



FEDERAL TRADE COMMISSION
Annual Freedom of Information Act Report
Fiscal Year 2018

FEDERAL TRADE COMMISSION
Annual FOIA Report for FY2018

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I. BASIC INFORMATION REGARDING REPORT

- 1. Name, title, address, and telephone number of person to be contacted with questions about the Report:**

Francis Conlon, General Attorney
Federal Trade Commission
Office of General Counsel, Room 585
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
202-326-2930
fconlon@ftc.gov

- 2. Electronic link for access to the Report on the FTC's website:**

<https://www.ftc.gov/policy/reports/policy-reports/foia-annual-reports>

- 3. To obtain a copy of the Report in paper form.**

Write to the address or contact the person listed above in Section I.1.

II. MAKING A FOIA REQUEST

All FOIA requests must be 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.

The FTC's FOIA & PA Handbook provides basic information for filing FOIA requests with the agency. You may find the Handbook at https://www.ftc.gov/system/files/attachments/foia-request/foiahandbook_2017.pdf.

* The following Annual FOIA Report covers the period October 1, 2017 through September 30, 2018, as required by 5 U.S.C. § 552.

1. Names, addresses, and telephone numbers of all individual agency components that receive FOIA requests.

All FOIA requests for agency records are processed by the FTC's Office of General Counsel. Thus, regardless of how you send your request (via e-mail, fax, U.S. mail, or other means), address it as follows:

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

The e-mail address is FOIA@ftc.gov and the fax number for the FOIA branch is 202-326-2477. Requests may also be submitted electronically, using the FTC's PAL request portal, at <https://foiaexpresspal.ftc.gov/>.

2. Brief description of why some requests are not granted and an overview of certain general categories of records to which the FOIA exemptions apply.

The FTC primarily receives requests for consumer complaints regarding a company's business practices and requests for records relating to the FTC's law enforcement investigations. The majority of requests that are initially denied, or partially denied, are based on personal privacy concerns reflected in Exemption 6 of the FOIA. Many denials are also due to statutory constraints on disclosure or because disclosure would interfere with ongoing law enforcement activities.

III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

1. Agency-specific acronyms or terms used in this Report.

FOIA – Freedom of Information Act (5 U.S.C. § 552)
FTC – Federal Trade Commission
FY – Fiscal Year
HSR – Hart-Scott-Rodino (Clayton Act, 15 U.S.C. § 18a(h))
PA – Privacy Act (5 U.S.C. § 552a)
PAL –Public Access Link system

2. 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 entireties 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. 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

Statute	Type of Information Withheld	Case Citation	Agency/ Component	Number of Times Relied upon by Agency / Component	Total Number of Times Relied upon by Agency Overall
21 U.S.C. § 355	Any information or documentary material that may have been filed pursuant to a pharmaceutical agreement notification	N/A	FTC	2	2
15 U.S.C. § 46(f) (Federal Trade Commission Act)	“[Any] trade secret or any commercial or financial information which is obtained from any person and which is privileged and confidential”	Ctr. for Digital Democracy v. FTC, 189 F. Supp. 3d 151, 158- 59 (D.D.C. 2016).	FTC	68	68
15 U.S.C. § 57b-2(f) (Federal Trade Commission Act)	Certain investigative materials received by the FTC and “provided pursuant to compulsory process under this subchapter or which is provided voluntarily in place of such compulsory process” or “consumer complaint information obtained from a foreign source”	A. Michael's Piano, Inc. v. FTC, 18 F.3d 138, 143-44 (2d Cir. 1994); Ayuda, Inc. v. FTC, 70 F. Supp. 3d 247, 278-79 (D.D.C. 2014) (15 U.S.C. § 57b-2); National Educ. Ass'n v. FTC, No. 79-959-S, 1983 WL 1883, at *1 (D. Mass. Sept. 26, 1983) (15 U.S.C. § 57b-2).	FTC	126	126
41 U.S.C. § 4702 (formerly at 41 U.S.C. § 253b(m)(1))	Contractor proposals that are in the possession or control of an executive agency and that have not been set forth or incorporated by reference into contracts	Sinkfield v. HUD, No. 10-885, 2012 U.S. Dist. LEXIS 35233, at *13-15 (S.D. Ohio Mar. 15, 2012); Margolin v. NASA, No. 09-CV-00421, 2011 WL 1303221, at *6 (D. Nev. Mar. 31, 2011); Hornbostel v. U.S.	FTC	1	1

		Dep't of the Interior, 305 F. Supp. 2d 21, 30 (D.D.C. 2003), summary affirmance granted, No. 03-5257, 2004 WL 1900562 (D.C. Cir. Aug. 25, 2004).			
15 U.S.C. § 18a(h)	Information submitted in connection with the premerger notification provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976	Lieberman v. FTC, 771 F.2d 32 (2nd Cir. 1985).	FTC	35	35
5 U.S.C. app. 4 § 107(a)(2) (Ethics in Government Act of 1978)	Confidential financial disclosure report pertaining to certain government employees	Meyerhoff v. EPA, 958 F.2d 1498, 1500-02 (9th Cir. 1992); Boyd v. Exec. Office for U.S. Attorneys, 161 F. Supp. 3d 1, 7 (D.D.C. 2015); Seife v. NIH, 874 F. Supp. 2d 248, 254 (S.D.N.Y. 2012).	FTC	1	1

V. FOIA REQUESTS

V.A. FOIA Requests -- Received, Processed and Pending FOIA Requests

Agency / Component	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
FTC	57	1,441	1,459	39
				0
AGENCY OVERALL	57	1,441	1,459	39

[†] After reviewing its database, FTC adjusted the number of requests pending as of the start of FY18.

V.B. Disposition of FOIA Requests

V.B.(1). All Processed Requests

Agency/ Component	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	All Records Referred to Another Component or Agency	Request Withdrawn	Fee- Related Reason	Records not Reasonably Described	Improper FOIA Request for Other Reason	Not Agency Record	Duplicate Request	Other *Explain in Chart Below	
FTC	451	532	85	185	6	20	21	26	25	2	67	39	1,459
													0
AGENCY OVERALL	373	578	85	185	6	20	21	26	25	2	67	39	1,459

V.B.(2). Other” Reasons for “Full Denials Based on Reasons Other Than Exemptions”

Agency / Component	Description of “Other” Reasons for Denials from Chart B(1)	Number of Times “Other” Reason Was Relied Upon	TOTAL
FTC	Directed Requester to Publicly Available Information	39	39
AGENCY OVERALL			39

V.B.(3). Number of Times Exemptions Applied

Agency / Component	Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
FTC	0	9	174	78	97	468	70	0	14	6	27	0	0	0
AGENCY OVERALL	0	9	174	78	97	468	70	0	14	6	27	0	0	0

VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS

VI.A. Received, Processed, and Pending Administrative Appeals

Agency / Component	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
FTC	4	24	24	4
				0
AGENCY OVERALL	4	24	24	4

VI.B. Disposition of Administrative Appeals -- All Processed Appeals

Agency / Component	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
FTC	18	1	3	2	24
AGENCY OVERALL	18	1	3	2	24

VI.C.(1). Reasons for Denial on Appeal -- Number of Times Exemptions Applied

Agency / Component	Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
FTC	0	0	4	2	4	2	5	0	0	0	1	0	0	0
AGENCY OVERALL	0	0	4	2	4	2	5	0	0	0	1	0	0	0

VI.C.(2). Reasons for Denial on Appeal -- Reasons Other Than Exemptions

Agency / Component	No Records	Records Referred at Initial Request Level	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper Request for Other Reasons	Not Agency Record	Duplicate Request or Appeal	Request in Litigation	Appeal Based Solely on Denial of Request for Expedited Processing	Other *Explain in chart below
FTC	1	0	0	0	0	0	0	0	0	0	1
AGENCY OVERALL	1	0	0	0	0	0	0	0	0	0	1

VI.C.(3). Reasons for Denial on Appeal -- “Other” Reasons

Agency / Component	Description of “Other” Reasons for Denial on Appeal from Chart C(2)	Number of Times “Other” Reason Was Relied Upon	TOTAL
FTC	Requested records are the subject of pending FOIA litigation in federal court.	1	1
AGENCY OVERALL			1

VI.C.(4). Response Time for Administrative Appeals

Agency / Component	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
AGENCY OVERALL	20.00	19.08	7.00	21.00

VI.C.(5). Ten Oldest Pending Administrative Appeals

Agency / Component		10th Oldest Appeal	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Appeal
	Date of Appeal										
	Number of Days Pending										
AGENCY OVERALL	Date of Appeal	N/A	N/A	N/A	N/A	N/A	N/A	2018-09-28	2018-09-27	2018-09-14	2018-09-05
	Number of Days Pending	0	0	0	0	0	0	1	2	11	18

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

VII.A. Processed Requests -- Response Time for All Processed Perfected Requests

Agency / Component	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
AGENCY OVERALL	11	11.86	<1	251	28	44.94	<1	750	48	53.17	11	135

VII.B. Processed Requests -- Response Time for Perfected Requests in Which Information was Granted

Agency / Component	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
AGENCY OVERALL	8	12.24	1	108	39	58.06	3	750	58	65.75	12	135

VII.C. Processed Requests -- Response Time in Day Increments

VII.C.(1). Simple Requests Response Time in Day Increments

Agency / Component	<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
FTC	830	70	20	7	5	1	0	0	0	0	0	0	0	933
AGENCY OVERALL	830	70	20	7	5	1	0	0	0	0	0	0	0	933

VII.C.(2). Complex Requests Response Time in Day Increments

Agency / Component	<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
FTC	156	129	72	35	28	20	13	8	5	0	3	1	0	470
AGENCY OVERALL	156	129	72	35	28	20	13	8	5	0	3	1	0	470

VII.C.(3). Requests Granted Expedited Processing Response Time in Day

Agency / Component	<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
FTC	1	0	1	1	0	0	1	0	0	0	0	0	0	4
AGENCY OVERALL	1	0	1	1	0	0	1	0	0	0	0	0	0	4

VII.D. Pending Requests -- All Pending Perfected Requests

Agency / Component	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
AGENCY OVERALL	10	5	6.2	29	24	39.14	0	N/A	N/A

VII.E. Pending Requests -- Ten Oldest Pending Perfected Requests

Agency / Component		10th Oldest Request	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Request
	Date of Receipt										
	Number of Days Pending										
AGENCY OVERALL	Date of Receipt	2018-08-27	2018-08-27	2018-08-24	2018-08-03	2018-08-01	2018-06-21	2018-05-10	2018-03-20	2018-03-08	2018-02-23
	Number of Days Pending	25	25	26	41	43	72	102	139	147	156

VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVERS

VIII.A. Requests for Expedited Processing

Agency / Component	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
AGENCY OVERALL	6	0	10	9.17	6

VIII.B. Requests for Fee Waiver

Agency / Component	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
AGENCY OVERALL	15	8	7	24.96

IX. FOIA PERSONNEL AND COSTS

Agency / Component	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
FTC	7	4.92	11.92	\$860,926.71	\$33,848.45	\$894,775.16
						\$0.00
AGENCY OVERALL	7	4.92	11.92	\$860,926.71	\$33,848.45	\$894,775.16

X. FEES COLLECTED FOR PROCESSING REQUESTS

Agency / Component	Total Amount of Fees Collected	Percentage of Total Costs
FTC	\$11,487.64	1.33%
AGENCY OVERALL	\$11,487.64	1.33%

XI. FOIA REGULATIONS

XI.A. Number of Times Subsection (C) Used

Agency / Component	Number of Times Subsection Used
FTC	0
AGENCY OVERALL	0

XI.B. Number of Subsection (A)(2) Postings

Agency / Component	Number of Records Posted by the FOIA Office	Number of Records Posted by Program Offices
FTC	0	0
AGENCY OVERALL	0	0

XII. BACKLOGS, CONSULTATIONS, AND COMPARISONS

XII.A. Backlogs of FOIA Requests and Administrative Appeals

Agency / Component	Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
FTC	6	0
AGENCY OVERALL	6	0

XII.B. Consultations on FOIA Requests -- Received, Processed, and Pending Consultations

Agency / Component	Number of Consultations Received from Other Agencies that were <u>Pending</u> at the 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 the Agency During the Fiscal Year	Number of Consultations Received from Other Agencies that were <u>Pending</u> at the Agency as of <u>End</u> of the Fiscal Year
FTC	0	0	0	0
				0
AGENCY OVERALL	0	0	0	0

XII.C. Consultations on FOIA Requests -- Ten Oldest Consultations Received from Other Agencies and Pending

Agency / Component		10th Oldest Consultation	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Consultation
	Date										
	Number of Days										
AGENCY OVERALL	Date	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Number of Days	0	0	0	0	0	0	0	0	0	0

XII.D. Comparison of Numbers of Requests from Previous and Current

XII.D.(1). Requests Received and Processed

Agency / Component	NUMBER OF REQUESTS RECEIVED		NUMBER OF REQUESTS PROCESSED	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
FTC	1,518	1,441	1,492	1,459
AGENCY OVERALL	1,518	1,441	1,492	1,459

XII.D.(2). Backlogged Requests

Agency / Component	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
FTC	8	6
AGENCY OVERALL	8	6

XII.E. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report

XII.E.(1). Appeals Received and Processed

Agency / Component	NUMBER OF APPEALS RECEIVED		NUMBER OF APPEALS PROCESSED	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
FTC	28	24	25	24
AGENCY OVERALL	28	24	25	24

XII.E.(2). Backlogged Appeals

Agency / Component	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
FTC	0	0
AGENCY OVERALL	0	0