

FEDERAL ENERGY REGULATORY COMMISSION

Leonard Tao

Chief FOIA Officer

CHIEF FOIA OFFICER REPORT



MARCH 2016

**2016 CHIEF FOIA OFFICER REPORT
FEDERAL ENERGY REGULATORY COMMISSION**

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Chief FOIA Officer
Director of the Office of External Affairs**

SECTION 1: STEPS TAKEN TO APPLY THE PRESUMPTION OF OPENESS

FOIA Training:

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

Yes. FOIA professional attended Annual report and Chief FOIA Officer report refresher sessions at the Department of Justice.

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

FERC has one full time FOIA professional. Internal training was provided for new employees and refresher training was provided to staff. Special training sessions were also conducted for specific program offices that address the majority of FOIA requests. This was 80% of the individuals that work on FOIA requests.

3. 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 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 years.

N/A

Discretionary Releases:

4. Does your agency have a distinct process or system in place to review records for discretionary release?

Yes

If so, please briefly describe this process.

FERC has established a policy that includes an additional tier of review before a final determination is rendered. This review places emphasis on identifying potential opportunities to release material that may have been withheld pursuant to exemption 5 or make a partial release of the material.

5. During the reporting period, did your agency make any discretionary releases of information?

Yes.

6. What exemption(s) would have covered the material released as a matter of discretion?

Exemption 5.

7. Provide a narrative description, as well as some specific examples, of the types of information that your agency released as a matter of discretion during the reporting year.

Yes. During FY2015 FERC made a discretionary release of internal staff deliberations and summary analysis. Due to the age of the document, certain portions no longer warranted protection from disclosure.

8. If your agency was not able to make any discretionary releases of information, please explain why.

N/A

Other Initiatives:

9. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

N/A

Section II: STEPS TAKEN TO ENSURE THAT YOUR AGENCY HAS AN EFFECTIVE SYSTEM IN PLACE FOR RESPONDING TO REQUESTS

Processing procedures:

1. For Fiscal Year 2015, 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 2015 Annual FOIA Report.

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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. Please confirm here that to the extent your agency may have had occasion to send a "still interested" inquiry, it has done so in accordance with the new guidelines for doing so, including affording requesters thirty working days to respond.

No inquiries

Requester services:

4. Agency FOIA Requester Service Centers and FOIA Public Liaisons serve as the face and voice of an agency. In this capacity they provide a very important service for requesters, informing them about how the FOIA process works and providing specific details on the handling of their individual requests. The FOIA also calls on agency FOIA Requester Service Centers and FOIA Public Liaisons to assist requesters in resolving disputes. Please explain here any steps your agency has taken to strengthen these services to better inform requesters about their requests and to prevent or resolve FOIA disputes.

The FOIA Liason has enhanced routine interactions with requesters to clarify how material is filed and classified at FERC. This often includes an overview of the online FERC elibrary that contains detailed index sheets of documents that have been filed at FERC or issued by FERC. Requesters are also advised

of the large volume of public material that can be viewed on their computer, without the necessity of a FOIA request. All guidance that is provided via a telephone discussion is now documented with a follow up email to each requester.

Other Initiatives:

5. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc., please describe them here.

N/A

SECTION III: STEPS TAKEN TO INCREASE PROACTIVE DISCLOSURES

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

Posting material:

1. Describe your agency's process or system for identifying "frequently requested" records required to be posted online under Subsection (a)(2) of the FOIA. For example, does your agency monitor its FOIA logs or is there some other system in place to identify these records for posting.

Yes. Reports from the FOIA tracker system are reviewed to identify frequently requested records.

2. Does your agency have a distinct process or system in place to identify other records for proactive disclosure? If so, please describe your agency's process or system.

Yes. The FERC elibrary is monitored to identify specific subject matter, orders, reports and other material that should be prominently reflected on our webpage.

3. When making proactive disclosures of records, are your agency's FOIA professionals involved in coding the records for Section 508 compliance or

otherwise preparing them for posting? If so, provide an estimate of how much time is involved for each of your FOIA professionals and your agency overall.

No. This function is handled by the agency Webmaster and IT team.

- *Please note that this question is directed at the efforts of actually posting the records online once all disclosure determinations have been made. For example, efforts to load the records in your web content platform or making the releasable documents accessible in compliance with Section 508 of the Rehabilitation Act.*

4. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?

No.

5. If so, please briefly explain those challenges.

N/A

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

The FERC elibrary includes an index of documents that have been filed at FERC or issued by FERC. Public documents can be viewed online.

<http://www.ferc.gov/docs-filing/elibrary.asp>

The following material reflects some of the items that have been posted to the FERC webpage.

January 29, 2016

FERC, NERC Staff Report Identifies Beneficial Practices for Grid Restoration and Recovery

[News Release](#) | [Report](#) 

FERC v. Electric Power Supply Ass'n, et al. 

No. 14-840 (S. Ct. January 25, 2016)

12/23/15 [Public Citizen and State of Conn. v. FERC](#) 

No. 14-1244, *et al.*

10/02/15 [MISO Transmission Owners v. FERC](#) 

No. 14-2153

August 3, 2015 - Commissioner Colette D. Honorable Statement on EPA's Significant Clean Power Plan Changes [Read more](#)

July 22, 2015 - Testimony of OEIS Director Joseph H. McClelland before the Senate Committee on Homeland Security & Governmental Affairs [Transcript](#) 

June 30, 2015

FERC invites comments on its five-year review of the oil pipeline pricing index [NOI](#)  | [FERC's Calculations](#) 

June 3, 2015

Testimony of OEPI Director Arnie Quinn and OE Director Larry Parkinson before the House Energy & Commerce Committee, Subcommittee on Energy and Power Testimony: [Mr. Quinn](#)  | [Mr. Parkinson](#)  | [Event Details](#)

May 19, 2015 - Commissioner Philip D. Moeller Statement on PJM's Amended and Restated Operating Agreements [Read more](#)

April 2, 2015 - Washington Post reporter Chris Mooney interviews Commissioner Tony Clark on Securing America's Energy Future [Transcript](#) 

Order No. 821  (RM15-26-000)	January 21, 2016	Instant Final Rule Transferring Certain Dispute Resolution Service Matters to the Commission's Landowner Helpline (Final Rule)
Order No. 811  (RM15-15-000)	June 18, 2015	Revised Exhibit Submission Requirements for Commission Hearings (Final Rule)
RM16-5-000 	January 21, 2016	Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators (Notice of Proposed Rulemaking)
RM16-3-000 	December 17, 2015	Ownership Information in Market-Based Rate Filings (Notice of Proposed Rulemaking)
RM16-1-000 	November 19, 2015	Reactive Power Requirements for Non-Synchronous Generation (Proposal To Revise Standard Generator Interconnection Agreements)
Order No. 771-B  (RM11-12-001)	November 19, 2015	Availability of E-Tag Data to Commission Staff (Order On Rehearing And Clarification)
2015 Report on Enforcement 		November 19, 2015
Order No. 587-W 	October 16, 2015	Standards for Business Practices of Interstate Natural Gas Pipelines; Coordination of the Scheduling Processes of

(RM96-1-038 & RM14-2-003)		Interstate Natural Gas Pipelines and Public Utilities (Final Rule)
Order No. 807-A  (RM14-11-001)	October 15, 2015	Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities (Order Denying Rehearing And Granting Clarification)
RM14-2-002 	October 15, 2015	Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities (Order Establishing Default Interpretations For Capacity Release Contracts)
RM14-2-001 	September 17, 2015	Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities (Order On Rehearing)
RM15-23-000 	September 17, 2015	Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators (Notice of Proposed Rulemaking)
RM15-24-000 	September 17, 2015	Settlement Intervals and Shortage Pricing in Markets Operated by Regional Transmission Organizations and Independent System Operators (Notice of Proposed Rulemaking)
Order No. 811  (RM15-15-000)	June 18, 2015	Revised Exhibit Submission Requirements for Commission Hearings (Final Rule)
RM15-18-000 	May 14, 2015	Commencement of Assessment of Annual Charges (Notice of Proposed Rulemaking)
Order No. 809  (RM14-2-000)	April 16, 2015	Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities (Final Rule)
RM05-5-024 	April 16, 2015	Standards for Business Practices and Communication Protocols for Public Utilities (Order on Rehearing)

7. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe those efforts.

For example, this can be done through social media or with the offering of e-mail subscription services.

FERC utilized Twitter and Facebook to inform the public of important issuances and other FERC activities. FERC also offered esubscription service that provided realtime notification of FERC filings and issuances. This notification included a direct link to public material in the elibrary.

Other Initiatives:

8. *If there are any other steps your agency has taken to increase proactive disclosures, please describe them here.*

FERC will continue to pursue potential opportunities to increase proactive disclosures and implement them accordingly.

SECTION IV: STEPS TAKEN TO GREATER UTILIZE TECHNOLOGY

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that describes your agency's efforts in this area.

Making Material Posted Online More Usable:

1. *Beyond posting new material, is your agency taking steps to make the posted information more useable to the public, especially to the community of individuals who regularly access your agency's website?*

Yes

2. *If yes, please provide examples of such improvements.*

FERC is pursuing additional opportunities to make the webpage more user friendly and enhance search options.

Use of Technology to Facilitate Processing of Requests:

Other Initiatives:

3. *Did your agency successfully post all four quarterly reports for Fiscal Year 2015?*

No

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 2016.*

During FY2016 FERC will continue to focus on enhancing the FOIA tracker to increase the quality of data. We expect to use this data for reports.

5. Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? See OIP Guidance, "*The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications.*" (Nov. 22, 2013) If yes, what are the different types of electronic means that are utilized by your agency to communicate with requesters?

Yes. Emails are routinely used to communicate with requesters. This includes automated acceptance emails from the FOIA tracker, seeking clarification, providing status updates, guidance on using the FERC elibrary and addressing other FOIA issues as necessary.

6. If your agency does not communicate electronically with requests as a default, are there any limitations or restrictions for the use of such means? If yes, does your agency inform requesters about such limitations? See *id.*

N/A

SECTION V: STEPS TAKEN TO IMPROVE TIMELINES IN RESPONDING TO REQUESTS AND REDUCING BACKLOGS

The President's **FOIA Memorandum** and the Attorney General's **2009 FOIA Guidelines** have emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report 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, appeals, and consultations.

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2015 Annual FOIA Report and, when applicable, your agency's 2014 Annual FOIA Report.

Simple Track: 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.

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

Yes

Simple - These requests are identified as track 1.

Complex – These requests are identified as track 2 and 3.

Track 2. Requests for documents that are readily identifiable and require limited review.

Track 3. Requests for documents that are complex and/or voluminous and require a significant search and/or review.

If so, for your agency overall in Fiscal Year 2015, was the average number of days to process simple requests twenty working days or fewer?

NO (The average number of processing days was 25)

2. Please provide the percentage of requests processed by your agency in Fiscal Year 2015 that were placed in your simple track.

62%

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

Backlogs: Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2014 and Fiscal Year 2015 when completing this section of your Chief FOIA Officer Report.

BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

NO

6. If not, 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:

There was an increase in the number of requests that were received and processed in 2015. Some of the requests involved complex issues that required additional processing time.

7. 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 2015.

8%

BACKLOGGED APPEALS

8. If your agency had a backlog of appeals at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

N/A

9. If not, explain why and describe the causes that contributed to your agency not being able to reduce backlog. When doing so, please also indicate if any of the following were contributing factors:

N/A

10. 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 2015. If your agency did not receive any appeals in Fiscal Year 2015 and/or has no appeal backlog, please answer with "N/A."

N/A

STATUS OF TEN OLDEST REQUESTS, APPEALS, AND CONSULTATIONS

Status of Ten Oldest Requests, Appeals, and Consultations:

Status of Ten Oldest Requests, Appeals, and Consultations: Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2014 and Fiscal Year 2015 when completing this section of your Chief FOIA Officer Report.

TEN OLDEST REQUESTS

11. In Fiscal Year 2015, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

NO

12. 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 2014 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

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For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed six of them, you should note that you closed six out of seven "oldest" requests.

13. Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester.

0

If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?

N/A

TEN OLDEST APPEALS

14. In Fiscal Year 2015, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

N/A (No oldest Appeals)

15. 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 2014 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A

- For example, if you only had seven appeals listed as part of your "ten oldest" in Section VII.C.(5) and you closed six of them, you should note that you closed six out of seven "oldest" appeals.

TEN OLDEST CONSULTATIONS

16. In Fiscal Year 2015, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2014 Annual FOIA Report?

N/A

17. 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

2014 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

N/A

For example, if you only had seven consultations listed as part of your "ten oldest" in Section XII.C. and you closed six of them, you should note that you closed six out of seven "oldest" consultations.

TEN OLDEST REQUESTS, APPEAL, AND CONSUTATIONS & PLANS

Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans:

18. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2014.

These requests dealt with complex matters and /or large volumes of material and were processed on a rolling basis.

19. 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

20. 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 2016.

FERC will work aggressively and focus necessary resources to successfully reach our goal of completing each of the ten oldest pending requests by the end of FY2016.

USE OF THE FOIA'S LAW ENFORCEMENT EXCLUSIONS

1. Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2015?

No

2. If so, please provide the total number of times exclusions were invoked.

N/A