

# 2013 Pension Benefit Guaranty Corporation Chief FOIA Officer Report

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## Part I: Steps Taken to Apply the Presumption of Openness

As President Obama indicated in his January 21, 2009, FOIA Memorandum, “The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails.”

Describe steps taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. Answer the questions listed below and then include any other pertinent information:

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

The Pension Benefit Guaranty Corporation (PBGC) did not hold a formal agency-wide FOIA conference, but did conduct FOIA training at the annual Benefits Administration & Payment Department (BAPD) conference (BAPD is PBGC’s largest department) and held weekly training sessions for Disclosure staff. The Disclosure staff also attended Department of Justice (DOJ) FOIA training courses, and FOIA and Disclosure principals discussed FOIA matters with other PBGC Department personnel on a targeted, individual basis. PBGC Office of the General Counsel staff further provided disclosure information during PBGC’s annual Privacy Week in March 2012.

2. Did your agency make any discretionary releases of otherwise exempt information?

Yes.

3. What exemptions would have covered the information that was released as a matter of discretion?

Exemption (b)(5).

4. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.

PBGC released information, which could have been withheld under exemption (b)(5). Specifically, the PBGC Disclosure Division released pre-decisional deliberative process information contained in internal audits of pension benefit plans and Inspector General reports.

5. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is applied.

The PBGC currently protects the pensions of more than 44 million American workers and retirees in more than 27,500 private single-employer and multi-employer defined benefit pension plans. We are currently responsible for paying benefits to more than 1.5

million people in failed pension plans. During FY 2012, the PBGC processed approximately 5,500 FOIA requests and is on track during FY 2013 to process slightly over 6,000 requests.

The Disclosure Division in 2009 and thereafter, distributed the Attorney General's March 2009 guidelines and the President's January 2009 FOIA and Transparency memorandums to all PBGC Washington DC personnel as well as personnel located at our Field Benefits Administration (FBA) offices and the Alexandria, VA Call Center. The Disclosure Officer also met with several PBGC department heads to explain and discuss the presumption of openness with respect to the release of PBGC records under the President's policy. During 2012, the Disclosure Officer again met with several department heads to explain the importance of the presumption of openness and how department heads could assure this was an agency-wide goal.

Specialized training was conducted with the Disclosure Division staff, emphasizing the maximum disclosure of records under the President's policy. The policy was also discussed at the annual BAPD conference held in January of each year; re-emphasized during weekly staff training and meetings; and incorporated into PBGC's yearly FOIA and Privacy Act training required of all PBGC personnel, as well as during other PBGC personnel FOIA training opportunities. Further, Disclosure Division staff attended the Department of Justice FOIA training in FY 2012, which emphasized the President's policy on the presumption of openness.

In addition to numerous initiatives undertaken in 2009 to promote the President's presumption of openness, the PBGC recently revised its FOIA appeal process to enable the Disclosure Division to revisit initial administrative FOIA determinations prior to formal review by the FOIA appeal authority. The purpose of the Disclosure Division's initial review of FOIA appeals is to encourage the maximum release of additional information, as appropriate, prior to formal review by the appeal authority.

Since the PBGC's FOIA processing is centralized, the Disclosure Officer has the unique opportunity to review any planned withholding of information under a discretionary FOIA exemption, such as FOIA exemption (b)(5). The administrative appeals process is used to re-attack initial non-disclosures of information and reconsider release of withheld information, consistent with the President's presumption of openness policy and the Attorney General's guidelines.

Finally, the PBGC showed a percentage increase in the number of records released in full over FY 2011. In FY 2011, the PBGC provided full releases in 74% of all cases. In FY 2012, the PBGC provided full releases in 80% of all cases.

## **Part II: Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests**

“Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests.”

Describe steps taken to ensure that your agency system for responding to requests is effective and efficient. Answer the questions below and then include any additional pertinent information:

1. Do FOIA professionals within your agency have sufficient IT support?

Yes. FOIA professionals have extensive, daily, IT support. The Disclosure Division has a dedicated, assigned IT individual to the Division who devotes full time support to the Division's electronic FOIA (eFOIA) processing system. This individual assures a continued high level of support for eFOIA the long term knowledge necessary at times to deal with required modifications to meet increased processing and reporting requirements. During FY 2012, the PBGC began updating and revising its eFOIA processing system in order to provide enhanced search and reporting capabilities, as well as minimize manually-performed processes.

2. Do your FOIA professionals work with your agency's Open Government Team?

Yes. Because the PBGC's FOIA process is centralized in one location, FOIA professionals interact with all PBGC departments on a daily basis. One of the Disclosure Division's FOIA specialist is a permanent member of the PBGC Web/Intranet Change Control Board. The Board works with the Open Government Team to find ways to make new information about the PBGC available on the Open Government web- page.

3. Has your agency assessed whether adequate staff is being devoted to FOIA administration?

Yes. The PBGC regularly assesses whether adequate staff is being devoted to FOIA administration. Both FOIA staffing and associated budget needs are continually reviewed to assure that, as situations change, appropriate staffing needs are met. This results in adequate augmentation support of PBGC's core level of federal FOIA professionals with contract employees.

4. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.

The PBGC is fortunate to have a full-time eFOIA IT support team on staff. This IT staff ensures the system sustains its compatibility with corporate-wide security and system integration requirements. The eFOIA electronic processing system is monitored on a daily basis through five different reports, including an "Error Report," "Aged Report," "Delinquent Requester Report," "Unperfected Request Report," and a "Weekly Production Report." These internal reports, provided weekly to the Disclosure and Deputy Disclosure Officer, assure the identification of processing issues as they occur, enabling the Disclosure staff to take timely and appropriate steps to address processing issues.

Additional Information:

All FOIA requests receive an acknowledgement letter mailed within two business days of receipt. If a requester wishes to discuss the status of their request they can call our toll free number and speak to the analyst processing their request. The effectiveness of

PBGC's system for appropriately and timely responding to requests resulted in only 3 appeals during the reporting period for this report (March 2012 – March 2013), with no backlog at the end of FY 2012. In January 2013, PBGC will stand-up the capability on its internet FOIA website for requesters to submit requests electronically and electronically seek status updates. It is anticipated that future system modifications will enable a requester to automatically track and receive updates electronically on the status of his or her FOIA request.

### **Part III. Steps Taken to Increase Proactive Disclosures**

“Agencies should readily and systematically post information online in advance of any public requests.”

Describe steps taken to increase the amount of material that is available on your agency's website, and the usability of such information, including providing examples of proactive disclosures. Answer the questions listed below and include any other pertinent information:

1. Provide examples of materials that your agency has posted this year.

The PBGC Office of the Inspector General posts the results of its internal audits and reports. Additionally, the Inspector General posts its semi-annual reports to Congress as well as congressional correspondence. The Disclosure Division has assisted the Appeals Board by reviewing, redacting personally identifiable information, and pro-actively publishing Appeals Board Decisions for benefit determinations. The PBGC continues to proactively publish a list of its trustee plans, an Unclaimed Pensions List, as well as a search engine for Missing Participants.

2. 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.?

Yes.

3. If so, provide examples of such improvements.

As previously mentioned, the PBGC continues to maintain and update its list of PBGC trustee plans, which are indexed alphabetically on its website. Similarly, the search engines for Unclaimed Pensions and Missing Participants listings are maintained on the agency's website. Additionally, the PBGC provides extensive information about the agency, which can be used by mobile devices and social media.

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

When a pension plan is taken over by the PBGC, the PBGC pays the monthly pension benefits to pension plan participants when they become eligible to retire. PBGC announces the takeover (trusteeship) of plans as they occur through press releases

available on its website. PBGC has established a webpage for each terminating pension plan where participants in the plan can track the progress of the termination, obtain other relevant information, and get updates from the PBGC. Placing current pension plan status information on the PBGC website allows participants to review the status of their plan termination and significantly reduces the need for the participant to file a FOIA request to obtain information about their pension plan.

During FY 2012, the PBGC redesigned portions of its website to offer the public more intuitive ways to get to information about insurance programs. PBGC also updated its “Legal Filings and Decisions” page to better inform the public as to decisions on cases that may involve their particular pension plan. This page not only gives current information on PBGC’s efforts to preserve and safeguard pensions, but also reflects major case filings dating back to the 1980’s. The PBGC also updated its “limited English proficiency plan,” which assists individuals whose primary language is Spanish by providing Spanish translations of important sections of the website.

The PBGC also proactively makes available on its web site redacted versions of final agency decisions issued by the PBGC’s Appeals Board. These determinations often affect more than one participant in a specific pension plan, and publication allows other participants and their representatives to review the PBGC’s analysis of factual situations and application of PBGC regulations. These final appeal decisions often provide participants with the information they need and precludes the filing of a FOIA request.

Last year, the PBGC added an “update section” to its website, where an individual can sign up to automatically be notified when information is updated on the website. This allows participants in plans, the PBGC trustees, to stay informed on issues that are of importance to them.

With respect to utilization of social media, PBGC has continued using social media to distribute information that has been posted on its website. PBGC has established social media webpage, such as on Facebook.

## **Part IV. Steps Taken to Improve Use of Technology**

Answer the following targeted questions:

### **Electronic receipt of FOIA requests:**

1. Can FOIA requests be made electronically to your agency?

Yes.

2. If your agency is decentralized, can FOIA requests be made electronically to all components of your agency?

PBGC is not a decentralized agency with respect to its FOIA program.

### **Online tracking of FOIA requests:**

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

As indicated above, the processing of FOIA requests is centralized at PBGC. The Disclosure Division receives all FOIA requests for PBGC documents, tracks the requests electronically in its eFOIA system, and processes the requests using its eFOIA software. At the present time, a requester can't track their request electronically by clicking on a link that shows them the status of their request. However, the Disclosure Division has received no complaints concerning timely receipt of information concerning the status of requests. The Disclosure Division's success in this respect is due to the fact the Division responds to most FOIA requests within 10 working days and otherwise provides timely regular status updates to requesters.

4. If so, describe the information that is provided to the requester through the tracking system.

N/A. However, although a requester cannot currently track his/her request electronically, the Disclosure Division maintains a hotline number to answer questions during office hours and a voice mail system receives calls when the office is closed. All phone calls made to the PBGC's toll free number are logged into the PBGC's call management system and inquiries about the status of requests are forwarded, electronically, to the applicable field benefit administrator office at which time the a return call with the status is made. This call management system tracks calls and inquiries that have been forwarded to the Disclosure Division by the Call Center.

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

N/A. Although the PBGC does not currently have electronic tracking capability for requesters, the PBGC's acknowledgement letters provide a projected completion date. This information is also provided in regular status updates and otherwise as requested.

6. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability.

Yes.

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?

Yes. Although nearly 98% of PBGC's FOIA requests are processed within the statutory time-limit of 20 workdays, with fewer than 10 appeals filed in a typical fiscal year, the Disclosure Division is taking steps to identify ways to enhance its current document sharing platforms. The Disclosure Division has obtained read-only privileges to various applications that enable the ability to search and retrieve documents.

8. If so, describe the technological improvements being made.

Each FOIA Specialist has the appropriate level of access to “Image Viewer,” a group of software applications that are integral to the efficient retrieval of documents. Image Viewer is an image-enabled system in which all incoming and outgoing correspondence is scanned. FOIA Specialists also have access to a document sharing platform called the “PBGC Portal.” The PBGC Portal allows for the easy download of various non-participant related documents by the specialist and the upload of voluminous documents by the record originator.

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

1. Refer to Section VII.A of PBGC’s 2012 Annual FOIA report for figures on FOIA Requests – Response Time for All Processed Requests

a. Does your agency utilize a separate track for simple requests?

No. A majority of PBGC’s FOIA requests are processed within 20 working days and are considered simple requests.

b. If so, for your agency overall, for Fiscal Year 2012, was the average number of days to process simple requests twenty working days or fewer?

The average number of days to process *all* perfected FOIA requests was less than 8 days.

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

Yes, see 1b, above.

2. Refer to Sections XII/D(2) and XII.E(2) of PBGC’s 2012 Annual FOIA Report for figures on backlogged requests/appeals, and Sections VII.E and VI.C(5) on the ten oldest pending requests/appeals

a. If your agency had a backlog of requests at the close of Fiscal Year 2012, did that backlog decrease as compared with Fiscal Year 2011?

N/A. PBGC had no FOIA backlog of requests at the close of FY 2012.

b. If your agency had a backlog of administrative appeals in Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011?

N/A. PBGC had no FOIA backlogged appeals at the close of FY 2012.

c. In Fiscal Year 2012, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2011?

Yes.

d. In Fiscal Year 2012, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2011?

N/A.

3. If you answered “**no**” to any question in “item 2,” answer the following questions and include any additional explanation. N/A.

a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests? N/A.

b. Was the lack of reduction in the request backlog caused by a loss of staff? N/A.

c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received? N/A.

d. What other causes, if any, contributed to the lack of a decrease in the request backlog? N/A.

**Administrative Appeal Backlog** (same a-d questions as in 3, above): N/A.

4. If your agency had a backlog in Fiscal Year 2012, 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.

Although the PBGC did not have a backlog at the end of Fiscal Year 2012, the Disclosure Division made more than 20 substantive interim releases of information on requests in which there were voluminous responsive documents.

Use of FOIA’s “Law Enforcement Exclusions.”

Answer the following questions concerning the use of the FOIA’s statutory law enforcement exclusions, 5 U.S.C. § 552(c)(1), (2), (3):

1. Did your agency invoke a statutory exclusion during Fiscal Year 2012? No.

2. If so, what was the total number of times exclusions were invoked? N/A.

Spotlight on Success.

The “spotlight on success” concerns not an individual FOIA case accomplishment, but the efficiency and professionalism of the Disclosure Division FOIA and IT staff as a whole. During FY 2012, the Disclosure Division provided nearly 6,000 requesters access to pension plan documents and other PBGC records, on average within 8 days of receiving the request. Many of our FOIA specialists have been working at the Disclosure Division for many years, which greatly enhances the ability to timely respond to individual FOIA requests. The PBGC and the Disclosure Division continue to be proud

of the ability to timely process nearly 98% of the growing number of FOIA requests we receive each year, while keeping to a bare minimum the number of requesters who decided to appeal a final response determination.