

Pension Benefit Guaranty Corporation's FY 2004 FOIA Report to the U.S. Department of Justice

Pursuant to the Freedom of Information Act (FOIA), as amended by the “Electronic Freedom of Information Act Amendments of 1996”, and “Guidelines for Agency Preparation and Submission of Annual FOIA Reports” created by the Office of Information Policy, Department of Justice, the following information reflects the Pension Benefit Guaranty Corporation’s (PBGC) activity in administering the FOIA during fiscal year 2004.

(Information in Italics has been added to this report as submitted to the Department of Justice to assist the reader.)

I. Basic Information Regarding Report

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

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

B. Electronic address for report on the World Wide Web.

www.pbgc.gov/laws/foia/annual.htm

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

A paper copy of the report can be obtained by calling the Communications & Public Affairs Department, PBGC at (202) 326-4040 or by printing a copy at the Web address listed in “B” above.

II. How to Make a FOIA Request

- Agencies may either include description here or provide them by cross-reference to their FOIA reference guides.

A FOIA request may be filed by addressing a written request to E. William FitzGerald, Disclosure Officer, PBGC, 1200 K Street, N.W., Washington D.C. 20005-4026. The 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 has 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.

A. Names, addresses, and telephone numbers of all individual agency components and offices that receive FOIA requests.

PBGC, Communications & Public Affairs Department, Attention E. William FitzGerald, Disclosure Officer, Suite 2413, 1200 K Street N.W., Washington, D.C. 20005-4026. Phone (202) 326-4040

B. Brief description of the agency's response-time ranges.

For fiscal year 2004 (October 1, 2003 - September 30, 2004), the PBGC's median response time for responding to FOIA requests was **15** days. Typically, the requests that took more than 20 days to process involved the search and review of voluminous records, or required consultation with other agencies or third parties that submitted information to PBGC. For requests accorded expedited treatment, the PBGC's median response time was 4 days.

C. Brief description of why some requests are not granted.

Some requests are not granted because one or more of the exemptions from FOIA's disclosure requirement applied to the records requested. In the vast majority of cases, denial of access to records involved requests by third parties for information about individuals. Generally, information about an individual will not be disclosed by PBGC if it could result in an invasion of privacy. A substantial number of denials involved requests for confidential commercial or financial information that had been submitted to PBGC. In some instances, PBGC did not possess any of the records that were requested, or the request was referred to another agency for processing.

III Definition of Terms and Acronyms Used in the Report (to be included in each report)

A. Agency-specific acronyms or other terms.

None

B. Basic terms, expressed in common terminology.

1. FOIA/PA request. A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records concerning oneself; such requests are also treated as FOIA requests. (All requests for access to records, regardless of which law is cited by the requester, are included in this report.)

2. Initial Request -- A request to a federal agency for access to records under the Freedom of Information Act.

3. Appeal -- a request to a federal agency asking that it review at a higher administrative level a full denial or partial denial of access to records under the Freedom of Information Act, or any other FOIA determination such as a matter pertaining to fees.
4. Processed Request or Appeal -- a request or appeal for which an agency has taken a final action on the request or the appeal in all aspects.
5. Multi-track processing -- a system in which simple requests requiring minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests in each track are processed on a first-in/first out basis. A requester who has an urgent need for records may request expedited processing (see below).
6. Expedited processing -- an agency will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier.
7. Simple request -- a FOIA request that an agency using multi-track processing places in its fastest (nonexpedited) track based on the volume and/or simplicity of records requested.
8. Complex request -- a FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.
9. Grant -- an agency decision to disclose all records in full in response to a FOIA request.
10. Partial grant -- an agency decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entirety, but to withhold others in whole or part.
11. Denial -- an agency decision not to release any part of a record or records in response to a FOIA request because all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA's exemptions, or for some procedural reason (such as because no record is located in response to a FOIA request).
12. Time limits -- the time period in the Freedom of Information Act for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a "perfected" FOIA request).
13. "Perfected" request -- a FOIA request for records which adequately describes the records sought, which has been received by the FOIA office of

the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.

14. Exemption 3 statute -- a separate federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA subsection (b)(3).

15. Median number -- the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.

16. 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.

IV. Exemption 3 Statutes

A. List of exemption 3 statutes relied on by agency during the current fiscal year. ***(These are laws that authorize an agency to withhold information from disclosure under FOIA.)***

41 U.S.C. § 253b(m)

1. Brief description of types of information withheld under each statute.

Information from proposals submitted by contractors seeking to do business with PBGC.

2. Statement of whether a court has upheld the use of each statute. If so, then cite example.

We are aware of one court case regarding PBGC's use of 41 U.S.C. § 253b(m) as an exemption 3 statute. That case is Hornbostel v. Department of Interior, 304 F. Supp. 2d 21 (D.D.C. 2003).

V. Initial FOIA/PA Access Requests

- This should include all access requests whether first-party (***request for records pertaining to the requester***) or third-party (***request for records that do not pertain to the requester***).

A. Number of initial requests.

- Total of the numbers in Lines 1 and 2, minus the number in line 3, should equal the number in line 4.

1. Number requests pending as of the end of the preceding fiscal year **238**

2.	Number of requests received during current fiscal year	1,577
3.	Number of requests processed during current fiscal year	1,656
4.	Number of requests pending as of the end of current fiscal year	159

B. Disposition of initial requests.

1.	Number of total grants (<i>all information requested was released</i>)	887
2.	Number of partial grants (<i>some information disclosed, some not</i>)	284
3.	Number of denials (<i>no requested information disclosed</i>)	34

a. number of times each FOIA exemption used (counting each exemption once per request) (*An agency may withhold information from disclosure if the information requested is the kind described in an exemption to FOIA.*)

- (1) Exemption 1 **0**
(*pertains to national security information*)
- (2) Exemption 2 **0**
(*information pertaining too purely internal matters and law enforcement manuals*)
- (3) Exemption 3 **2**
(*information prohibited from disclosure by statute*)
- (4) Exemption 4 **39**
(*trade secrets and confidential commercial or financial information*)
- (5) Exemption 5 **17**
(*inter or intra agency memoranda or letters that would not be disclosed in litigation*)
- (6) Exemption 6 **167**
(*information pertaining to an individual where release would clearly invade the individual's privacy*)
- (7) Exemption 7(A) **0**
(*law enforcement information – release would interfere with on going proceedings*)
- (8) Exemption 7(B) **0**
(*law enforcement information – release would jeopardize a fair trial*)
- (9) Exemption 7(C) **3**
(*law enforcement information – release could reasonably invade an individual's privacy*)
- (10) Exemption 7(D) **2**
(*law enforcement information – release would expose confidential sources*)
- (11) Exemption 7(E) **2**
(*law enforcement information – release would expose law enforcement techniques or procedures*)

(12) Exemption 7(F)	0
<i>(law enforcement information – release would jeopardize personal safety)</i>	
(13) Exemption 8	0
<i>(bank examiner information)</i>	
(14) Exemption 9	0
<i>(oil well information)</i>	
4. Other reasons for nondisclosure (total)	451
a. no records	19
<i>(PBGC did not have any records responsive to the request)</i>	
b. referrals	21
<i>(The request pertained to another agency and was referred to that agency for a response.)</i>	
c. request withdrawn	17
d. fee-related reason	12
<i>(The requester declined to pay applicable search & copying fees.)</i>	
e. records not reasonably described	5
f. not a proper FOIA request for some other reason	49
<i>(The request did not seek access to records but instead asked general questions. The requests were referred within the agency for response)</i>	
g. not an agency record	53
<i>(The record requested is not collected or created by PBGC)</i>	
h. duplicate request	65
i. other (specify)	210

The requester did not submit proper authorization to receive access to another individual's records and did not respond to PBGC's request for proper authorization or other identifying information.

VI. Appeals of Initial Denials of FOIA/PA Requests

(An appeal of an initial denial of a FOIA/Privacy Act request should be made to the Office of the General Counsel within 30 days from the date of the initial denial)

- This should include all access requests, whether first-party or third-party.
(First-party requests involve records pertaining to the requester, while third-party requests do not involve records pertaining to the requester.)

A. Number of appeals.

1. Number of appeals received during fiscal year 3
We attribute this low number of appeals in part to sound and easy to understand written and oral communications with requesters

providing adequate explanations of basis of any full or partial denials of access to records.

2. Number of appeals processed during the fiscal year **3**

B. Disposition of appeals.

1. Number completely upheld **2**

2. Number partially reversed **0**

3. Number completely reversed **0**

a. number of times each FOIA exemption used (counting each exemption once per appeal)

1 Exemption 1 **0**

2. Exemption 2 **0**

3. Exemption 3 **0**

4. Exemption 4 **0**

5. Exemption 5 **0**

(inter or intra agency memoranda or letters that would not be disclosed in litigation)

6. Exemption 6 **2**

(information pertaining to an individual where release would clearly invade the individual's privacy)

7. Exemption 7(A) **0**

8. Exemption 7(B) **0**

9. Exemption 7(C) **0**

10. Exemption 7(D) **0**

11. Exemption 7(E) **0**

12. Exemption 7(F) **0**

13. Exemption 8 **0**

14. Exemption 9 **0**

4.	Other reasons for nondisclosure (total)	1
	a. no records	1
	b. referrals	0
	c. request withdrawn	0
	d. fee-related reason	0
	e. records not reasonably described	0
	f. not a proper FOIA request for some other reason	0
	g. not an agency record	0
	h. duplicate request	0
	I. other (specify)	0

VII. Compliance with Time Limits/Status of pending requests

(The FOIA generally requires the agency to respond to a FOIA request within 20 workdays after receipt.)

- Agencies should count days from the time at which a request is “perfected.”
- Agencies should separately report each track of a multi-track system, as well as an “expedited processing” track, and may report any other type of request at their option.
- Example for calculation of median: Given the requests completed during the fiscal year, aged 10, 25, 35, 65, 75, 80, and 400 days from the date of perfection to date of completion, the total number of requests completed during the fiscal year would be 7 and the median age of the completed requests would be 65 days.
- Example for calculation of median: If there were 6 pending cases aged 10, 20, 30, 50, 120, and 200 days from the date of perfection to date of completion, the total number of requests completed would be 6 and the median age would be 40 days (the average of the 2 Middle numbers).

A. Median processing time for requests processed during the year.

1. Simple requests (if multiple tracks used).

N/A

a. number of requests processed

b. median number of days to process

2. Complex requests (specify for any and all tracks used).

a. number of requests processed

We do not have a multiple track system; however, we did process a total of 1,641 requests during FY 2004.

b. median number of days to process

The median number of days to process all types of requests in FY 2004 was 15.

3. Requests accorded expedited processing.

(Requests from the media which are on deadline, requests involving the health or safety of an individual, and request involving an issue that is being appealed before the agency are given expedited treatment.)

a. number of requests processed **15**

b. median number of days to process **4**

B. Status of pending requests.

- Agencies using multiple tracks may provide numbers for each track, as well as totals.

1. Number of requests pending as of end of current fiscal year **159**

2. Median number of days that such requests were pending as of that date **16**

VIII. Comparisons with Previous Year(s) (Optional)

The number of requests processed increased to 1,656 in FY 2004 an increase from FY 2003 (1,345). This was in part due to the increased number of participants coming into PBGC in large terminations that took place in FY 2004 as well as greater use of our "FOIA Guide" on PBGC's web site which explains how to file a FOIA request. In addition we are becoming more efficient in using electronic processing of FOIA requests.

The median number of days required to process a request increased from **14** in FY 03 to **15** in FY 04 due to much larger volume of requests. In FY 2003 we received 1,493, in FY 2004 we received a total of 1,656 requests. This represents over a 11 % increase in the number of requests received in the prior year. This coupled with a 60% increase in 2003 over the prior year reflects a consistent increase in the number of requests over the last two fiscal years.

We received **0** requests for expedited processing but granted **15** requests expedited treatment based on descriptive information contained in each request.

IX. Costs/FOIA Staffing

- Both large and small agencies should provide information in the format presented below.

A. Staffing levels.

1. Number of full-time FOIA personnel **6.5**
2. Number of personnel with part-time or occasional FOIA duties (in total work-years) **.5**
3. Total number of personnel (in work-years) **7.0**

B. Total costs (including staff and all resources).

1. FOIA processing (including appeals) **\$497,360**
(Salaries and other estimated personnel-related costs of processing FOIA requests and appeals are included.)
2. Litigation-related activities (estimated) **None**, no litigation
3. Total costs **\$497,360**
4. Comparison with previous year(s) (including percentage of change) (optional)

Between FY 2003 (\$417,200) and FY 04 (\$497,360) a 19% increase in processing costs occurred. This increase can be largely attributable to the 4.42% increase in salary for federal employees and 14.5% increase in non-personnel costs.

C. Statement of additional resources needed for FOIA compliance (optional)

X. Fees

- This includes charges for search, review, document duplication, and any other direct costs permitted under agency regulations.

A. Total amount of fees collected by agency for processing requests **\$5,055**. The majority of fees associated with participants requesting their own records as well as records relating to their pension plan were waived.

B. Percentage of total costs **1%**

XI. FOIA Regulations (Including Fee Schedule)

- Agencies should provide electronic link for availability in electronic form and attach copy in paper form.

www.pbgc.gov/laws/foia/annual.htm

(This is a link to PBGC's home page on the world wide web where you will find information about FOIA, including this report.)