

**FEDERAL TRADE COMMISSION  
FREEDOM OF INFORMATION ACT ANNUAL REPORT**

Fiscal Year 2017

(Oct. 1, 2016 - Sep. 30, 2017)



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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:**

Shelley M. O'Hara  
General Attorney  
FOIA Office, Room 585  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
Telephone: (202) 326-2072  
E-mail address: sohara@ftc.gov

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

<http://www.ftc.gov/foia/annualreports.shtm>

### **3. How to obtain a copy of the report in paper form:**

Federal Trade Commission  
Consumer Response Center  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

## **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.

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

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

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

Facsimile: (202) 326-2477  
E-mail address: FOIA@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 FOIA Exemption 6. 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:**

FOIA – Freedom of Information Act (5 U.S.C. § 552)  
FTC – Federal Trade Commission  
HSR – Hart-Scott-Rodino (Clayton Act)  
FY – Fiscal Year  
PA – Privacy Act (5 U.S.C. § 552a)

**2. Basic terms, expressed in common terminology:**

- 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 and 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. Descriptions of the nine FOIA exemptions:**

- a. **Exemption 1:** classified national defense and foreign relations information
- b. **Exemption 2:** information that is related solely to the internal personnel rules and practices of an agency
- 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

### 3. Agency Component Abbreviations

Component Abbreviation	Component Name



#### 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
15 U.S.C. § 46(f)	"[Any] trade secret or any commercial or financial information which is obtained from any person and which is privileged and confidential"	Doherty v. FTC, No. 80-0513, 1981 WL 2094, at *3 (D.D.C. June 24, 1981)(15 U.S.C. § 46(f)).	FTC	179	179
15 U.S.C. § 57b-21(f)	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) (15 U.S.C. § 57b-2); Ayuda, Inc. v. FTC, 70 F.Supp.3d 247 (D.D.C. 2014) (15 U.S.C. § 57b-2); Carter, Fullerton & Hayes, LLC v. FTC, 637 F. Supp. 2d 1, 9 (D.D.C. 2009) (15 U.S.C. § 57b-2);	FTC	71	71
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	42	42

## 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	30	1,518	1,492	56
				0
AGENCY OVERALL	30	1,518	1,492	56

*After reviewing its database, FTC updated the number of requests pending as of the start of the Fiscal Year to 30, rather than 28.*

**V.B.(1). DISPOSITION OF FOIA REQUESTS -- 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	373	578	85	262	3	38	26	48	14	4	37	24	1,492
													0
AGENCY OVERALL	373	578	85	262	3	38	26	48	14	4	37	24	1,492

**V.B.(2). DISPOSITION OF FOIA REQUESTS -- "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	23	24
	Court Seal	1	
AGENCY OVERALL			24

**V.B.(3). DISPOSITION OF FOIA REQUESTS -- 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	5	228	82	104	537	64	0	29	11	19	0	0	0
AGENCY OVERALL	0	5	228	82	104	537	64	0	29	11	19	0	0	0

**VI.A. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS -- 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	1	28	25	4
				0
AGENCY OVERALL	1	28	25	4

*After reviewing its database, FTC updated the number of appeals pending as of the start of the Fiscal Year to 1, rather than 0.*

**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	17	2	5	1	25
					0
AGENCY OVERALL	17	2	5	1	25

**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	1	0	4	5	2	0	1	0	2	0	0	0
AGENCY OVERALL	0	0	1	0	4	5	2	0	1	0	2	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	4	0	1	7	0	1	0	0	0	0	0
AGENCY OVERALL	4	0	1	7	0	1	0	0	0	0	0

**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	N/A	0	0
AGENCY OVERALL			0

**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	19.00	18.50	9.00	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	2017-09-27	2017-09-22	2017-09-19	2017-09-11
	Number of Days Pending	0	0	0	0	0	0	2	5	8	14

**VII.A. FOIA 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	4	5.7	<1	88	17	33	<1	402	19	18	8	27

**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	2	6.2	<1	88	21	46.2	<1	402	20	21	16	27



**VII.C. PROCESSED 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	310	96	41	25	18	11	5	4	3	4	7	1	1	526
														0
AGENCY OVERALL	310	96	41	25	18	11	5	4	3	4	7	1	1	526





**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	16	5	6	41	14	23.1	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	2017-08-24	2017-08-24	2017-07-26	2017-07-25	2017-07-24	2017-07-14	2017-07-11	2017-05-16	2017-05-11	2017-03-21
	Number of Days Pending	25	25	46	47	48	54	57	95	98	135

**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	5	35	7	5.5	37

**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	1	4	18	13

**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	6	4.25	10.25	\$992,879.85	\$39,515.97	\$1,032,395.82
			0			\$0.00
AGENCY OVERALL	6	4.25	10.25	\$992,879.85	\$39,515.97	\$1,032,395.82

**X. FEES COLLECTED FOR PROCESSING REQUESTS**

Agency / Component	Total Amount of Fees Collected	Percentage of Total Costs
FTC	\$20,946.08	2.11%
AGENCY OVERALL	\$20,946.08	2.11%

**XI.A. NUMBER OF TIMES SUBSECTION USED**

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



**XI.B. NUMBER OF SUBSECTION POSTINGS**

Agency / Component	Number of Records Posted by the FOIA Office	Number of Records Posted by Program Offices
FTC	23,159	107
AGENCY OVERALL	23,159	107

## 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	8	0
AGENCY OVERALL	8	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	3	3	0
				0
AGENCY OVERALL	0	3	3	0



**XII.D.(1). COMPARISON OF NUMBERS OF REQUESTS FROM PREVIOUS AND CURRENT ANNUAL REPORT --  
REQUESTS RECEIVED AND PROCESSED**

Agency / Component	NUMBER OF REQUESTS <u>RECEIVED</u>		NUMBER OF REQUESTS <u>PROCESSED</u>	
	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	1,260	1,518	1,258	1,492
AGENCY OVERALL	1,260	1,518	1,258	1,492

**XII.D.(2). COMPARISON OF NUMBERS OF REQUESTS FROM PREVIOUS AND CURRENT ANNUAL REPORT -- 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	12	8
AGENCY OVERALL	12	8

**XII.E.(1). COMPARISON OF NUMBERS OF ADMINISTRATIVE APPEALS FROM PREVIOUS AND CURRENT ANNUAL REPORT -- APPEALS RECEIVED AND PROCESSED**

Agency / Component	NUMBER OF APPEALS <u>RECEIVED</u>		NUMBER OF APPEALS <u>PROCESSED</u>	
	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	26	28	27	25
AGENCY OVERALL	26	28	27	25

**XII.E.(2). COMPARISON OF NUMBERS OF ADMINISTRATIVE APPEALS FROM PREVIOUS AND CURRENT ANNUAL REPORT -- 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