

Executive Office of the President

Office of the United States Trade Representative



Annual Freedom of Information Act Report

Fiscal Year 2018

I. BASIC INFORMATION REGARDING REPORT

A. Name, title, address, and telephone number of person(s) to be contacted with questions about the report:

Melissa Keppel
FOIA Attorney and Program Manager
Office of the United States Trade Representative
(202) 456-7073
mkeppel@ustr.eop.gov

Monique Ricker
FOIA Attorney and Program Manager
Office of the United States Trade Representative
(202) 395-4990
mricker@ustr.eop.gov

B. Electronic address for report on the World Wide Web:

<https://ustr.gov/about-us/reading-room/freedom-information-act-foia/annual-foia-reports>

C. How to obtain a copy of the report in paper form:

Contact the USTR FOIA Office at (202) 395-3419 or FOIA@ustr.eop.gov

II. MAKING A FOIA REQUEST

You must make all requests for USTR records in writing and in accordance with USTR FOIA regulations and should send your request by email to FOIA@ustr.eop.gov. To avoid mail delivery delays, we strongly suggest that you email your request. The mailing address is FOIA Office, Office of the United States Trade Representative, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW, Washington DC 20509. To ensure that the FOIA Office receives your request without delay, you should include the notation "FOIA Request" in the subject line of your email or on the front of your envelope and also at the beginning of your request.

Your request must describe the records that you seek in enough detail to enable USTR personnel to locate them in a reasonable amount of time. The request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record.

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

Office of the U.S. Trade Representative, FOIA Office
(202) 395-3419
FOIA@ustr.eop.gov

B. Brief description of why some requests are not granted.

USTR may determine that the agency does not have records within the scope of the request. In addition, USTR may exempt records from disclosure records under one or more of the following FOIA exemptions:

Exemption 1 (5 U.S.C. § 552(b)(1)), which pertains to information that is properly classified in the interest of national security pursuant to Executive Order 13526.

Exemption 3 (5 U.S.C. § 552(b)(3)), which pertains to information specifically exempted from disclosure by statute, including section 135(g) of the Trade Act of 1974 (19 U.S.C. § 2155(g)).

Exemption 4 (5 U.S.C. § 552(b)(4)), which pertains to commercial or financial information obtained from a person that is privileged or confidential.

Exemption 5 (5 U.S.C. § 552(b)(5)), which pertains to certain inter- and intra-agency communications protected by the deliberative process, the attorney client, work product, and presidential communications privileges.

Exemption 6 (5 U.S.C. § 552(b)(6)), which pertains to personnel and medical files and similar information where disclosure would constitute an unwarranted invasion of personal privacy.

C. Link to agency FOIA regulations, including the agency's fee schedule (see 15 CFR 2004.9)

<https://ustr.gov/about-us/reading-room/freedom-information-act-foia/ustr-guide-foia>

III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

A. Agency-specific acronyms or other terms.

USTR – United States Trade Representative

EOP – Executive Office of the President

B. Basic terms, expressed in common terminology.

1. **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.

2. **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.

3. **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.
4. **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.
5. **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.
6. **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.
7. **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.)
8. **Full Grant** – an agency decision to disclose all records in full in response to a FOIA request.
9. **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.
10. **Median Number** – the middle, not average, number. For example, of 3, 7 and 14, the median number is 7.

11. **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.

- a. **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.
- b. **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.
- c. **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.

12. **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.

13. **Pending Request or Pending Administrative Appeal** – a request or administrative appeal for which an agency has not taken final action in all respects.

14. **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.

15. **Processed Request or Processed Administrative Appeal** – a request or administrative appeal for which an agency has taken final action in all respects.

16. **Range in Number of Days** – the lowest and highest number of days to process requests or administrative appeals.

17. **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).

C. Descriptions of the nine FOIA exemptions:

Exemption 1: classified national defense and foreign relations information

Exemption 2: information that is related solely to the internal personnel rules and practices of an agency

Exemption 3: information that is prohibited from disclosure by another federal law

Exemption 4: trade secrets and other confidential business information

Exemption 5: inter-agency or intra-agency communications that are protected by legal privileges

Exemption 6: information involving matters of personal privacy

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

Exemption 8: information relating to the supervision of financial institutions

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
19 U.S.C. § 2155(g) (Trade Act)	Certain information in connection with trade negotiations that is "submitted in confidence."	Intellectual Prop. Watch v. U.S. Trade Representative, 205 F. Supp. 3d 334, 345-46 (S.D.N.Y. 2016).	USTR	7	7

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
USTR	16	186	188	14
				0
AGENCY OVERALL	16	186	188	14

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	
USTR	22	87	4	50	1	3	1	12	0	0	0	8	188
													0
AGENCY OVERALL	22	87	4	50	1	3	1	12	0	0	0	8	188

**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
USTR	Directed Requester to Publicly Available Information	8	8
AGENCY OVERALL			8

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
USTR	0	6	4	2
				0
AGENCY OVERALL	0	6	4	2

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
USTR	2	1	0	1	4
					0
AGENCY OVERALL	2	1	0	1	4

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
USTR	1	0	1	0	0	0	1	0	0	0	0
AGENCY OVERALL	1	0	1	0	0	0	1	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
USTR	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	8.00	12.00	4.00	18.00

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	16	17	1	99	102	105	12	222	6	5	3	7

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	20	21	1	91	102	109	21	222	N/A	N/A	N/A	N/A

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
USTR	1	2	3	7	3	7	4	3	2	0	3	0	0	35
														0
AGENCY OVERALL	1	2	3	7	3	7	4	3	2	0	3	0	0	35

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	4	20	30	9	173	290	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	2018-07-13	2018-07-11	2018-07-09	2018-05-17	2018-04-04	2018-02-27	2018-02-07	2017-11-13	2017-11-02	2013-05-28
	Number of Days Pending	55	57	59	94	124	151	164	222	228	1342

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	9	7	7	15

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	0	0	N/A	N/A

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
USTR	0	1.7	1.7	\$254,000.00	\$4,000.00	\$258,000.00
			0			\$0.00
AGENCY OVERALL	0	1.7	1.7	\$254,000.00	\$4,000.00	\$258,000.00

X. FEES COLLECTED FOR PROCESSING REQUESTS

Agency / Component	Total Amount of Fees Collected	Percentage of Total Costs
USTR	\$1,558.00	0.61%
AGENCY OVERALL	\$1,558.00	0.61%

XI.A. NUMBER OF TIMES SUBSECTION (C) USED

Agency / Component	Number of Times Subsection Used
USTR	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
USTR	34	19
AGENCY OVERALL	34	19

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
USTR	11	0
AGENCY OVERALL	11	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
USTR	0	11	11	0
				0
AGENCY OVERALL	0	11	11	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
USTR	140	186	156	188
AGENCY OVERALL	140	186	156	188

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
USTR	5	11
AGENCY OVERALL	5	11

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
USTR	3	6	3	4
AGENCY OVERALL	3	6	3	4

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
USTR	0	0
AGENCY OVERALL	0	0

