes that led these plaintiffs to pursue litigation.

The impact of FOIA litigation is to place additional, unexpected, and often heavy burdens on the FOIA unit and on the agency generally. Given finite resources, efforts made to respond to FOIA litigation take resources from the agency's ongoing work; for the FOIA unit, these efforts can result in delays processing incoming FOIA requests and increased backlogs.