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**EXPORT-IMPORT BANK OF THE UNITED STATES**  
**Chief FOIA Officer's Report**  
**David Sena, Chief Financial Officer and Chief FOIA Officer**  
**March 6, 2014**

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**Section I – Steps Taken to Apply the Presumption of Openness**

Ex-Im Bank's FOIA Team continues to apply the presumption of openness by utilizing the "Foreseeable Harm Standard" whenever practicable when reviewing documents for FOIA requests, and has made many discretionary releases. For example, Ex-Im Bank has released portions of extremely deliberative E-Mails between Bank staff and its attorneys in which staff has sought legal advice, as well as portions of pre-decisional Memorandums to the Board of Directors. The material released would previously have been withheld under FOIA Exemption (b)(5). In order to maximize discretionary releases, Ex-Im Bank's FOIA Specialists meet frequently with staff attorneys to review and discuss pending requests whose responsive documents include material that was previously withheld under Exemption (b)(5). And, the FOIA Team continues to consult more frequently with the Bank components that created/generated the records in question, in order to discuss the records' significance and determine any actual harm in disclosure. Ex-Im Bank is moving forward with its plans to update its FOIA regulations in the year ahead and will incorporate the "presumption of openness" principle into the new version.

***1.-2. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?***

Ex-Im Bank did not conduct FOIA training or conferences in Fiscal Year (FY) 2013; however, Ex-Im Bank began developing curriculum and modules for comprehensive in-house FOIA training to be held in the coming year.

***3.-4. Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?***

Yes. In 2013, all members (100%) of Ex-Im Bank's FOIA Team attended and participated in such informational gatherings as DOJ Updates and American Society of Access Professionals' (ASAP) FOIA Training seminars.

***5. Provide your Agency's plan for ensuring that such training is offered to all Agency FOIA professionals by March 2015.***

As discussed above, Ex-Im Bank is currently developing curriculum and modules for comprehensive in-house FOIA training to be held in the coming year, and is in discussions with DOJ to secure their participation as panelist(s) in this training. The training will be directed toward both FOIA and non-FOIA staff and will not only provide

instruction to FOIA professionals, but will also convey to non-FOIA staff how the FOIA's requirements mesh with their work at the Bank. We anticipate that this training will result in more efficient and expeditious processing of FOIA requests.

***6. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement.***

Ex-Im Bank has reached out to actual and potential FOIA requesters by proactively placing data on our FOIA Web site and actively soliciting feedback about that data from requesters and the public. When discussing feedback with the requester community, we ask, "What do you want to see? What can we be doing/(releasable) information providing that would be useful to you?"

***7. Does your Agency have a formal process in place to review records for discretionary release? If so, please briefly describe this process.***

In order to maximize discretionary releases, Ex-Im Bank's FOIA Specialists meet frequently with staff attorneys to review and discuss pending requests whose responsive documents include material that was previously withheld under Exemption (b)(5). And, the FOIA Team continues to consult more frequently with the Bank components that created/generated the records in question, in order to discuss the records' significance and determine any actual harm in disclosure. Ex-Im Bank is moving forward with its plans to update its FOIA regulations in the year ahead and will incorporate the "presumption of openness" principle into the new version.

***8.-9. During the reporting period, did your Agency make any discretionary releases of otherwise exempt information? What exemptions would have covered the information that was released as a matter of discretion?***

In 2013, Ex-Im Bank continued to exercise ever-greater discretion and further minimized the application of FOIA Exemption (b)(5), which encompasses the deliberative process and attorney-client privileges and is the second most common Exemption the Bank considers when processing FOIA requests.

***10. Provide a narrative description, or some examples of, the types of information that your Agency released as a matter of discretion.***

When Ex-Im Bank receives applications for participation in its loan, guarantee and insurance programs, a great deal of E-Mail correspondence is traditionally generated as each potential transaction makes its way through the Bank's due diligence and decision-making processes. This correspondence contains candid discussion, comments and recommendations by Bank staff. Quite often, Bank staff attorneys are included in this correspondence, providing legal advice and recommendations to staff processing the applications. In 2013, Ex-Im Bank continued to receive FOIA requests whose responses involved the FOIA Team's review of many such documents. Although these records had

typically been withheld in full or in part in accordance with Exemption (b)(5), under both the deliberative process *and* the attorney-client privileges, Ex-Im Bank continued to apply the presumption of openness by releasing greater portions of these and other such documents.

***11. If your Agency was not able to make any discretionary releases of information, please explain why.***

N/A.

***12. Did your Agency post all of the required quarterly FOIA Reports for Fiscal Year 2013?***

Yes.

## **Section II – Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests**

Ex-Im Bank is a small Agency that, prior to FY 2012, has received an average of 110 requests per year. The Bank's system for responding to requests has been in place for a number of years and has proven to be quite effective.

Ex-Im Bank receives most requests electronically, either via E-Mail to a dedicated FOIA mailbox or through a fillable form on the Bank's web site. Because Ex-Im Bank is a small Agency and its FOIA office is centralized, there is only one component within the Bank which receives FOIA requests. Each member of the Bank's FOIA Team receives these requests via E-Mail; this ensures that the initial request is seen by at least two people. The FOIA Team logs in each request and a tracking number is assigned and immediately provided to the requester via E-Mail. The Team analyzes each request to determine whether the request contains sufficient information to clearly identify the records in question. If the requested records are not clearly identifiable, the FOIA Public Liaison contacts the requester via telephone or E-Mail to seek clarification. If the request is overly broad, the Liaison works with the requester to determine their specific need so the scope of the request can be clearly defined and the request can be processed in the most expeditious manner possible.

Ex-Im Bank hired one temporary employee in FY 2013 to assist with processing backlogged FOIA requests. Additionally, the Team continues to employ an informal "fast track" response system, which allows us to process simpler requests expeditiously without delaying the handling of more complex requests.

Ex-Im Bank has also made IT improvements to allow us to process requests in a more timely manner: the Bank utilizes a FOIA-specific software package to more efficiently track, provide responses to and otherwise process FOIA requests. All members of the Bank's centralized FOIA Team have access to this software, which is further discussed in Part IV below. Members of the Bank's FOIA and IT Teams regularly consult with the

software vendor's IT staff in order to identify, discuss and effect updates and improvements.

The FOIA Team meets regularly to review the status of all outstanding requests and discuss any issues as they arise, and to set and adjust goals if necessary.

## **Personnel**

***1.-3. - Has your Agency converted all of its FOIA professionals to the new Government Information Specialist job series? If not, what proportion of personnel has been converted to the new job series? If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted?***

No. Ex-Im Bank currently has one full-time FOIA professional; this position is in the 0950 (Paralegal Specialist) job series. Ex-Im Bank will review this position and consult with its Office of Human Resources to determine if the job series currently assigned to this position is appropriate.

## **Processing Procedures**

***4. For FY 2013, did your Agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not, describe the steps your Agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.***

Ex-Im Bank received one request for expedited treatment in FY 2013. Generally, Ex-Im Bank adjudicates requests for expedited treatment in ten calendar days or fewer; however, greater than ten calendar days was required to adjudicate this request, as the request did not qualify for expedited processing and we were working with the requester to either narrow the scope of the request or provide documents on a "rolling" basis.

***5. Has your Agency taken any steps to make the handling of consultations and referrals more efficient and effective?***

Yes. Any referrals or consultations are done electronically between Agencies whenever possible, which has resulted in more expeditious processing of these requests.

## **Requester Services**

***6. Do you use E-Mail or other electronic means to communicate with requesters when feasible?***

Yes; whenever possible, Ex-Im Bank's FOIA Team communicates electronically with requesters. The Team also provides documents and responses in general electronically whenever possible.

**7. Does your Agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS)?**

Yes.

**8. Describe any other steps your Agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments, improving search processes, eliminating redundancy, etc.**

Ex-Im Bank often receives requests whose components either partially or completely mirror those of other requests. The FOIA Team regularly reviews requests whose subject matter appears to be related and, if applicable, processes these requests or portions thereof concurrently in order to avoid unnecessary delays. Ex-Im Bank is also investigating the purchase and use of “de-duplicating” software, which would consolidate E-Mail correspondence and eliminate duplicative review of documents. Additionally, Ex-Im Bank’s Chief FOIA Officer has taken the initiative to create and implement a system that will make document searches more expeditious and efficient, and which will allow for timelier processing of FOIA requests. Specifically, staff requested to search for documents will be required to either complete searches or provide a status report within a specified time frame. Also, The Bank’s FOIA and IT Teams regularly consult with the software vendor’s IT staff to further enhance and fine-tune its FOIA software-processing package to Ex-Im Bank’s specific needs. Additionally, more internal documents are being filed electronically at the time they are created, making it faster and easier to conduct searches for these documents.

**Section III – Steps Taken to Increase Proactive Disclosures**

**Posting Material**

**1.-2. Do your FOIA professionals have a system in place to identify records for proactive disclosure? If so, describe the system that is in place.**

Yes. The FOIA Team meets at least quarterly to review recent disclosures, identify request and disclosure trends as well as information that may be of interest to the public, and discusses placing that information on our FOIA Web site. And, Ex-Im Bank continues to update quarterly the downloadable statistical data relating to Bank transactions placed on our Web site.

**3. Provide examples of material that your Agency has posted this past reporting period, including links to where this material can be found online.**

In 2013, Ex-Im Bank continued to proactively place a large amount of statistical data related to Bank transactions on our FOIA Web site. These data files contain information on participants in the transactions, as well as on the transactions themselves, over the past six years, and are updated quarterly. To maximize use by the public, the files are downloadable and are posted in CSV format for the users’ convenience; users may create

custom reports using these files. Also included with each data file is a “key” that explains each column heading in every data file. These files are available on Ex-Im Bank’s Web site at <http://www.exim.gov/open/index.cfm>. The Bank has received a great deal of positive feedback from the public in response to this posting, from previous FOIA requesters as well as individuals who would have otherwise requested the data under the FOIA.

## **Making Posted Material More Useful**

***4.-5. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency’s website, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities on the site, creating mobile applications, providing explanatory material, etc.? If so, provide examples of such improvements.***

Yes. Ex-Im Bank’s FOIA Web site provides a feedback button for public comments and questions. Ex-Im Bank’s FOIA Team is also working with the Web Team to enhance the site’s search capabilities. The FOIA Team is investigating the possible use of social media such as Twitter and Facebook, on which Ex-Im Bank would place live links to proactive disclosures on our Web site, as well as information and updates on the Bank’s FOIA process. The Bank is also considering the use of YouTube for disseminating information to the public about Ex-Im Bank’s FOIA process, progress, request trends and recent disclosures.

***6. Did your Agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized?***

While social media was not utilized, Ex-Im Bank did highlight proactive disclosures on its FOIA Web site by placing a “Frequently Requested Records and Proactive Disclosures” link in a prominent spot on its home (non-FOIA) page, as well as prominently headlining the links to these disclosures on its FOIA Web page.

***7. Has your Agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.***

Ex-Im Bank has not encountered significant challenges when posting proactive disclosures on its FOIA Web site.

***8. Describe any other steps taken to increase proactive disclosures at your agency.***

Ex-Im Bank continues to update quarterly the downloadable statistical data relating to Bank transactions placed on our Web site. Ex-Im Bank also solicits feedback from the users of this data to determine ways in which the presentation of the data, as well as content, could be improved.

## **Section IV – Steps Taken to Greater Utilize Technology**

***1. Can a FOIA requester track the status of his/her request electronically?***

Not at the present time.

***2. If yes, how is this tracking function provided to the public?***

N/A.

***3. Describe the information that is provided to the requester through the tracking system.***

N/A.

***4. In particular, does your Agency tracking system provide the requester with an estimated date of completion for his or her request?***

N/A.

***5. If your Agency does not provide online tracking of requests, is your Agency taking steps to establish this capability?***

Yes, Ex-Im Bank is investigating the purchase of the additional components of its current FOIA tracking system that would provide this capability.

### **Use of Technology to Facilitate Processing of Requests**

***6.-7. Beyond using technology to redact documents, is your Agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents? If so, describe the technological improvements being made.***

Ex-Im Bank is investigating the purchase and use of “de-duplicating” software, which would consolidate E-Mail correspondence and eliminate duplicative review of documents. For requests involving review of voluminous E-Mail documents, Ex-Im Bank has employed a vendor that assisted with sorting and formatting the documents to facilitate their review.

***8. Are there additional technological tools that would be helpful to achieving further efficiencies in your Agency’s FOIA program?***

The additional on-line tracking component of our current FOIA tracking software would be especially helpful, as well as the E-Mail de-duplicating software. Additionally, some type of product that would allow requesters to receive more data via E-Mail would be useful, as occasionally our FOIA responses are “bounced back” to us due to size.

## **V. Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs**

### **Simple Track Requests**

*1.a.-b. Does your Agency utilize a separate track for simple requests? If so, for your Agency overall, for FY 2013, was the average number of days to process simple requests twenty days or fewer?*

Yes, Ex-Im Bank does utilize a “fast track” for simple requests. In FY 2013, the average number of days to process these was greater than twenty working days, with the lowest number of days being one.

*1.c. If your Agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?*

N/A.

### **Backlogs**

*2.a. If your Agency had a backlog of requests at the close of FY 2013, did that backlog decrease as compared with FY 2012?*

Yes.

*2.b. If your Agency had a backlog of administrative appeals in FY 2013, did that backlog decrease as compared to FY 2012?*

Yes.

### **Ten Oldest Requests**

*2.c.-d. In FY 2013, did your Agency close the ten oldest requests that were pending as of the end of FY 2012? If no, please provide the number of these requests your Agency was able to close by the end of the Fiscal Year.*

Ex-Im Bank closed eight of the ten oldest requests in FY 2013 and one in FY 2014. One remains open; this request involves the review of voluminous documents and we are providing “rolling releases” on that one.

## **Ten Oldest Appeals**

***2.e.-f. In FY 2013, did your Agency close the ten oldest administrative appeals that were pending as of the end of FY 2012? If no, please provide the number of these appeals your Agency was able to close by the end of the Fiscal Year.***

Ex-Im Bank had only two appeals open at the end of FY 2012. One was closed in FY 2013; one remains open.

## **Ten Oldest Consultations**

***2.g.-h. In FY 2013, did your Agency close the ten oldest consultations received by your Agency and pending at the end of FY 2012? If no, please provide the number of these consultations you Agency did close.***

Ex-Im Bank did not have any consultations pending at the end of FY 2012.

***3. If you answered “no” to any question in “Item 2”, answer the following questions and include any additional explanation:***

### **Request and/or Backlog:**

***3.a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals?***

N/A.

***3.b. Was the lack of reduction in the request and/or appeal backlog caused by a loss of staff?***

N/A.

***3.c. Was the lack of a reduction in the request and/or appeal backlog caused by an increase in the complexity of the requests and/or appeals received?***

N/A.

***3.d. What other causes, if any, contributed to the lack of a decrease in the request and/or appeal backlog?***

N/A.

***3.e. Briefly explain the obstacles your Agency faced in closing its ten oldest requests, appeals, and consultations from FY 2012.***

As explained above, the one remaining of our “ten oldest requests” in FY 2012 was not closed because the request involves the review of many documents and E-Mails. However, throughout FY 2013 we have been providing and continue to provide documents in a staggered fashion, i.e., “rolling releases”, in response to this request.

***3.f. If your Agency was unable to close any of its ten oldest requests or appeals 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.

#### **Plans for Closing of Ten Oldest Pending Requests, Appeals and Consultations, and Reducing Backlogs**

***4. If your Agency did not close its ten oldest pending requests, appeals and consultations, please provide a plan describing how your Agency intends to close those “ten oldest” requests, appeals and consultations during FY 2014.***

Ex-Im Bank will close out the one remaining “ten oldest” FOIA request by continuing to review documents and releasing them on a “rolling” basis. Ex-Im Bank’s Legal Division, which processes all FOIA appeals, will prioritize the one appeal remaining from FY 2012. Ex-Im Bank’s attorneys who process appeals also work on other, non-FOIA-related assignments, so priorities often fluctuate.

***5. If your Agency had a backlog of more than 1,000 pending requests and did not reduce that backlog in FY 2013, provide your Agency’s plan for achieving backlog reduction in the year ahead.***

N/A.

#### **Interim Responses**

***6. Does your Agency have a system in place to provide interim responses to requesters when appropriate?***

Yes.

***7. If your Agency had a backlog in FY 2013, provide an estimate of the number of cases in the backlog where a substantive interim response was provided during the Fiscal Year, even though the request was not finally closed.***

One case, as discussed in #4, above.

#### **Use of FOIA's Law Enforcement "Exclusions"**

***Did your agency invoke a statutory exclusion during FY 2013?***

No.

***If, so, what was the total number of times exclusions were invoked?***

Not applicable; no exclusions were invoked.

#### **Spotlight on Success**

- Ex-Im Bank made discretionary releases in nearly 90% of the 17 FOIA requests processed in FY 2013 that involved review of material on which a discretionary release could be made.
- In Fiscal Year 2013, Ex-Im Bank continued to proactively place on its FOIA Web site data that provides specific details about Ex-Im Bank transactions. As a direct result of placing this data on line, the number of Ex-Im Bank's total FOIA requests received plummeted to only 45 in Fiscal Year 2013, down from 62 in FY 2012. This represents an unprecedented low number of requests, as between Fiscal Years 1998 and 2011, Ex-Im Bank received an average of 110 FOIA requests annually. Ex-Im Bank continues to receive positive feedback from the public about the scope and availability of this data.

