

**2010: Chief FOIA Officer Report
from
the Pension Benefit Guaranty Corporation**

Part I: Steps Taken to Apply the Presumption of Openness

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

1. Description

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving FOIA.

- One of the first steps we took was to distribute the President’s memorandum to all Disclosure Division staff at PBGC. We conducted special training with the Disclosure staff to stress maximum disclosure of records to requesters while being certain to protect the privacy of individuals other than the requester. PBGC currently protects the pensions of more than 44 million American workers and retirees in more than 29,000 private single-employer and multiemployer defined benefit pension plans. Over 90% of its FOIA requests are from participants in plans PBGC has trusted and for whom it now pays monthly pension benefits. Even prior to President Obama’s memorandum, PBGC considered participant requests for records to be very important because disclosure allows the participants to see records that explain how their pension plan provisions effect how their benefits are calculated. Often the information helps to explain why their plan was taken over by PBGC. PBGC very seldom uses a FOIA exemption to deny participants access to relevant records. The only major exception involves requests for records that contain other participant’s information. In such circumstances PBGC usually asserts exemption (b)(6) to protect the personal privacy of the other pension plan participants.
- In PBGC’s 2008 and 2009 FOIA Annual Reports we have reported that PBGC processed 10,453 perfected requests during the two reporting periods. Of PBGC’s responses to these requests, 10,058 or 96.2% were participant requests and were granted in full. Another 379 responses or 3.6% were granted in part. Only 16 requests—only 1 in all of FY 2009—were denied in full. Of the 395 responses that were not granted in full, 356 relied on (b)(6) exemption of the FOIA to partially withhold information relating to participants other than the requester from a record containing the FOIA requester’s information. This “denial” is a bit of a misnomer, since in most cases all of the information the requester was seeking was fully provided. Only 39 times in two years was an exemption other than (b)(6) used leading to the requester not receiving all requested information. Thus, in only 0.4% of all processed requests was an exemption used to withhold any information.

2. Disclosure Comparisons

Report whether your agency shows an increase in the number of requests where records have been released in full or where records have been released in part when compared with those numbers in the previous year's FOIA Annual report.

- As explained above, the majority of PBGC's requests come from pension plan participants seeking to access records pertaining to themselves and their pension plan, and partial denials are usually a result of multiple participants' information appearing as part of the same record. Considering these partial denials first, in FY 2008 we reported that PBGC issued a partial grant/partial denial based on exemptions for 187 requests. In FY 2009, PBGC issued a partial grant/partial denial based on exemptions for 192 requests. We feel that the variance is negligible between the two fiscal years.
- PBGC is already statistically close to not using or very seldom using an exemption to fully deny access to records. Considering full denials, in FY 2008 we reported that PBGC issued a full denial for 15 requests. In FY 2009, PBGC issued a full denial for only 1 request (or 0.02% of all requests received). Given the small sample size, it is difficult to claim that this is a reduction in full denials; in any case, we again feel that the variance is negligible between the two fiscal years.

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.”

1. Description

Describe here the steps your agency has taken to ensure that your system for responding to requests is effective and efficient.

- PBGC was one of the first government agencies to fully implement an electronic system to process FOIA requests in 1997. We have developed and refined this processing so that PBGC's staff of eight analysts was able to process over 7,300 requests in FY 2008 with no backlog. PBGC's system not only allows us to process all requests electronically, but also allows for daily monitoring of each request as well as tracking to ensure that PBGC knows the processing status of each request. All FOIA requests have an acknowledgement letter mailed within two business days of receipt. The determination letters that are issued when processing is completed are concise and to the point. They fully explain if any portion of a record is withheld, what exemption of the FOIA was used, and the appeal rights afforded the requester. We average fewer than three appeals a year contesting FOIA determinations.
- During FY 2009, an additional FTE was added to the disclosure staff. This full time position supports the eFOIA processing system in use at PBGC. By having a full-time federal employee in this position, we can assure a continued high level of support for our electronic processing system and retention of knowledge needed to deal with required modifications to the software to meet increased reporting

requirements. In addition to support for the system, this employee regularly examines ways to improve the efficiency of the system.

Part III. Steps Taken to Increase Proactive Disclosures

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

1. Description

Describe here the steps your agency has taken to increase the amount of material that is available on your agency’s website, including providing examples of proactive disclosures that have been made since issuance of the new FOIA guidelines.

- As indicated above, PBGC insures private sector defined benefit pension plans and protects over 44 million American workers. When a plan is taken over by PBGC, it pays monthly pension benefits to pension plan participants when they become eligible to retire. As a proactive step, PBGC announces the takeover (trusteeship) of plans as they occur through press releases made available on its website. PBGC also establishes a webpage for each terminating pension plan where participants can visit to track progress of the termination, obtain information and get updates from PBGC for their plan. Placing current pension plan status information on our web site allows participants to review the status of their plan termination and in part reduces the need to file a FOIA request to get that basic information about the status of their pension plan termination. Our website is used by thousands of plan participants to get basic information on PBGC’s mission and how it will affect their specific terminated pension plan. PBGC also sends out a series of letters to all plan participants in its trustee plans informing them of their rights and entitlement to pension benefits. All trustee plans appear in searchable data sets allowing participants to check to see if PBGC has taken over their pension plan. Budget performance and planning reports are also posted on PBGC’s website. PBGC’s website also includes performance reports such as ACSI (American Customer Satisfaction Index) which measures six aspects of PBGC’s performance.
- Since the issuance of the new FOIA guidelines, PBGC has established an “Open Government” webpage which allows a subscriber to receive updates to various data sets and information to help the American public better understand the work of PBGC. This new webpage makes important PBGC data sets available to the public for the first time and explains how the public can provide suggestions to improve the Corporation’s work and performance. PBGC’s newly published information complements the many other Federal agency data sets located at www.data.gov. PBGC expects to add additional data sets in the future.
- In addition, PBGC makes available on its website redacted versions of final decisions regarding eligibility for benefits issued by 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 PBGC’s analysis of factual situations and application of PBGC’s regulations. These final

appeal decisions often provide participants with the information they need and obviate the need to file a FOIA request for similar information.

Part IV. Steps Taken to Greater Utilize Technology

Electronic receipt of requests

1. Does your agency currently receive requests electronically?

- The majority of our requests are filed by pension plan participants (or third party representatives) seeking access to pension plan records and/or copies of their participant file. Since the requested records are contained in part in a system of records covered by the Privacy Act of 1974 (as amended), access to copies of those records requires the signature of the subject of the record. As a result, e-mail requests for these types of records are not accepted. This is because we do not know who is sending the e-mail, and PBGC needs a signature from the subject of the record to verify the identity of the requester prior to disclosing the record. In this era of ID Theft we take every step to assure the protections afforded by the Privacy Act of 1974 are followed to assure that participant records are only disclosed to the subject of the record or his/her authorized representative.

2. If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically?

- Not applicable; see IV.1. above. Requests for PBGC records require an original signature for identify verification.

Electronic tracking of requests

3. Does your agency track requests electronically?

- As indicated above, PBGC implemented an electronic system to process and track all requests in 1997 as required by the Electronic Freedom of Information Act Amendment of 1996. As one of the first agencies to comply with the Act, PBGC has been in the forefront of the automation of the entire FOIA process. PBGC's system allows it to electronically track requests, gather requested records from various other internal systems, review those records and make required redactions. PBGC processed over 7,300 requests in FY 2008, a record number for PBGC. In 2009 our outreach efforts in part helped reduce the number of requests to 4,526. Any requester can call the number listed in PBGC's confirmation letter acknowledging their request and get an immediate update on the status of processing of their request. PBGC's electronic processing system is adaptable, and PBGC has modified it to meet new reporting requirements as developed by DOJ.

4. If not, what are the current impediments to your agency utilizing a system to track electronically?

- Not applicable; see IV.3. above. PBGC has utilized an electronic FOIA tracking and processing system since FY 1999.

Electronic processing of requests

5. Does your agency use technology to process requests?

- As indicated in response to question number 3 above, all FOIA tracking, records collection and processing (including any required redaction) are handled electronically.

6. If not, what are the current impediments to your agency utilizing technology to process requests?

- Not applicable; see IV.5. above. PBGC has utilized an electronic FOIA tracking and processing system since FY 1999.

Electronic preparation of Annual FOIA Report

7. Does your agency utilize technology to prepare your agency Annual FOIA Report?

- Yes, PBGC's electronic FOIA system provides a detailed working report that calculates and finalizes all numerical calculations as required in the latest DOJ's OIP FOIA report guidance from 2008. Furthermore, PBGC's system generates periodic reports allowing constant monitoring of the FOIA response progress in order to preemptively anticipate and solve issues before they cause production problems. This allows PBGC to generate the FOIA Annual Report narrative quickly and with confidence that the information is accurate.

8. If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report?

- Not applicable; see IV.7. above. PBGC has utilized an electronic FOIA tracking and processing system since FY 1999.

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

1. Backlog Status

- PBGC does not have any requests (0 requests) backlogged at this time. PBGC did not have or report a backlog at the end of FY 2009, and PBGC did not have or report a backlog at the end of FY 2008. We credit this to the rapid electronic processing of all incoming FOIA requests. We are always striving to improve our electronic system by developing new procedures and modifying existing procedures to allow finite tracking of requests to assure the shortest processing time possible.

2. Backlog Reduction Steps

- Not applicable; see V.1. above. PBGC did not have a backlog in FY 2009 or FY 2008.

3. Steps to Improve Timeliness

- Not applicable; see V.1. above. PBGC did not have a backlog in FY 2009 or FY 2008.