



OFFICE OF GOVERNMENT INFORMATION SERVICES

COMPLIANCE REVIEW OF CONSUMER FINANCIAL PROTECTION BUREAU

FREEDOM OF INFORMATION ACT PROGRAM

**MANAGEMENT CHALLENGES, SIGNIFICANT INVESTMENT IN TECHNOLOGY, AND
EFFECTIVE CUSTOMER SERVICE**

A Message from the Director

The Freedom of Information Act (FOIA) mandates that the Office of Government and Information Services (OGIS) “shall ... review policies and procedures of administrative agencies ... review compliance ... by administrative agencies; and identify procedures and methods for improving compliance under this section.” 5 U.S.C. § 552(h)(2). OGIS’s compliance program includes reviewing and commenting on agency FOIA regulations; reviewing FOIA issues and trends; reviewing and suggesting improvements to agency FOIA websites and template correspondence; and working with agencies on policies and procedures that appear to be inconsistent with FOIA law or policies.

OGIS’s Compliance Team also periodically conducts independent, systematic reviews of agencies to evaluate their compliance with FOIA. This report is an assessment of the FOIA program at the Consumer Financial Protection Bureau (CFPB). OGIS’s report addresses the program’s compliance with the FOIA and is based on direct observation and review of CFPB’s FOIA case files, analysis of applicable data and documents, and interviews with agency employees and officials. We have developed the recommendations in this report based on the best knowledge available to our office, and we have discussed the recommendations in draft with those responsible for the program. We hope this report and our recommendations will assist the CFPB in its continued efforts to fulfill its FOIA responsibilities. OGIS will follow up with appropriate individuals regarding the status of these recommendations in 120 business days.

ALINA M. SEMO
Director

Executive Summary

What OGIS Found

The Consumer Financial Protection Bureau (CFPB) Freedom of Information Act (FOIA) program receives a relatively small number of FOIA requests each year and is able to manage its backlog. Most of CFPB's FOIA requests are categorized as simple, and the agency responds to these requests in an average of about 10 working days, half the time allowed under the law.

Despite an increase in the number of requests received each fiscal year (FY), the size of CFPB's FOIA staff has been constant since FY 2016, and is not expected to grow within the next five years. Between FY 2013 and FY 2016, the average number of requests processed by each FOIA staff member more than doubled.

During our review, the FOIA office had one vacancy; CFPB was not able to fill the vacancy immediately due to a government-wide hiring freeze that was issued just after the employee's departure. CFPB plans to fill the vacancy in FY 2018. A short-term detail from another division of the agency was helping the office keep up with its workload by handling administrative tasks and responding to public inquiries about requests.

CFPB has invested in technology that greatly enhances the efficiency of its FOIA program. The agency has purchased a FOIA processing and tracking system that includes reporting tools, gives the FOIA staff access to powerful technology that improves the program's ability to locate responsive records, and allows for informed discussion with requesters about the scope of their requests. In addition to investing in these tools, the agency provides the FOIA program with sufficient technical support.

OGIS's three primary findings are:

- CFPB faces management challenges to maintain its current responsiveness to FOIA requests during the next five years;
- CFPB's investments in technologies improve the FOIA process; and
- CFPB communicates well with requesters.

What OGIS Recommends

We recommend that the CFPB FOIA program continue to engage agency leaders to explore strategies to ensure continued compliance with FOIA's statutory time limits. We also recommend that CFPB follow U.S. Department of Justice (DOJ) guidance regarding metadata of released records, and that the FOIA unit set up a formal feedback loop to reduce the number of appeals remanded for further processing.

Introduction

The Freedom of Information Act (FOIA) directs the Office of Government Information Services (OGIS) to review agency FOIA policies, procedures and compliance, and identify procedures and methods for improving compliance. *See* 5 U.S.C. § 552(h)(2). OGIS compliance assessments are independent and systematic evaluations of an agency’s compliance with FOIA. The assessments 1) provide factual and analytical information; 2) review compliance with the law, regulation, and policy; and 3) share best practices. The assessments also include recommendations for improvement.

We conduct compliance assessments of individual agency FOIA programs by visiting agencies and reviewing a range of material including regulations, internal guidance for processing requests, agency initial request and appeal files, annual reports collected by DOJ, and federal court litigation. Our mandate is to determine compliance with FOIA.¹

OGIS’s agency assessment program process involves five steps: 1) use last fiscal year’s FOIA data as a starting point; 2) inventory FOIA program activity; 3) flag areas of potential noncompliance or risk; 4) consider outside factors that may contribute to noncompliance; and 5) report findings.

What We Reviewed

This report is the result of direct review of initial request and appeal case files; a review of CFPB regulations, the agency’s FOIA web page, and other written material such as CFPB’s standard operating procedures, policies, and organizational chart, and FOIA Reports to the Attorney General of the United States; interviews with FOIA officials and staff; and a review of agency FOIA litigation from 2011 to the present.

CFPB provided us with data about FOIA request and appeal files closed in FY 2016. OGIS reviewed a random sample of 192 FOIA requests, which allowed us to generalize to the population of the 427 FOIA requests the program processed in FY 2016.²

Background

CFPB was created by the Dodd–Frank Wall Street Reform and Consumer Protection Act,³ which was signed into law on July 21, 2010. The mission of CFPB is to help consumer finance markets work by “making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives.”⁴

¹ 5 U.S.C. §§ 552(h)(2)(A) and 552(h)(2)(B).

² *See* Scope and Methodology on page 20 of this report for details.

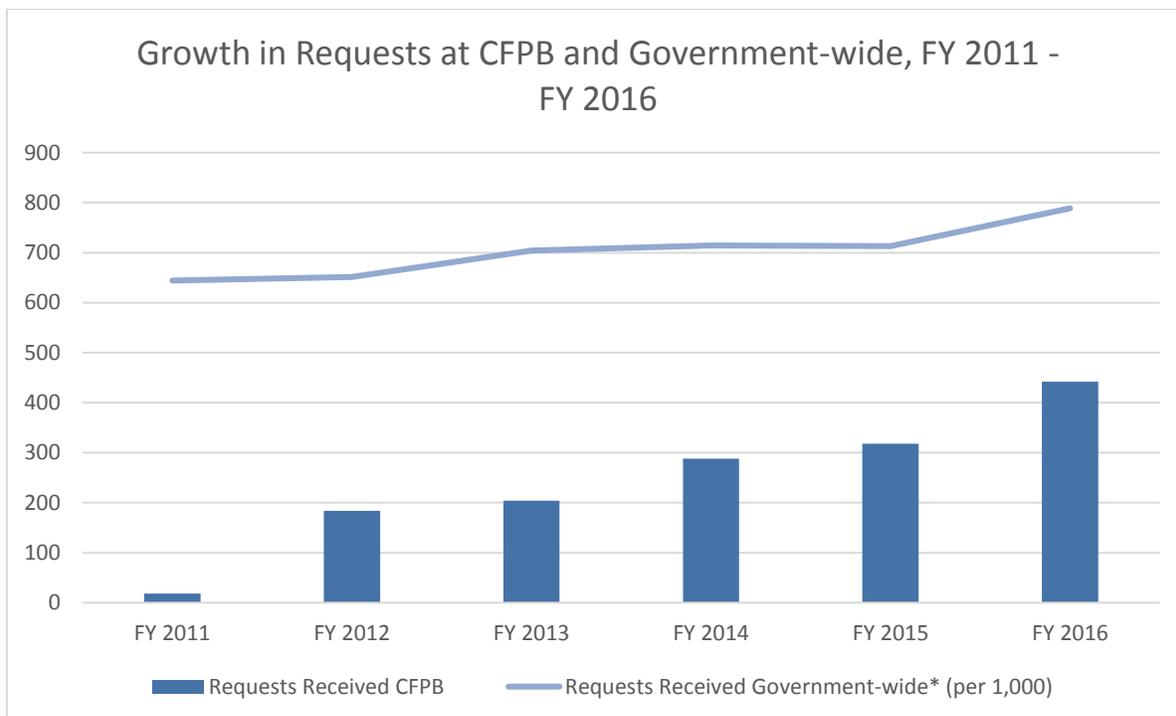
³ Pub. L. 111-203, 124 Stat. 1376-2223 (21 July 2010).

⁴ “About Us Overview,” accessed April 24, 2017, <https://www.consumerfinance.gov/about-us/>.

CFPB formally began operating on July 21, 2011. The U.S. Department of the Treasury’s Annual FOIA Report includes performance information about CFPB’s FOIA program for FY 2011 and FY 2012. In FY 2013, the CFPB began submitting and publishing its own annual FOIA Report to the Attorney General. The FOIA Office is in the Office of Administrative Operations, which is a part of the Operations Division, one of six CFPB divisions.

Number of Requests, Staffing, and Timeliness

Figure 1, Number of Requests Received⁵

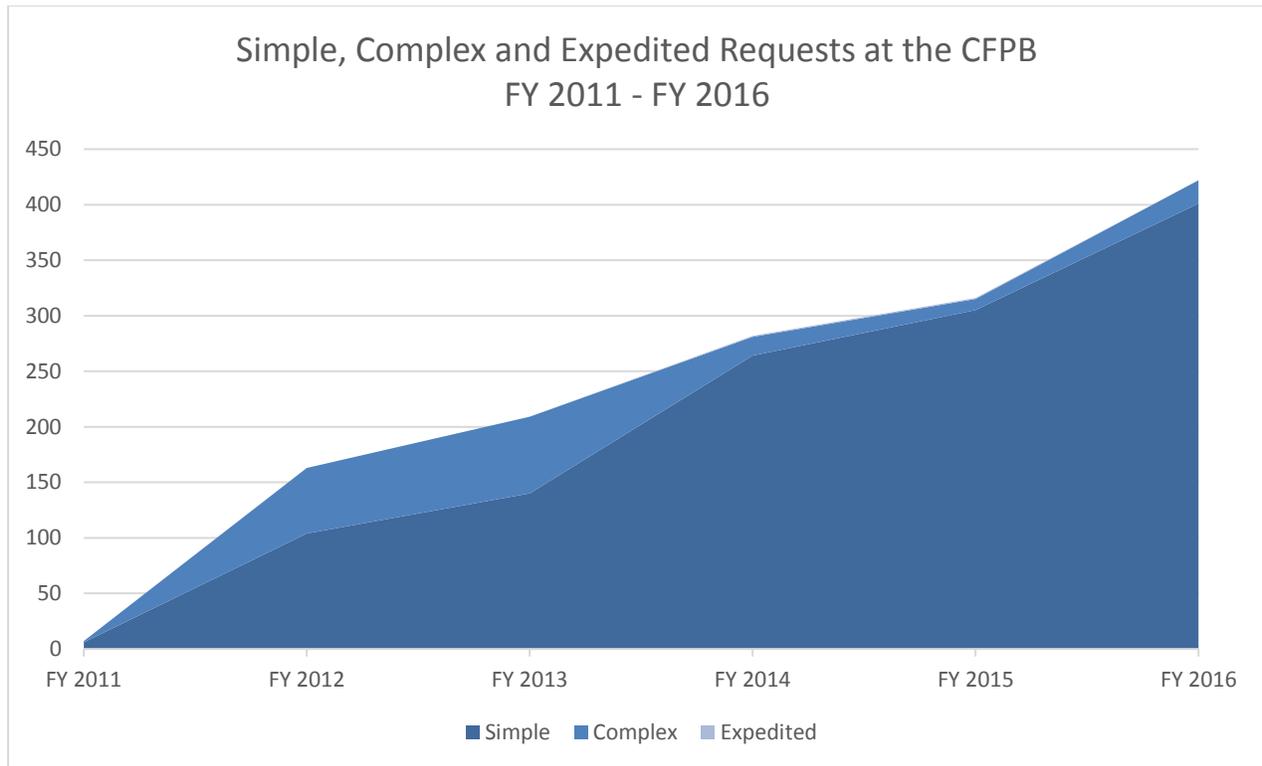


CFPB receives a relatively small number of the FOIA requests when compared to the total number of FOIA requests received by the Federal government: in FY 2016, the 442 requests received by CFPB accounted for less than one-tenth of 1 percent of the 788,769 requests received by the entire Federal government. The number of requests received by the CFPB has increased each year since the agency opened its doors. Over the last four fiscal years (FY 2012 through FY 2016), the number of requests received by CFPB each year grew by an average of 25 percent. The number of requests received by the Federal government as a whole during the same period grew an average 5 percent.⁶

⁵ Report on Department of the Treasury (DOT) Requests FY 2011-FY 2012; Report on Consumer Financial Protection Bureau (CFPB) Requests FY 2013-FY 2016, last accessed April 24, 2017, www.foia.gov.

⁶ Report on DOT Requests; Report on CFPB Requests; and Summary of Annual FOIA Reports for Fiscal Year 2016, last accessed April 24, 2017, https://www.justice.gov/oip/reports/fy_2016_annual_report_summary.pdf/download.

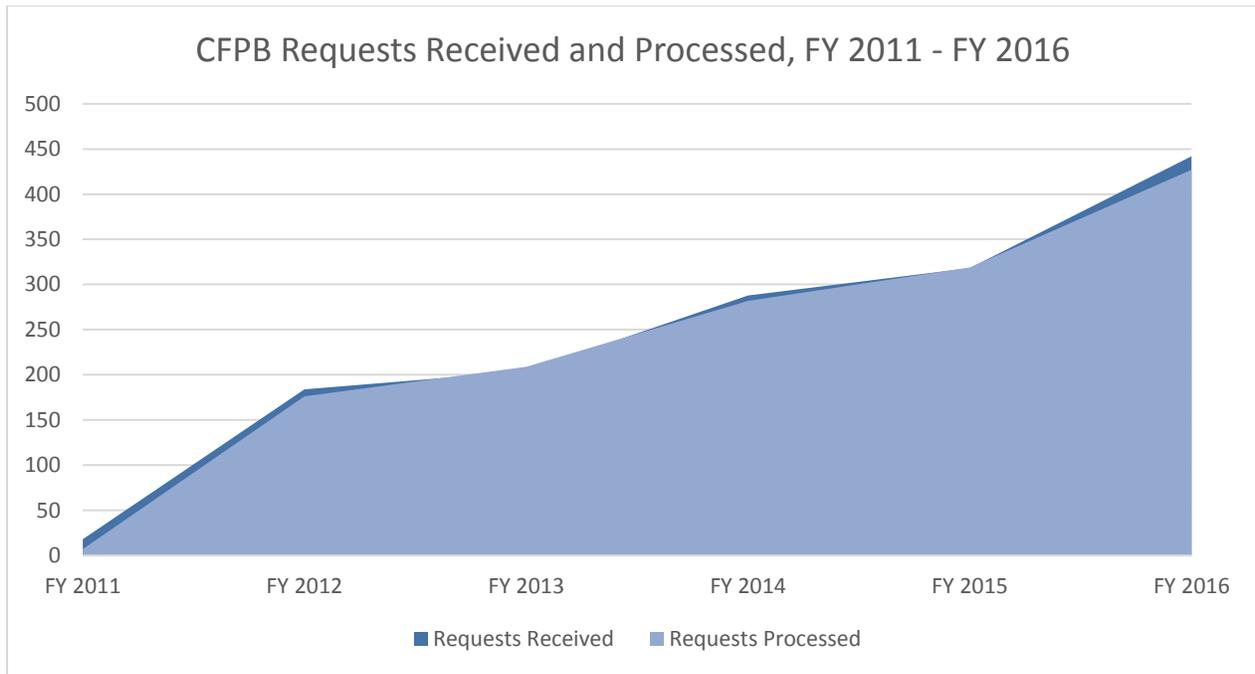
Figure 2, Simple & Complex Requests⁷



CFPB reported that for the last three fiscal years, it has treated the majority of its requests as simple requests. A Supervisory Government Information Specialist (GIS) assigns incoming requests to either the simple or complex queue; in general, requests that involve three or more programs and/or involve a potentially voluminous amount of responsive records are categorized by the Supervisory GIS as complex. In FY 2012 and FY 2013, CFPB reported that complex requests accounted for about 35 percent of the agency’s caseload. Between FY 2014 and FY 2016, CFPB reported that complex requests accounted for an average of approximately 5 percent per year. In interviews with OGIS, CFPB FOIA processors stated that they perceive the complexity of the CFPB’s requests to be increasing, and that they expect CFPB requests to continue to become more complex as requesters learn more about the agency and its records.

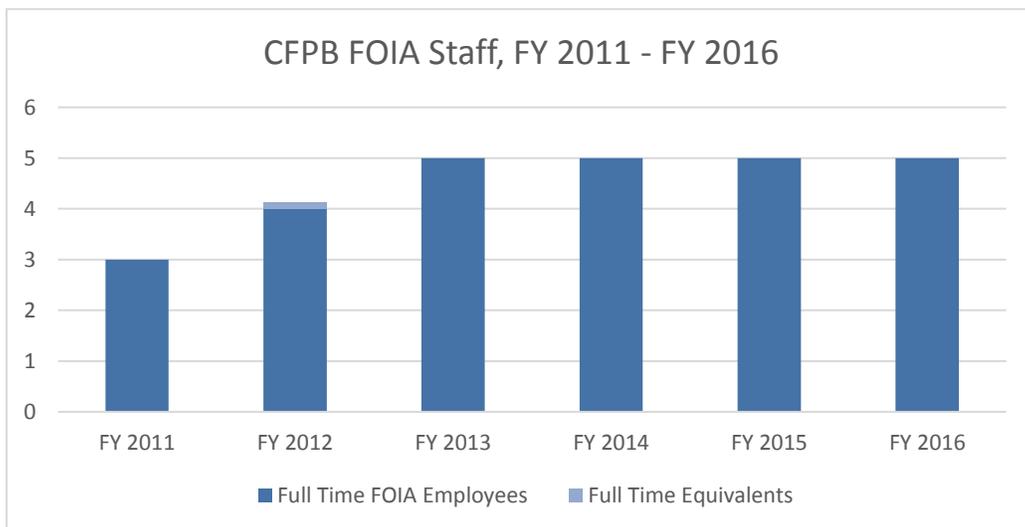
⁷ Report on DOT Requests; Report on CFPB Requests.

Figure 3, Requests Received & Processed⁸



Available data indicates that CFPB kept up with the volume of requests it received each year, and the agency does not have a substantial backlog. In FY 2014 and FY 2015, CFPB reported that it had no backlog. Between FY 2011 and FY 2016, CFPB reported its average backlog as two requests.

Figure 4, CFPB FOIA Staff⁹

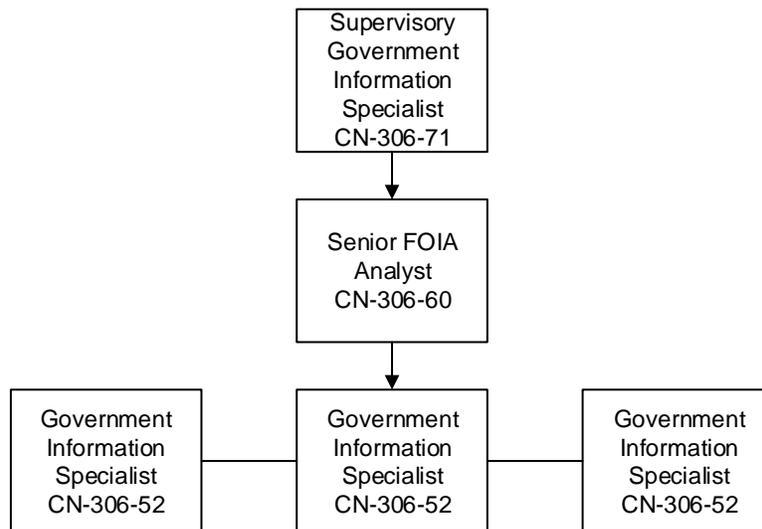


⁸ Report on DOT Requests; Report on CFPB Requests.

⁹ Report on DOT Requests; Report on CFPB Requests.

CFPB reported a full-time FOIA staff of five during the last four fiscal years. In FY 2013, each CFPB FOIA employee processed an average of 42 requests. The average number of requests processed per member of The CFPB FOIA staff's processing volume has increased each year since: the average increase in the number of requests processed per staff during the last three fiscal years is 27 percent. According to CFPB's Supervisory GIS, the FOIA staff is unlikely to grow for at least the next five years.

Figure 5, CFPB FOIA Program Organization Chart¹⁰



The FOIA program's organizational chart includes a Supervisory GIS who oversees the FOIA program and works with CFPB leadership; a Senior FOIA Analyst, who oversees day-to-day operations; and three GISs who handle intake and processing. The Senior FOIA Analyst left CFPB shortly before our on-site review of the CFPB FOIA program. The agency expects to fill the position in FY 2018. The Supervisory GIS was handling some of the Senior FOIA Analyst's duties, such as review of correspondence, including final responses, while a detailee from CFPB's Office of Consumer Response was helping with day-to-day operations.

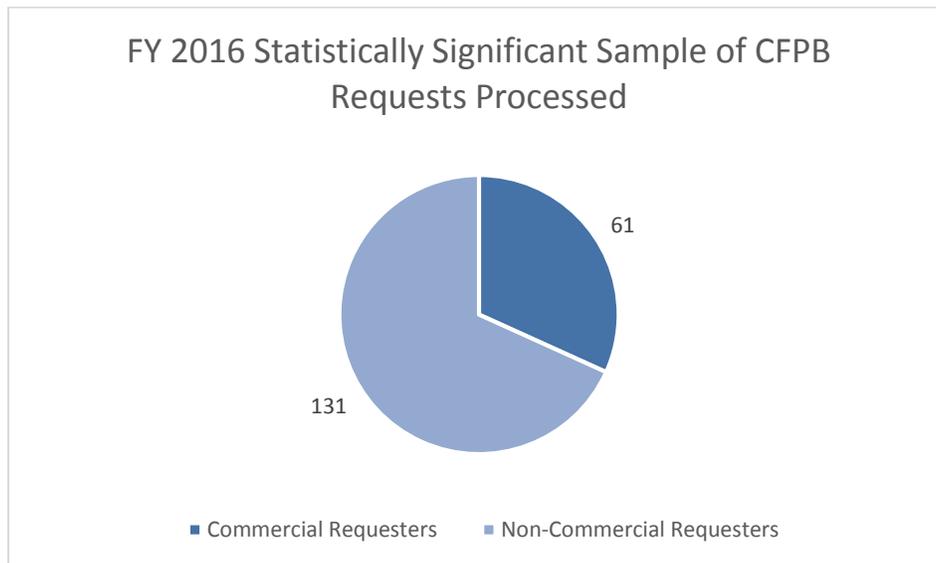
Requester Categories and Fees

The Supervisory GIS estimates that CFPB charges fees for about 20 percent of the agency's FOIA requesters. Between FY 2012 through FY 2016, the Federal government reported taking in an average of 1 percent of what it reported spending on processing FOIA requests. During the same period, CFPB reported collecting an average of a little more than 3 percent of the costs it reported for processing FOIA requests. The CFPB's higher percentage of fees collected is explained in large part by the relatively high percentage of commercial requesters who make requests to the agency: while FOIA allows the

¹⁰ CFPB employees are on a different pay and grade scale than the General Schedule used by most Federal agencies.

government to recoup only some of the costs of fulfilling a FOIA request from non-commercial requesters, commercial requesters are required to pay all search, review and duplication fees. *See* 5 U.S.C. § 552(a)(4)(A)(ii).

Figure 6, Commercial & Non-Commercial Requesters in FY 2016 OGIS Sample¹¹



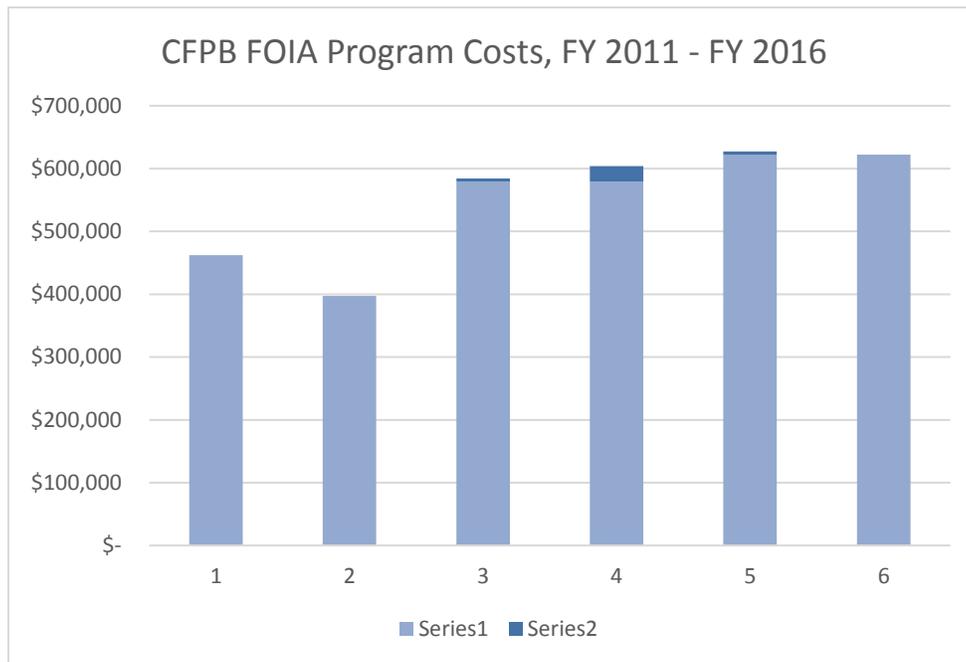
During interviews with OGIS staff, CFPB’s FOIA processors noted that the agency receives a large proportion of its requests from commercial requesters. The agency’s Annual FOIA reports do not include data on the fee category of requesters. However, commercial requesters made up about 32 percent of the requests in our sample of the requests processed by CFPB in FY 2016.

Program Costs

During the first six fiscal years of CFPB’s operation, the agency reported an average annual FOIA program cost of approximately \$550,000. As we will discuss later, at least some of the costs for technology used by the FOIA program are paid by the Office of Technology and Innovation (T&I), which is also a part of the Operations Division. Between FY 2015 and FY 2016, the CFPB’s processing costs decreased by about 1 percent when training was cut from the budget, This reduction in spending was a part of an agency-wide budget reduction, according to the Supervisory GIS.

¹¹ Randomly selected statistically significant sample of requests processed by CFPB in FY 2016. (*See* Scope and Methodology, *infra*, p. 20 for details).

Figure 7, CFPB FOIA Costs¹²



The FOIA program’s litigation-related costs account for a relatively small portion of the program’s total costs: between FY 2011 and FY 2016, CFPB reported spending \$35,000 on litigation-related costs. Litigation-related spending reported in Annual FOIA Reports represents staff time spent on litigation-related issues; this figure does not include attorneys’ fees and costs awarded to plaintiffs’ counsel, or the cost of any settlements that the agency may have reached with a litigant.

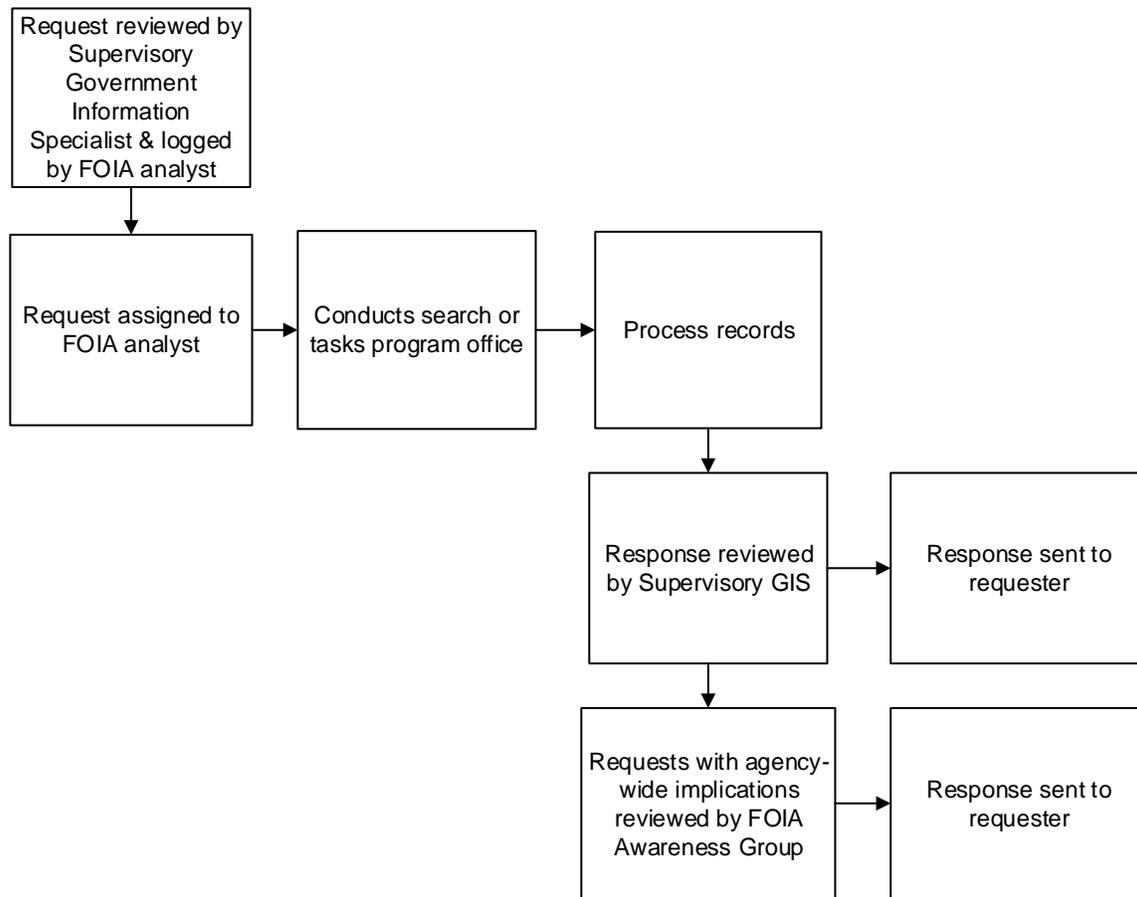
Between FY 2011 when the CFPB FOIA program began operating and the beginning of our review in 2017, eight FOIA lawsuits had been filed against the agency. At the time of our review, five of the cases were closed and three litigations were pending.¹³

¹² Report on DOT Requests; Report on CFPB Requests.

¹³ *Cause of Action Institute v. Consumer Fin. Prot. Bureau*, Civ. No. 16-cv-02434 (D.D.C. May 25, 2017) (case settled and dismissed by stipulation); *Daily Caller News Foundation v. Consumer Fin. Prot. Bureau*, Civ. No. 15-cv-01125 (D.D.C. Oct. 25, 2016) (case settled and dismissed by stipulation); *Benjenk v. Consumer Fin. Prot. Bureau*, Civ. No. 15-cv-01115 (D.D.C. Mar. 14, 2016) (case settled and dismissed by stipulation); *Washington Newspaper Pub. Co. v. Consumer Fin. Prot. Bureau*, Civ. No. 14-cv-00444, (D.D.C. Oct. 3, 2014) (case settled and dismissed by stipulation); *Judicial Watch, Inc. v. Consumer Fin. Prot. Bureau*, 60 F. Supp. 3d 1 (D.D.C. Mar. 27, 2014) (defendant’s motion for summary judgment granted); *Frank LLP v. Consumer Fin. Prot. Bureau*, Civ. No. 16-cv-00670, (D.D.C.) (pending); *Frank LLP v. Consumer Fin. Prot. Bureau*, No. 16-cv-02105, (D.D.C.) (pending); *Gordon v. Consumer Fin. Prot. Bureau et. al.*, Civ. No. 16-cv-06069, (C.D. Cal.) (stayed).

CFPB FOIA Process

Figure 8, CFPB FOIA Process



Initial Processing

The CFPB FOIA Program is centralized and accepts requests via email, U.S. mail, or fax. In the absence of a Senior FOIA Analyst, the Supervisory GIS reviews all incoming FOIA requests. Generally, the FOIA analysts take turns logging requests into the CFPB's FOIA tracking and processing system and acknowledging the requests. The Supervisory GIS assigns requests to each FOIA analyst. The Supervisory GIS reported that FOIA analysts are assigned a mix of simple and complex cases and each typically has between eight and 15 cases open at any given time.

Cases are sometimes assigned to a particular analyst who has previous experience with similar requests or has a good working relationship with the program that might have responsive records.

The FOIA analyst is responsible for searching for potentially responsive records, redacting responsive records, and writing the final response letter. The FOIA analyst is expected to contact the requester for

any clarification about the request, and/or to discuss possibly narrowing the scope. The FOIA staff also has access to an attorney-advisor from the Legal Division who answers questions or addresses concerns.

Search

If a request involves email records, T&I locates the records from the account holders that need to be searched, and the FOIA analyst searches for responsive records using one of the two electronic discovery, or e-discovery, tools available to the FOIA office. CFPB's FOIA analysts also use the e-discovery tools when the program office grants the FOIA office access to its shared drive where the potentially responsive records are kept.

Staff in individual program offices are responsible for conducting some searches. The Supervisory GIS reported that program office employees are usually asked to conduct searches if the request is for a particular document, which an employee in the program could readily identify and return to the FOIA office. CFPB's FOIA analysts also noted that having the program staff conduct a search, or discussing the search with program staff, can help because the program staff has better subject-matter knowledge of where potentially responsive records may be kept and which keywords that staff should use to retrieve potentially responsive documents.

Employees in program offices are asked to search for records and provide a response to the FOIA office within three days. If the program staff does not respond within three days, the FOIA analyst is expected to follow up or to escalate the issue. According to the Supervisory GIS, staff in the program offices generally respond within the allotted time period. However, several members of the CFPB FOIA staff noted that some program office staff are slower to respond.

The Supervisory GIS sends leadership a weekly report that highlights any requests that have been pending for more than 20 days and provides an explanation for why the response is delayed, including whether staff of a program office has not returned records.

Review before Response

The Senior FOIA Analyst is responsible for reviewing all correspondence and final responses to initial requests before review and signature by the Supervisory GIS; during our assessment and with the Senior FOIA Analyst position vacant, this responsibility was being handled solely by the Supervisory GIS.

A few cases each week are reviewed before release by the "FOIA Awareness Group," which consists of about 20 high-level officials from programs across the agency. The Supervisory GIS selects cases for review by the FOIA Awareness Group because they have agency-wide implications, are related to enforcement actions, consist of topics covered in the news or on-going litigation, or are requests from or about members of Congress.

The FOIA Awareness Group meets weekly; if there are no cases to review, the meeting is canceled. The Friday before the meeting, the Supervisory GIS provides the group with copies of the requests and proposed redacted documents for review. The Supervisory GIS acknowledged that this review delays

some responses, but reported that the agency still manages to send most responses within the 20 working days allowed under the law.

FOIA Appeals

FOIA appeals are sent to the FOIA office, and are logged into CFPB's FOIA tracking and processing system, allowing the attorney assigned to review the appeal read-only access to the request's administrative file, to the attorney assigned to review the appeal. A senior attorney in the Legal Division reviews all incoming appeals and assigns them to an attorney. If a case is remanded, the FOIA analyst who initially handled the request is responsible for further processing.

Finding 1: Management

CFPB responds to most FOIA requests within FOIA's 20-working-day statutory response period, and leadership has a high level of interest and engagement with the FOIA program. CFPB may not be able to continue to meet the statutory response deadline in future years if the FOIA staff does not grow and the number and complexity of requests continues to increase as expected. We recommend that the CFPB FOIA program continue to engage the agency's leaders and develop further buy-in from leadership and program staff to ensure the FOIA program maintains its capability to respond in a timely fashion.

Management Controls

The Supervisory GIS reported that the program's three FOIA analysts have an informal goal of closing three cases each week. If the FOIA analysts meet this informal goal, the CFPB FOIA office would close a similar amount of FOIA requests as the office received in FY 2016. Each FOIA analyst reports weekly to the Supervisory GIS on the previous week's accomplishments, goals for the following week, and the status of any overdue requests assigned to the analyst.

The Supervisory GIS also prepares a weekly report for CFPB leadership. This report lists any new initial requests and appeals opened that week, requests and appeals closed that week, all pending requests, and requests that are beyond the statutory 20-working-day deadline for a response. The report includes a "FOIA by the Numbers" section that gives readers a snapshot of the number of requests the FOIA program has received and closed, the number of requests in the backlog, the oldest pending request, and the average response time. The report also includes graphs showing the number of search requests the FOIA program has sent to each of CFPB's six divisions, and each division's average response time.

Release Sensitivity/ Program Support

Several members of the CFPB FOIA staff noted that there is a high level of interest in the FOIA program agency-wide, and that agency employees can be sensitive regarding the release of certain records. With regard to the FOIA Awareness Group, some CFPB FOIA analysts said that some program office staff express a high degree of ownership over their office's records, making it more difficult for the FOIA office to obtain the potentially responsive records for processing. One CFPB FOIA analyst

noted that a FOIA training for program staff helped overcome reluctance by program staff to turn over records.

The Supervisory GIS also said that the CFPB Director has taken steps to support the FOIA program, including sending an agency-wide memo highlighting the importance of compliance with FOIA and government transparency.

Staffing

As we discussed previously, the Supervisory GIS reported that the CFPB FOIA staff is unlikely to grow during the next five years. In FY 2018 CFPB plans to fill the Senior FOIA Analyst position vacated by an employee who departed the agency shortly before the government-wide hiring freeze.

During our review, the Supervisory GIS noted that the detailee from CFPB's Office of Consumer Response has helped the FOIA staff by taking over many of the administrative duties, such as maintaining the email inbox. The detailee was also acting as the CFPB's FOIA Public Liaison by answering requesters' phone calls.¹⁴

The Supervisory GIS estimated that the CFPB FOIA office generally receives five or six calls each week. According to the detailee, the calls are usually from FOIA requesters who do not understand the process; there are very few requests for assistance from media or commercial requesters.

The Supervisory GIS explained that although the FOIA staff is not expected to grow during the next five years, CFPB leadership is aware that requests might surpass the current staff's capacity before that time. The Supervisory GIS said that there are ongoing discussions about how to expand the FOIA staff's capacity without adding additional full-time employees, including creating detail opportunities and hiring interns. Other options discussed include hiring a contractor and rotating the program offices' points of contact for short-term details to the FOIA office.

Training

According to the Supervisory GIS, CFPB offers quarterly training to its FOIA staff. During FY 2016, the CFPB FOIA program reduced its training budget to reflect reduced spending across the agency. The Supervisory GIS explained that the training budget was targeted for reductions in large part because of the numerous free training options available.

All of the CFPB's FOIA analysts joined the staff with several years of FOIA experience at other Federal agencies. All three FOIA analysts noted that while many FOIA training sessions are too basic to meet their needs, they attended a FOIA training coordinated by the Federal Deposit Insurance Corporation and a training in bank examination, which helped them better understand CFPB's records and their possible sensitivity.

¹⁴ FOIA states that "FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes." 5 U.S.C. § 552(l).

Recommendations

Recommendation 1

We recommend that the CFPB Director and other agency leaders continue to visibly support the FOIA program, highlighting the importance of compliance, the professionalism and expertise of the CFPB FOIA staff, and the vital importance of cooperation between staff in the FOIA office and in program offices.

Recommendation 2

We recommend that the Supervisory GIS continue to discuss with leadership the need for additional FOIA assistance as the caseload grows. Short-term details to the FOIA office of program points of contact would not only assist with keeping the workload at a manageable level, but could be particularly useful to increasing agency-wide understanding of FOIA and its processes.

Finding 2: Investments in Technology to Improve Processes

The CFPB FOIA Program has strong technical support and access to tools that improve the program's efficiency. We recommend that CFPB comply with Department of Justice guidance which encourages agencies to add a FOIA metadata tag to all released records posted online.

Technology Investments

CFPB is mostly paper-free, in large part because the agency is young compared to the rest of the Federal government. CFPB uses a proprietary FOIA processing and tracking system to manage its process. CFPB chose to purchase the system in part because CFPB's initial FOIA staff were familiar with the system's features, according to the Supervisory GIS. CFPB's initial investment in the technology included a pilot program to ensure that the system was compatible with CFPB's existing technology infrastructure and security requirements. When it made the original purchase, CFPB's initial contract with the vendor included an option to customize the system for an additional cost. The agency has not needed that option. CFPB pays annual operations and maintenance costs.

CFPB FOIA analysts use the system's processing tools to review and redact responsive records for most FOIA requests. The system does slow down significantly, however, if a particularly large volume of records are uploaded. To avoid delays, CFPB analysts use another commercially available processing tool to redact records if there are more than 20,000 pages of records. When records are redacted using this system, it allows the FOIA analyst to avoid manually entering information about the exemptions used and instead exemption information is automatically generated.

In addition to the FOIA case management and processing tool, CFPB FOIA staff has access to two electronic discovery, or e-discovery, tools. Developed to assist with discovery requests in civil or criminal litigation, the tools allow users to identify duplicate records and to conduct searches using

multiple keywords and specific timeframes. The CFPB FOIA analysts informed us that they frequently use these tools to search for records if the request involves email or a particularly large number of records. CFPB's FOIA analysts also said that these tools are particularly helpful for negotiating the scope of a request; the FOIA analyst can try different keywords and timeframes while on the phone with a requester, allowing them to discuss the time it would take to review records and any possible fees involved with the request. The cost of these tools, which both include an initial purchase of about \$2 million and recurring annual fees of around \$1 million, come out of the agency's T&I budget.

Tech Support

T&I supports the CFPB FOIA office in a number of ways. In addition to giving the FOIA office access to technological tools, T&I also assists the FOIA office by searching for and pulling email records that need to be reviewed in response to a FOIA request. T&I also assists the FOIA office by installing any updates to the FOIA processing and tracking system, and updating the FOIA web pages.

Posting Released Records

CFPB made its online reading room of records released under FOIA available in July 2016, according to the Supervisory GIS. The reading room includes copies of CFPB's annual FOIA reports, FOIA logs, and frequently requested records that have been requested three or more times.

CFPB generally requires that any changes to an agency webpage go through a concurrence process in which other offices within the agency can review and sign-off on proposed changes before they go into effect. The agency has agreed to waive the concurrence process to allow the FOIA program to add material to the online reading room, however, according to the Supervisory GIS.

If records do not meet the accessibility requirements of Section 508 of the Rehabilitation Act, CITE, which requires that all information that is posted to government websites is accessible to individuals with disabilities, the FOIA staff is responsible for remediating the records to make them 508 compliant.

Based on our review of a sample of the most recently posted records on CFPB's online reading room, we found that the records had little or no metadata. Metadata, including keywords, improve the capability of search engines to find records of interest. None of the records we reviewed at the time of our review included the FOIA metadata tag suggested by DOJ.¹⁵ CFPB has since updated the records in the online reading room with the FOIA metadata tag. CFPB also notes that users could locate the documents using a key-word search in an online search engine.

¹⁵ "Using Metadata in FOIA Documents Posted Online to Lay the Foundation for Building a Government-Wide FOIA Library," last modified July 16, 2015, <http://www.justice.gov/oip/blog/foia-guidance-11>

Recommendations

Recommendation 3: We recommend that CFPB puts a process in place to ensure a FOIA metadata tag is included for all records released under the FOIA and added to the CFPB reading room, in line with DOJ guidance.

Finding 3: Customer Service

CFPB's FOIA staff communicates well to negotiate with requesters. We noted, however, that the percentage of appeals remanded in part or in whole have increased each fiscal year, and that CFPB "Glomar" responses did not cite an exemption, even after the appeal authority had directed the FOIA program to do so several times. We recommend that CFPB formalize a feedback loop to ensure that requests are properly processed at the initial request stage.

Communication with Requesters and Plain Language

During our review of CFPB case files, we noted that CFPB's FOIA analysts proactively contacted the requester to discuss the request about one-third of the time (65 of 192 cases). CFPB's FOIA analysts both called and emailed requesters to ask for clarification on the topic of the request, or to discuss the scope of the request.

CFPB uses template letters to correspond with requesters. We noted during our review that the FOIA analysts will customize the templates to ensure that any discussion that occurred with the requester regarding the scope of the request is memorialized in the response. The final response letter also includes a basic description of any of the exemptions that are used to withhold information.

Timeliness of Responses and Still Interested Letters

As we previously noted, CFPB has a relatively small backlog. Each year between FY 2011 and FY 2016, CFPB reported that its average response time for simple requests (which account for most of the FOIA program's workload), is around 10 working days—ranging from 11 days in FY 2011 to 8.36 days in FY 2013. CFPB's average response time for complex requests ranged from a high of 48.5 working days in FY 2012 to a low of 22.5 working days in FY 2014. The oldest pending request CFPB reported in its annual reports was 124 days old (FY 2012 Annual Report).

Our sample did not contain any examples of any correspondence to requesters which contained an inquiry as to whether the requester was still interested in having the request processed.

Streamlined Submitter Notice Process

CFPB's Chief Operations Officer—who formerly served as the agency's Supervisory GIS—informed us that the agency's policy requires all vendors to submit proposed FOIA redactions to contracts when the agency and the vendor enter into an agreement. He explained that this process can help the FOIA office

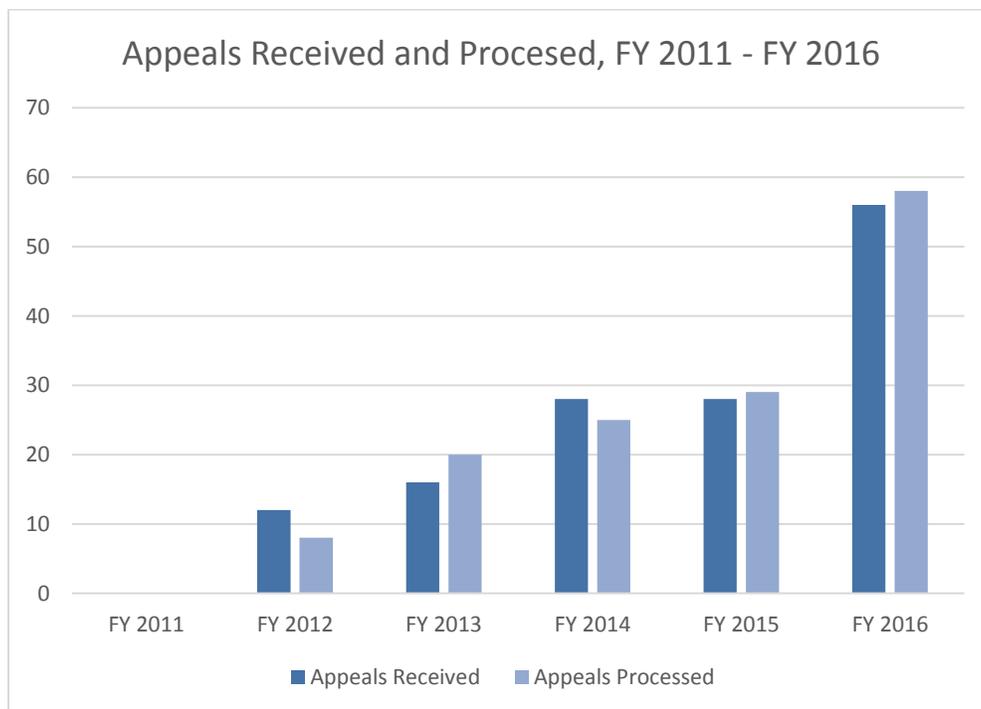
more quickly respond to requests for contracts because the FOIA analyst does not have to wait for the vendor to inform the agency if it objects to the release of any information in response to a request.

Remanded Appeals

As discussed previously, the Legal Division reviews administrative appeals exclusively. Between FY 2012 and FY 2016, the number of appeals processed by CFPB grew by about 367 percent—from 12 appeals in FY 2012 to 56 appeals in FY 2016.

We noted that an average of about 10 percent of requests CFPB processed between FY 2012 and FY 2015 were appealed by requesters. An average of 2 percent of requests processed government-wide between FY 2012 and FY 2015 were appealed.¹⁶ However, there are agencies that receive a proportionally higher number of requests overall and a lower number of appeals overall: for example, in FY 2016, CFPB received the 36th largest number of initial requests and the 25th largest number of appeals in the Federal government.

Figure 10, CFPB Appeals¹⁷



The percentage of appeals remanded in part or in whole for additional processing by the FOIA office increased each year between FY 2012 and FY 2016. In FY 2016, CFPB remanded 43 percent of appeals

¹⁶ Data compiled from information contained in “Summary of Annual FOIA Reports for Fiscal Year 2016,” accessed May 18, 2017, https://www.justice.gov/oip/reports/fy_2016_annual_report_summary.pdf/download.

¹⁷ Report on DOT Requests; Report on CFPB Requests.

in part or in whole: of those, about 28 percent were partially remanded and almost 16 percent were remanded in full. The Supervisory GIS informed us that during weekly staff meetings, FOIA staff members discuss the reasons why an appeal was remanded for further processing.

During our observation of CFPB's case files, we noted that CFPB did not update its practices regarding the use of the "Glomar" response after receiving guidance from the Legal Division. When an agency responds to a FOIA request by neither confirming nor denying the existence of responsive records, it is known as a Glomar response. A Glomar response is proper when to admit that records even exist would reveal the very fact that an agency needs to withhold that information under FOIA.¹⁸ We noted that in 12 of its Glomar responses, CFPB did not cite an exemption; we observed that this practice continued even after the Legal Division directed the FOIA unit to cite an exemption in response to a requester's appeal.

Recommendations

Recommendation 4: We recommend that the CFPB establish a feedback loop that runs from the Legal Division to the FOIA analysts to ensure that requests are properly processed at the initial request stage, reducing the number of appeals on issues previously remanded for additional processing.

¹⁸ See *Phillippi v. CIA*, 655 F.2d 1325 (D.C. Cir. 1981).

Checklist of OGIS Recommendations for CFPB'S FOIA Program Management

Management

- Continue to engage high-level CFPB officials and highlight the importance of compliance with FOIA and a high degree of cooperation between staff in the FOIA office and the program offices.
- Keep CFPB leadership apprised of the need for any additional FOIA assistance to keep up with growing workload.

Technology

- Comply with Department of Justice guidance encouraging agencies to use a FOIA metadata tag for all posted records released under FOIA.

Communication

- Create a formal feedback loop to ensure requests are properly processed at the initial request stage and to reduce the number of appeals remanded for further processing.

Scope and methodology¹⁹

OGIS Compliance Team Lead Kirsten Mitchell and Compliance Team member Amy Bennett conducted the assessment of CFPB's FOIA program. This report is the result of their first-hand review of CFPB's FOIA request files, including eight cases on appeal which were remanded for further processing; analysis of applicable data and documents including CFPB FOIA regulations, the agency's FOIA website and other written material; and interviews with CFPB FOIA officials and staff. OGIS legal interns Samantha Kosarzycki and Christina Lamoureux reviewed CFPB's FOIA litigation. On February 23, 2017, we interviewed, separately, the Supervisory GIS, CFPB's three GISs, and the FOIA program's detailee. Before our visit, CFPB provided us with spreadsheets of its FOIA cases closed in FY 2016. We chose a statistically significant sample of 192 FOIA initial request files.²⁰ CFPB provided us with electronic copies of the administrative file for each of the selected cases. We finished our review of the case files on April 3, 2017. Our findings are founded on OGIS's Elements of an Effective FOIA Program which are based on

- the FOIA statute;
- Office of Management and Budget Guidelines for Fees;
- Presidential Memoranda;
- Attorney General Memoranda;
- Guidance from the DOJ's Office of Information Policy, including DOJ's Guide to the Freedom of Information Act; and
- Inconsistencies and non-compliance observed during OGIS's mediation services for cases involving CFPB.

¹⁹ Please direct questions to OGIS at ogis@nara.gov or 202-741-5770.

²⁰ A statistically significant random sample of CFPB's FY 2016 FOIA cases allows us to generalize to the entire population of the agency's FY 2016 cases.