

## 2012: Chief FOIA Officer Report from the Pension Benefit Guaranty Corporation

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

As President Obama instructed 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.”

#### 1. Steps taken to apply the presumption of openness.

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

Over 90% of our FOIA requests are from participants in plans PBGC has trusteeed and now pays monthly pension benefits. Even prior to President Obama’s FOIA 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 affect the manner in which their benefits are calculated and why their plan was taken over by PBGC. We very seldom use a FOIA exemption to deny participants access to relevant records. The exception occurs when other participants’ records appear within the requested records and PBGC asserts exemption (b) (6) of the FOIA to protect the personal privacy of other pension plan participants.

One of the first steps we took to apply the presumption of openness in 2009 was to distribute the President’s memorandum as well as the Attorney General’s FOIA Guidelines to all members of our Disclosure staff. Once again in 2011, we distributed these two documents and conducted special training with the Disclosure staff to stress maximum disclosure of records to requesters while being certain to protect the privacy of other individuals from the requester. The training focused on changes in the Disclosure Division’s internal guidance to provide maximum disclosure of requested records. During 2011, PBGC’s Disclosure Officer again met with several departments within PBGC to explain to both managers and employees the importance of the presumption of openness and how we can assure this is an agency-wide goal for PBGC. All Disclosure Division staff attended advanced FOIA training in FY 2011.

Our FOIA processing is centralized in PBGC allowing the Disclosure Division to review each instance where the potential use of an exemption may be applied. In that review process, specific emphasis is placed on possible discretionary release of the information in question. We examine each instance on a case-by-case basis in an effort to provide maximum disclosure of requested records. As indicated above, the vast majority of our requests are from participants in pension plans PBGC trustees. As a result, we are restricted by the constraints of the Privacy Act from making

discretionary releases of this type of information to individuals other than the participant or their designated third party representatives. However, in 2011, we made several discretionary releases of records that did not involve participant information. These requests involved interagency memorandums that could have been withheld under exemption (b) (5) of FOIA. We exercised our discretion and released the records in an effort to provide greater transparency into PBGC program operations.

- Statistics – In our 2011 FOIA Annual Report, we stated that PBGC processed 7,364 requests that year. Of PBGC's responses to these requests, 5,466 or 74% were granted in full and involved requests for pension-related records. Another 305 responses or 4.1% were granted in part. Only 3 requests were denied in full. Of the 308 responses that were not granted in full, 273 relied on a partial (b)(6) exemption of the FOIA to 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 273 requests, the information the requester was seeking was fully provided. This leaves only 35 times during 2011 where a partial exemption was used and the requester did not receive all the requested information—scarcely 0.4% of all processed requests —where an exemption had to be used to withhold information.

2. 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 Annual FOIA report.
  - In FY 2011, PBGC experienced an increase of 1,753 processed requests over FY 2010. During FY 2010 we processed 5,611 requests. Of those requests 3,989 (71%) were granted in full, and 233 (4.2%) were granted in part. In FY 2011, we processed 7,364 requests resulting in 5,466 (74%) full releases and 305 (4.1%) partial releases. The percentage of full releases increased 3% between FY 2010 and FY 2011.

As explained above, the majority of our requests come from pension plan participants seeking to access records pertaining to themselves and their pension plan. Consequently, PBGC rarely uses an exemption to fully deny access to records. As a result, drawing conclusions from a comparison between FY 2010 and FY 2011 is difficult. In FY 2010, we used an exemption only 6 times to totally withhold requested information. In FY 2011, we used an exemption 3 times to totally withhold a document. As indicated above, in 2011, we processed 1,753 more requests than in FY 2010; nevertheless, the overall usage of exemptions to fully deny information decreased from 6 to 3 in 2011. Although this sample size is far too small to project into another year, we would be proud to continue to keep our denial rate at or below 3 times per year. While most requests are submitted by participants, in FY 2011 we experienced a trend with a growing number of requests submitted by non-participants. We will monitor this trend to determine its impact on potential opportunities for use of our web page for increased proactive disclosures.

## **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. 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. The developments and refinements made to this system allowed a staff of eight analysts to process over 7,364 requests in FY 2011, with only one backlogged request. PBGC’s system not only allows us to process all requests electronically, but also allows for daily monitoring and tracking of each request to ensure that we know the processing status of each request.
  - All FOIA requests get an acknowledgement letter mailed within two business days of receipt. The determination letters issued when processing is completed are concise and to the point. If a person would like to discuss the status of their request they can call our toll free number and actually speak to the analyst processing their request. If any portion of a record is withheld, our determination letters fully explain, what exemption of the FOIA was used and the appeal rights afforded the requester. During FY 2011, we received only 7 appeals contesting FOIA determinations.
  - FOIA professionals have extensive daily IT support. We have an assigned individual that devotes full time support for the eFOIA (electronic FOIA) processing system in use at PBGC. This individual assures 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 individual is constantly looking for ways to improve the efficiency and reporting capabilities of the system.
  - Our agency FOIA professionals interact with all PBGC departments on a daily basis. We have appointed one of our FOIA professionals as a permanent member of our Web/Intranet Change Control Board. One of the responsibilities of this Board is to work with our Open Government Team to find ways to make new information about PBGC available on the Open Government web- page. A further discussion of the Open Government web- page activities is presented under Part III below.
  - Both FOIA staffing and associated budget needs are reviewed on a quarterly basis or more often as appropriate to assure that as situations change we are able to provide assistance when needed. If trends reflect a sharp increase in FOIA activity, we are poised to take appropriate action to provide adequate support.
  - Our FOIA processing system is monitored on a daily basis through various reports including error reports to assure that we identify problems as they occur and take

appropriate steps to avoid similar problems in the future. Our ability to process over 7,364 requests in 2011 with just 13 full-time staff (8 federal employees plus 5 fulltime contractors) is a testament to the efficient and effective use of our electronic processing of FOIA requests.

- As of the end of FY 2010 PBGC had only one appeal pending.
- All pending FOIA requests and appeals on hand as of the end of FY 2010 were closed in FY 2011.

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

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

1. 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.
  - When a plan is taken over by PBGC, we pay 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 available on its web site. PBGC also establishes a web page for each terminating pension plan where participants in that plan can track the progress of the termination, obtain information, and get updates from PBGC. 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 for basic information about the status of their pension plan termination. Our web site is used by thousands of plan participants to get basic information about PBGC’s mission and how it will affect their specific terminated pension plan. We also send out a series of letters to all plan participants in trustee plans informing them of their rights and entitlement to pension benefits.
  - During FY 2011, PBGC continued reviewing its web site and, based on feedback, redesigned portions of our web site offering the public more intuitive ways to get to information about our insurance programs. PBGC added a “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, it also reflects major case filings dating back to the 1980’s. We also updated our “limited English proficiency plan” which assists individuals where English is not their primary language by providing Spanish translations of important sections of the web site.
  - We added an “update section” to our web site where an individual can sign up to be automatically notified when information is updated on the web site. This will allow participants in plans we trustee 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. We have established a Facebook web page, a YouTube web page, and a Twitter feed. These social media tools are used to increase proactive disclosure for PBGC.
- Since the issuance of the new FOIA guidelines, PBGC has taken several steps to open information to the public. As indicated above, the “Open Government” web page provides information to help the American public better understand the work of PBGC and allows a subscriber to receive updates to various data sets. These updated data sets include a list of single-employer plans that have been trustee by PBGC, information about the financial assistance provided by PBGC to multiemployer plans, and current and historical information from PBGC’s financial statements. This page also 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](http://www.data.gov). PBGC will be providing additional data sets as they become available.
- PBGC makes available on its web site 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 preclude having to file a FOIA request for similar information.

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

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

- Does your agency currently receive requests electronically?
  - No, we do not receive requests electronically. FOIA processing at PBGC is centralized, and therefore, no other components of PBGC receive, track or process FOIA requests. With respect to our centralized processing, as in past years, the majority of our requests are filed by pension plan participants (or third party representative) 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 since we cannot confirm the identity of the individual 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 identity 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.

### **Electronic tracking of requests:**

#### 2. Tracking of FOIA requests

- As indicated above, processing of FOIA requests is centralized at PBGC. The Disclosure Division receives all FOIA requests for PBGC documents, tracks these requests electronically, and processes the requests using our eFOIA software.

### **Electronic Processing of Requests:**

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

- No, at the current time requesters do not have the ability to track their request electronically. However, we currently send out acknowledgement letters for each FOIA request received and in that letter we list a phone number that can be called to receive immediate update on the status of the request.

#### 4 If not, is your agency taking steps to establish this capability?

- Yes, we are currently looking to upgrade our software and this will include additional capabilities including remote access to check the status of FOIA requests.

### **Electronic Preparation of Annual FOIA Report**

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

- Yes. Our electronic eFOIA system is FOIA-specific and provides a detailed working report that calculates and finalizes all numerical calculations as required in the latest OIP FOIA report guidance from 2008. Furthermore, our 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 us to generate the FOIA Annual Report narrative quickly and with confidence that the information is accurate. We are satisfied with our existing system that prepares our Annual FOIA Report.

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

#### 1. Backlog Status

- We have a current backlog of only one request and credit this to the rapid electronic processing of all incoming FOIA requests. On requests that cover a voluminous PBGC records, we work with the requester to attempt to possibly narrow the scope of the request and provide partial disclosures to the requester at the earliest possible date. Our experience indicates that working directly with the requester improves understanding for both parties, achieves the desired disclosure more quickly, and greatly improves customer satisfaction. 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. Of the ten oldest pending requests as reported in our FOIA 2011 report, nine were less than 16 days old as of the end of FY 2011. Only one request was over 20 days old. That request which was 23 days old, and represents the only backlogged request as of the end of FY 2011. On November 7, 2011 this request was closed.

- As stated in PBGC's FOIA 2011 report, the average number of days to process a perfected FOIA request was 10 days.
- PBGC has a single track processing system as defined in PBGC's FY 2011 FOIA Annual Report. On the rare occasion when we receive a request that requires expedited treatment we pull the request and a manager monitors its processing to assure expedited status is maintained until closed.
- We had two backlogged appeals at the close of FY 2011 and processing of both appeals has been completed.
- Also as reported in our FOIA Annual Report, the Ten Oldest FOIA requests in process as of the end of FY 2011 have all been completed.
- During FY 2011, PBGC did not receive a FOIA request that required consultation with another agency. However, if we receive that type of request, we immediately forward any record that has been obtained from another agency to that agency to get their opinion as to the disclosability of that record under the FOIA.

## 2. Backlog Reduction Steps

- Not applicable: see V.1. above. PBGC had only one backlogged request in FY 2011. PBGC did not have a backlog in FY 2010.
- During FY 2011, PBGC did not invoke any exclusions under 5 U.S.C. § 552(c) (2006 & Supp. III 2009).

## 3. Steps taken to Improve Timeliness

- While we have a small backlog, we are constantly looking at ways to reduce processing time through more efficient use of our electronic processing system. We monitor processing time through special reports generated by our electronic processing system. We set and adjust goals based on our constant monitoring of reports. During FY 2011, we were able to add an additional analyst to assist in processing our increased FOIA workload. Our Chief FOIA Officer has been involved in overseeing our capacity to process increased numbers of FOIA requests. Particular attention has been placed on satisfying increased staffing needs and well as associated increased budget needs. Also during FY 2011, we have developed additional IT procedures to streamline the timeliness of electronic input of data as well as its accuracy. We are currently looking at additional software that may assist with more rapid processing and tracking of requests. These additional IT

improvements will allow us to handle the increased volume of FOIA requests in a more efficient manner.

## **Spotlight on Success**

We are very proud of our ability to timely process the growing number of FOIA requests we receive each year. Benefits paid by PBGC to pension plan participants often represent the largest source of retirement income for participants and as such, are extremely important to the participant as they face the uncertainty of retirement. During FY 2011, we provided some 7,000 pension plan participants access to their personal records as well as pension plan documents and PBGC processing records. This enabled these participants to review their individual pension calculations or seek assistance of third parties to confirm the correctness of calculations or contest the accuracy of the calculations if desired. The FOIA staff assists the participants in not only getting the records they need to understand their PBGC guaranteed pension but, often refer the participants to other PBGC employees that can further assist them in understanding the involved process of plan termination and payment of retirement benefits.