

**The Pension Benefit Guaranty  
Corporation's Freedom of  
Information Act Report  
Fiscal Year 2013**



**Office of the General Counsel  
Disclosure Division**

**Report to the  
Attorney General of the United States  
For the Period of  
October 1, 2012 – September 30, 2013**

# Pension Benefit Guaranty Corporation – FY 2013 Annual FOIA Report

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## I. BASIC INFORMATION REGARDING REPORT

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

D. Camilla Perry, Disclosure Officer  
Pension Benefit Guaranty Corporation  
1200 K Street, N.W. Washington, D.C. 20005-4026  
(202) 326-4040

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

<http://www.pbgc.gov/documents/2013-FOIA-Annual-Report.pdf>

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

A paper copy of the report can be obtained by calling the Office of the General Counsel, Disclosure Division, PBGC at (202) 326-4040 or by printing a copy at the Web address listed in I.2 above.

## II. MAKING A FOIA REQUEST

1. Names, addresses, and telephone numbers of PBGC FOIA Officers and FOIA Liaisons. FOIA requests should be submitted directly to the Disclosure Division

Attention: D. Camilla Perry, Disclosure Officer  
Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Suite 11101  
Washington, DC 20005-4026  
Phone (202) 326-4040

**Chief FOIA and Privacy Act Officer**  
Philip Hertz

**FOIA Public Liaisons**  
Michelle Chase  
Betty Gamez

A FOIA request should include a description of the requested records, an assurance that the requester is willing to pay the fees, if any, associated with processing the request, and the complete address of the requester. In addition, it is helpful to provide a phone number where the requester can be reached during business hours so that any questions regarding the scope of the request can be resolved quickly. If the requester is unsure of how to describe the records they desire or have specific questions relating to processing of a request, they should call the FOIA staff for advice at (202) 326-4040 prior to filing their request.

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2. Brief description of why some requests are not granted and an overview of certain general categories of the agency's records to which the FOIA exemptions applies

Records subject to disclosure and application of FOIA exemptions include, in part; records submitted to PBGC and created by PBGC in connection with processing distress plan terminations, or standard termination filing, comments on proposed regulations and documents outlining PBGC policies and procedures, as well as documents underlying PBGC policies and procedures.

Some requests are not granted because one or more of the exemptions from FOIA's disclosure requirement applies to the records requested. The primary exemptions used by PBGC are (b) (3), (4), (5) and (6).

PBGC denies access to records which have be submitted to the agency under Title 29 USC 4010 and 29 USC 4043 pursuant to exemption (b)(3).

In addition, companies often submit confidential financial and/or commercial information to PBGC in the course of doing business. This information is withheld under exemption (b)(4).

In some instances, PBGC did not possess any of the records that were requested.

Exemption (b) (5) in part, allows for the protection of records that reflect the deliberative process within the agency. It can be used to protect portions of records that contain pre-decisional opinions recommendations and advice when the disclosure of that information may have a chilling effect on the decision making process. Exemption (b) (5) also protects attorney work product and attorney client communications.

In the vast majority of cases, denial of access to records involve requests by third parties for personal information about individuals contained in the individual's Privacy Act record or other record, where the subject individual has not authorized release of their personal information, a Privacy Act routine use does not apply, or the FOIA does not require the PBGC to otherwise release the personal information. These records or information are withheld under exemption (b)(6).

3. FOIA Regulations (including Fee Schedule)

PBGC FOIA regulations are available online at:

<http://www.pbgc.gov/res/laws-and-regulations/code-of-federal-regulations/part-4901---examination-and-copying-of-pension-benefit-guaranty-corporation-records.html>

### III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

1. Agency-specific acronyms or other terms: None

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### 2. Definitions of terms used in this report:

- a. **Administrative Appeal** – a request to a federal agency asking that it review at a higher administrative level 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 that 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.

NOTE: PBGC is centralized and therefore does not have multiple components.

- e. **Consultation** – the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that 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/PA 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.)

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NOTE: PBGC processed all requests for access to records, regardless of which law was cited by the requester, under both the FOIA and PA, as appropriate.

- 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 for some 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. **Perfect 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.

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- 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. Concise description of the nine FOIA exemptions:

An agency may withhold information from disclosure if the information requested is the kind described in any of the nine exemptions listed in the FOIA.

1. **Exemption 1:** classified national defense and foreign relations information.
2. **Exemption 2:** information that is related solely to the internal personnel rules and practices of an agency.
3. **Exemption 3:** information that is prohibited from disclosure by another federal law.
4. **Exemption 4:** trade secrets and other confidential business information.
5. **Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges.
6. **Exemption 6:** information which, if released, would constitute a clearly unwarranted invasion of personal privacy.
7. **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.
8. **Exemption 8:** Information relating to the supervision of financial institutions.
9. **Exemption 9:** Geological information on wells.

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### 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
29 U.S.C. § 1343	Any information or documentary material submitted to the [agency] pursuant to... section [1343 of title 29 of the United States Code]	None	PBGC	1	1

### V. FOIA/PA REQUESTS

Note that PBGC does not have multiple components. All data for all sections below are referring to the agency overall.

#### A. Received, Processed and Pending FOIA Requests

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
144 <sup>1</sup>	5,721	5,786	79

#### B(1). Disposition of FOIA Requests – All Processed Requests

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 Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper FOIA Request for Other	Not Agency Record	Duplicate Request	Other *Explain in Chart Below		
4,766	214	180	43	0	43	3	6	37	60	434	0	5,786

<sup>1</sup> Correction: At the end of FY12, the PBGC reported 146 pending requests. During FY13, it was determined the reported number was an error. There were 144 pending requests at the start of FY13.

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B(2). Disposition of FOIA Requests – “Other” Reasons for “Full Denials Based on Reasons Other than Exemptions”

Description of "Other" Reasons for Denials from Chart B(1)	Number of Times "Other" Reason Was Relied Upon	TOTAL
N/A	0	0

B(3). Disposition of FOIA Requests – Number of Times Exemptions Applied

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
0	0	1	11	10	268	1	0	1	0	0	0	0	0

### VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA/PA REQUESTS

A. Received, Processed, and Pending Administrative Appeals

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
0	5 <sup>2</sup>	3	2

B. Disposition of Administrative Appeals – All Processed Appeals

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
2	1	0	0	3

C.(1). Reasons for Denial on Appeal — Number of Times Exemptions Applied

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
0	0	0	0	2	0	0	0	0	0	0	0	0	0

<sup>2</sup> Two of the appeals received are from the same requester and related to the same request; the requester appealed the interim and final releases. The first appeal was adjudicated in FY13. The second appeal was pending at the end of the fiscal year and it was processed in accordance with agency regulation.



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### C.(2). Reasons for Denial on Appeal — Reasons Other Than Exemptions

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
1	0	0	0	0	0	0	0	0	0	0

### C.(3). Reasons for Denial on Appeal — “Other” Reasons from VIC(2) Chart

Description of "Other" Reasons for Denial on Appeal from Chart C(2)	Number of Times "Other" Reason Was Relied Upon	TOTAL
N/A	0	0

### C.(4). Response Time for Administrative Appeals

Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
23.00	30.00	19.00	49.00

### C.(5). Ten Oldest Pending Administrative Appeals

	10th Oldest Appeal	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Appeal
Date of Appeal	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	2013-09-23	2013-07-26
Number of Days Pending	0	0	0	0	0	0	0	0	5	45

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## VII. FOIA REQUESTS: RESPONSE TIME FOR PROCESSED AND PENDING REQUESTS

### A. Processed Requests – Response Time for All Processed Perfected Requests

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
N/A	N/A	N/A	N/A	9	10	1	198	N/A	N/A	N/A	N/A

### B. Processed Requests – Response Time for Perfected Requests in which Information was Granted

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
N/A	N/A	N/A	N/A	9	10	1	198	N/A	N/A	N/A	N/A

### C. Processed Requests — Response Time in Day Increments

PROCESSED SIMPLE REQUESTS													
<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
0	0	0	0	0	0	0	0	0	0	0	0	0	0

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PROCESSED COMPLEX REQUESTS													
<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
5,311	431	24	7	6	4	0	1	0	1	0	0	0	5,785

PROCESSED REQUESTS GRANTED EXPEDITED PROCESSING													
<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
0	0	0	0	0	0	0	0	0	0	0	0	0	0

### D. Pending Requests — All Pending Perfected Requests

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
0	N/A	N/A	79	5	12	0	N/A	N/A

### E. Pending Requests — Ten Oldest Pending Perfected Requests

	10th Oldest	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest
Date of Receipt	09/10/2013	09/10/2013	08/29/2013	08/23/2013	08/13/2013	08/08/2013	06/21/2013	04/02/2013	03/05/2013	01/16/2013
Number of Days Pending	14	14	21	25	33	36	69	126	145	177

## VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER

The majority of FOIA requests which PBGC receives are submitted by members of the pension plans which PBGC has trusted (also known as participants).

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It is the PBGC Disclosure Officer's policy to routinely waive search and review fees and duplication fees on all FOIA requests from participants.

### A. Requests for Expedited Processing

Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
0	0	N/A	N/A	N/A

PBGC received one expedited processing request, which was delayed to allow the requester more time to submit additional information. The requester subsequently withdrew the expedited processing request.

### B. Requests for Fee Waiver

Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
0	0	N/A	N/A

## IX. FOIA PERSONNEL AND COSTS

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
10	2	12	\$858,612.00	\$0.00	\$858,612.00

## X. FEES COLLECTED FOR PROCESSING REQUESTS

Total Amount of Fees Collected	Percentage of Total Costs
\$3,813.95	0.44%

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### XII. BACKLOGS, CONSULTATIONS AND COMPARISONS

#### A. Backlogs of FOIA Requests and Administrative Appeals

Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
8	1

#### B. Consultations on FOIA Requests – Received, Processed, and Pending Consultations

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
0	0	0	0

#### C. Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency

	10th Oldest	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest
Date of Receipt	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Number of Days Pending	0	0	0	0	0	0	0	0	0	0

#### D.(1) Comparison of Numbers of Requests from Previous and Current Annual Report – Requests Received and Processed

NUMBER OF REQUESTS RECEIVED		NUMBER OF REQUESTS PROCESSED	
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
5,314	5,721	5,475	5,786

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D.(2) Comparison of Numbers of Requests from Previous and Current Annual Report – Backlogged Requests

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
0	8

E.(1) Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report – Appeals Received and Processed, and Backlogged

NUMBER OF APPEALS RECEIVED		NUMBER OF APPEALS PROCESSED	
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
6	5	8	3

E.(2) Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report – Backlogged Appeals

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
0	1

F. Discussion of Other FOIA Activities

We continued our efforts to improve customer service. In fiscal year 2013, PBGC received 5,721 FOIA requests and processed 5,786 requests. The average time to process a standard request was 7 work days. Our electronic software, used to process requests since 1999, was once again able to meet the demand of processing over 5,700 requests.

In October of 2013, the PBGC executed a Memorandum of Understanding with the Environmental Protection Agency and joined the consortium of other agencies for the use of FOIAonline.

PBGC received only five appeals of denials during the fiscal year.

Since the majority of our requests are received from pension plan participants who are in trustee plans, we ensure those participants' access to critical documents that are relied on to calculate their individual pension benefits.