

USPTO FOIA FY 2012 ANNUAL REPORT

The following **Annual Freedom of Information Act** report covers the period 10/01/2011 through 09/30/2012 for the United States Patent and Trademark Office (USPTO), as required by 5 U.S.C. § 552.

I. BASIC INFORMATION REGARDING REPORT

1. Person to be contacted with questions about the Report:

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P.O. Box 1450
Alexandria, VA 22313-1450
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2. Electronic link for access to the Report on the agency website:

http://www.uspto.gov/ip/boards/foia_rr/index.jsp

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

Write to the above address or submit a request electronically to efoia@uspto.gov.

II. MAKING A FOIA REQUEST

1. Agency components that receive FOIA requests:

All requests are routed through the USPTO FOIA Office via the above mailing address or electronically through efoia@uspto.gov.

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

The USPTO is the federal agency tasked with granting U.S. patents and registering trademarks. As a general matter, the vast majority of the USPTO's operation records are already available to the public in the patent and trademark examination files. A request for records may be denied if the requested record contains information which falls into one or more of the nine FOIA exemptions listed in section III.3. Of the 247 requests that the USPTO processed during Fiscal Year 2012, only 6 were denied in full (2.4%). Half of those denials were based on Exemption 4 for confidential third-party commercial or

financial information. The other half were denied pursuant to Exemption 5 for privileged Agency communications.

III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

1. Agency-specific acronyms or terms used in this Report:
 - a. **Agency or USPTO** – United States Patent and Trademark Office
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 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. Exemption 3 Statutes Relied Upon to Withhold Information

Statute	Type of Information Withheld	Case Citation	Total No. of Times Relied upon by Agency
35 U.S.C. § 122	Confidential patent information	<i>Irons & Sears v. Dann</i> , 606 F.2d 1215, 1220 (D.C. Cir. 1979), <i>cert. denied</i> , 444 U.S. 1075 (1980); <i>Leeds v. Quigg</i> , 720 F. Supp. 193, 194 (D.D.C. 1989), <i>aff'd mem.</i> , No. 89-5062 (D.C. Cir. Oct. 24, 1989)	7

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
14	255	247	22

B. (1) Disposition of FOIA Requests – All Process 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	All Records Referred to Another Component or Agency	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper Request for Other Reason ¹	Not Agency Record	Duplicate Request	Other *Explain in chart below	
70	62	6	21	2	6	27	6	40	1	5	1	247

B. (2) Disposition of FOIA Requests – “Other” Reasons for “Full Denials Based on Reasons Other than Exemptions” from Section V, B (1) Chart

“Other” Reasons for Denials from Chart B (1)	No. of Time Relied Upon	TOTAL
The Department of Commerce took the lead on the request and it was reopened separately.	1	1

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

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
-	-	7	22	16	36	-	-	-	-	-	-	-	-

¹ The USPTO relies on this designation when a requester is seeking records that are already publicly available. In these instances, response letters to the requestors will include instructions on how and where to locate the requested records.

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
1	10	10	1

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
5	3	1	1	10

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

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
-	-	1	1	1	1	-	-	-	-	-	-	-	-

C. (2) Reasons for Denial on Appeal – Reasons Other than Exemptions

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 on Denial of Expedited Processing	Other *Explain in chart below
2	1	-	-	-	-	-	-	-	-	1

C. (3) Reasons for Denial on Appeal – “Other” Reasons from Section VI, C (2) Chart

“Other” Reasons for Denial on Appeal from Chart C (2)	No. of Times Relied Upon	TOTAL
Appeal was untimely	1	1

C. (4) Response Time for Administrative Appeals

Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
20	18.2	11	21

C. (5) Ten Oldest Pending Administrative Appeals

	10 th Oldest	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	1 st
Date of Receipt of 10 Oldest Appeals	-	-	-	-	-	-	-	-	-	9/4/12
No. of Days Pending	-	-	-	-	-	-	-	-	-	18

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

A. Processed Requests – Response Time for All Processed Perfected Requests

SIMPLE ²				COMPLEX				EXPEDITED PROCESSING ³			
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
11	11.4	1	29								

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
14	13.8	1	29								

² For FY 2012, the USPTO did not categorize requests as “simple” or “complex,” and for reporting purposes is treating all requests as “simple.”

³ The USPTO did not grant any requests for expedited processing during FY 2012.

C. Processed Requests – Response Time in Day Increments

All Requests

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
242	5												247

Requests Granted for Expedited Processing – None

D. Pending Requests – All Pending Perfected Requests as of September 30, 2012

SIMPLE			COMPLEX			EXPEDITED PROCESSING		
Number Pending	Median Number of Days Pending	Average Number of Days Pending	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days
22	11	10.6						

E. Pending Requests – Ten Oldest Pending Perfected Requests

	10th Oldest Request	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Request
Date Received	9/13/12	9/13/12	9/10/12	9/10/2012	9/6/12	9/6/12	9/6/12	9/5/12	9/5/12	8/24/12
No. of Days Pending as of 9/30/12	11	11	14	14	16	16	16	17	17	24

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
0	6	1.5	4.3	5

B. Requests for Fee Waiver

Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
2	0	24.5	24.5

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 (at initial request and appeal levels)	Litigation-Related Costs	Total Costs
3	.5	3.5	\$355,000.00	\$00.00	\$355,000.00

X. FEES COLLECTED FOR PROCESSING REQUESTS

Total Amount of Fees Collected	Percentage of Total Costs
\$2,174.36	1%<

XI. USPTO FOIA REGULATIONS

Available at: <http://www.uspto.gov/web/offices/com/sol/notices/pubfreeinf.pdf>

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
0	0

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
0	0	0	0

C. Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency

10 th Oldest Consultation and Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Consultation and Number of Days Pending

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>	
No. Received During Fiscal Year from Last Year's Annual Report (FY 2011)	No. Received During Fiscal Year from Current Annual Report (FY 2012)	No. Processed During Fiscal Year from Last Year's Annual Report (FY 2011)	No. Processed During Fiscal Year from Current Annual Report (FY 2012)
302	255	303	247

Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report (FY 2011)	Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report (FY 2012)
0	0

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 Year's Annual Report (FY 2011)	Number Received During Fiscal Year from Current Annual Report (FY 2012)	Number Processed During Fiscal Year from Last Year's Annual Report (FY 2011)	Number Processed During Fiscal Year from Current Annual Report (FY 2012)
7	10	6	10

Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report (FY 2011)	Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report (FY 2012)
0	0

F. Discussion of Other FOIA Activities

In 2012, the USPTO FOIA team worked to increase the visibility of FOIA around the Agency and to provide guidance to the USPTO Business Units. The FOIA team ramped up training sessions for specific Agency divisions and for individuals tasked with FOIA coordination within each Business Unit. Training the Agency population at large helps to increase the accuracy and efficiency of individual FOIA responses.