

U.S. Office of Government Ethics (OGE) Fiscal Year 2011 Annual Freedom of Information Act (FOIA) Report

I. BASIC INFORMATION REGARDING REPORT

1. OGE's contact person for questions about OGE's annual FOIA report for Fiscal Year 2011 (10/01/10-09/30/11): Elaine Newton, OGE FOIA Officer, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917, Tel: 202-482-9265; TDD: 202-482-9293; FAX: 202-482-9237; E-mail: usoge@oge.gov.
2. The electronic link for access to this Report in the FOIA section of OGE's Internet Website is <http://www.oge.gov/FOIA-and-Privacy-Act/Freedom-of-Information-Act/Electronic-Reading-Room/Reports/Reports/>
3. A copy of this Report in paper form can be obtained by downloading it from OGE's Website (see part I.2. above) or by requesting a copy from OGE's contact person (see Section I.1. above).

II. MAKING A FOIA REQUEST

1. As a small agency, OGE handles all FOIA requests at the agency level by submission to its contact person (see Section I.1. above); OGE does not have any separate agency components that receive FOIA requests, and this Report shows information only for OGE overall.
2. After searching, OGE at times does not locate any responsive records. Moreover, some requests are not granted in full or in part because access is sought to records containing exempt personal information, including personal financial information, or records constituting pre-decisional deliberative process material.

III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

1. The following agency-specific acronyms are used in this Report:
 - a. **FOIA** – Freedom of Information Act ([5 U.S.C. § 552](#)).
 - b. **FY** – Fiscal Year.
 - c. **OGE** – Office of Government Ethics.
 - d. **PA** – Privacy Act ([5 U.S.C. § 552a](#)).

2. The following definitions of terms are used in this Report:
- a. **Administrative Appeal** – a request to a federal agency asking that it review at a higher administrative level a 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. As noted, as a small agency, OGE does not have any FOIA components, and so the information provided in this Report is just for OGE overall.
 - e. **Consultation** – the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other 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 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 “system 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).

- h. **Full Grant** – an OGE decision to disclose all records in full response to a FOIA request.
- i. **Full Denial** – an OGE 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 because of a procedural reason, such as when no records could be located.
- j. **Median Number** – the middle, not average, number. For example: 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. **Perfected 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.
 - 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. The following are concise descriptions of the nine FOIA exemptions:
- a. **Exemption 1:** classified national defense and foreign relations information
 - b. **Exemption 2:** internal agency rules and practices
 - c. **Exemption 3:** information that is prohibited from disclosure by another federal law
 - d. **Exemption 4:** trade secrets and other confidential business information
 - e. **Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges
 - f. **Exemption 6:** information involving matters of personal privacy
 - g. **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 an individual

- h. **Exemption 8:** information relating to the supervision of financial institutions
- i. **Exemption 9:** geological information on wells

IV. EXEMPTION 3 STATUTES

A. Exemption 3 Statutes Relied upon to Withhold Information

Statute	Type of Information Withheld	Case Citation	Total Number of Times Relied upon by Agency
5 U.S.C. app. § 107(a)	Financial disclosure information pertaining to certain government employees	Meyerhoff v. EPA, 958 F.2d 1498, 1500-02 (9th Cir. 1992); Concepcion v. FBI, 606 F. Supp. 2d 14, 33 (D.D.C. 2009), renewed motion for summary judgment granted in part on other grounds, 699 F. Supp. 2d 106 (D.D.C. 2010).	6

V. FOIA REQUESTS

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
OGE Overall	6	69	72	3

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

	Full Grant	Partial Grant / Partial Denial	Full Denial Based on Exemptions
OGE Overall	22	31	8

Number of Full Denials Based on Reasons Other than Exemptions									
No Records	All Records Referred to Another Comp. or Agency	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper FOIA Request for Other Reasons	Not Agency Record	Duplicate Req.	Other *Explained In Chart Below	Total
9	2	0	0	0	0	0	0	0	72

B.(2) Disposition of FOIA Requests – “Other” Reasons for “Full Denials Based on Reasons Other than Exemptions” from Section V, B(1) Chart

	*Description of “Other” Reasons for Denials from Chart B (1) & Number of Times Those Reasons Were Relied Upon	Total
OGE Overall	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
OGE Overall	0	2	6	3	8	17	1	0	0	0	0	0	0	0

VI. APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS

A. Received, Processed and Pending Appeals

Number of Appeals Pending as of Start of Fiscal Year	Numbers of Appeals Received in Fiscal Year	Number of Appeals Processed in Fiscal Year	Number of Appeals Pending as of End of Fiscal Year
0	3	3	0

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 Closed for Other Reasons	Total
1	2	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	1	0	0	1	2	0	0	0	0	0	0	0	0

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

No Records	Records Referred at Initial Request Level	Request With-drawn	Fee-Related Reason	Records not Reasonably Described	Improper Request for Other Reasons	Not Agency Record	Duplicate Request or Appeal	In Liti-gation	Appeal Based Solely on Denial of Request for Expedited Processing	Other *Explain in Chart Below
0	0	0	0	0	0	0	0	0	0	0

C.(3) Reasons for Denial on Appeal – “Other” Reasons from Section VI,C(2) Chart

*Description of “Other” Reasons for Denial on Appeal from Chart C(2) & Number of Times Those Reasons Were Relied Upon	TOTAL
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
25	28.67	10	51

C.(5) Ten Oldest Pending Administrative Appeals

	10 th Oldest Appeal	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Appeal
Date of Receipt of Ten Oldest Appeals	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

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

A. Processed Requests – Response Time for All Perfected Requests

	SIMPLE				COMPLEX			
	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
OGE Overall	9.5	12.097	1	54	0	0	0	0

	EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
OGE Overall	8	8	8	8

B. Processed Requests – Response Time for Perfected Requests Where Information Was Granted

	SIMPLE				COMPLEX			
	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
OGE Overall	11	13.23	1	54	0	0	0	0

	EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
OGE Overall	0	0	0	0

C. Processed Requests – Response Time in Day Increments

Simple Requests

	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days
OGE Overall	60	11	1	0	0	0	0

	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401 + Days	TOTAL
OGE Overall	0	0	0	0	0	0	72

Complex Requests

	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days
OGE Overall	0	0	0	0	0	0	0

	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401 + Days	TOTAL
OGE Overall	0	0	0	0	0	0	0

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
OGE Overall	2	0	0	0	0	0	0

	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401 + Days	TOTAL
OGE Overall	0	0	0	0	0	0	2

D. Pending Requests – All Pending Perfected Requests

	SIMPLE			COMPLEX			EXPEDITED PROCESSING		
	No. Pending	Median No. of Days	Avg. No. of Days	No. Pending	Median No. of Days	Avg. No. of Days	No. Pending	Median No. of Days	Avg. No. of Days
OGE Overall	3	11	15	0	0	0	0	0	0

E. Pending Requests – Ten Oldest Pending Perfected Requests

OGE Overall	10th Oldest Request & Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Request & Number of Days Pending
Date	N/A	N/A	N/A	N/A	N/A	N/A	N/A	09/28/11	09/26/11	09/19/11
Number of Days	N/A	N/A	N/A	N/A	N/A	N/A	N/A	8	11	26

VIII. REQUESTS FOR EXPEDITED PROCESSING & REQUESTS FOR FEE WAIVER

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
OGE Overall	0	1	7	7	1

B. Requests for Fee Waiver

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
OGE Overall	0	0	0	0

IX. FOIA PERSONNEL & COSTS

	PERSONNEL			COSTS		
	Number of “Full-Time FOIA Employees”	Number of “Equivalent Full-Time FOIA Employees”	Total Number of “Full-Time FOIA Staff” (Sum of Columns 1 and 2)	Processing Costs (At initial request and appeal levels)	Litigation- Related Costs	Total Costs
OGE Overall	0	1.5	1.5	\$151,160.98	\$0	\$151,160.98

X. FEES COLLECTED FOR PROCESSING REQUESTS

	Total Amount of Fees Collected	Percentage of Total Processing Costs
OGE Overall	\$0	0%

XI. FOIA REGULATIONS

OGE’s FOIA regulations, including the fee schedule, are codified at [5 C.F.R. part 2604](#).

XII. BACKLOGS, CONSULTATIONS & 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
OGE Overall	0	0

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

	Number Received that Were <u>Pending</u> at OGE as of <u>Start</u> of the Fiscal Year	Number <u>Received</u> During the Fiscal Year	Number Received that Were <u>Processed</u> by OGE During the Fiscal Year	Number Received that Were <u>Pending</u> at OGE as of <u>End</u> of the Fiscal Year
OGE Overall	0	2	2	0

C. Consultations on FOIA Requests – Ten Oldest Pending Consultations

OGE Overall	10th Oldest Consultation & Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Consultation & Number of Days Pending
Date	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Number of Days	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

D. Comparison of Numbers of Requests Received, Processed & Backlogged

	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
OGE Overall	89	69	87	72

	Number of Backlogged Requests as of End of Fiscal Year from Previous Annual Report	Number of Backlogged Appeals as of End of Fiscal Year from Current Annual Report
OGE Overall	0	0

E. Comparison of Numbers of Administrative Appeals Received, Processed & 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
OGE Overall	4	3	4	3

	Number of Backlogged Appeals as of End of Fiscal Year from Previous Annual Report	Number of Backlogged Appeals as of End of Fiscal Year from Current Annual Report
OGE Overall	0	0

F. Discussion of Other FOIA Activities (Optional)

OGE continues to fully comply with the FOIA and implementing Executive Orders and Department of Justice guidance. OGE also makes proactive disclosures through the FOIA process and continues to evaluate agency records to determine what material can be added to the OGE Website. Finally, OGE added a new attorney to its staff in 2011. That individual's duties will include working with the FOIA program.