

Pension Benefit Guaranty Corporation's FY 2009 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 “2008 Guidelines for Agency Preparation of Annual FOIA Reports” created by the Office of Information and Privacy, Department of Justice, the following information reflects the Pension Benefit Guaranty Corporation’s (PBGC) activity in administering the FOIA during fiscal year 2009.

I. BASIC INFORMATION REGARDING REPORT

1. 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

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

<http://www.pbgc.gov/docs/foia2009.pdf>

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

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

II. MAKING A FOIA REQUEST

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

PBGC, Office of the General Counsel
Attention E. William FitzGerald, Disclosure Officer
Suite 11101
1200 K Street N.W.
Washington, D.C. 20005-4026
Phone (202) 326-4040

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

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

Some requests are not granted because one or more of the exemptions from FOIA's disclosure requirement apply 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. Other denials were in response to subpoenas served on PBGC seeking information about benefits due individual participants from pension plans trusted by the PBGC.

In addition, a number of denials involved requests for confidential commercial or financial information that had been submitted to PBGC. Finally, in some instances, PBGC did not possess any of the records that were requested.

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

III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

1. Agency-specific acronyms or other terms:
 - a. PBGC — Pension Benefit Guaranty Corporation

2. Definitions of terms used in this report:

- b. **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.
- c. **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.
- d. **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.
- e. **Component** — For agencies that process requests on a decentralized basis, a “component” is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in their Annual FOIA Report data for both the agency overall and for each principal component of the agency.

NOTE: PBGC does not process requests on a decentralized basis and therefore does not have multiple components.

- f. **Consultation** — The procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.
- g. **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.
- h. **FOIA/PA Request** — A FOIA request is generally a request for access to records concerning another person (i.e., a “third-party” request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., “first-party” requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act “systems of records” or where

a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require the agency to utilize the FOIA in responding to the requester are included in this report.

Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this report.)

NOTE: PBGC treats all requests for access to records, regardless of which law is cited by the requester, as FOIA and PA requests.

- i. **Full Grant** — An agency decision to disclose all records in full in response to a FOIA request.
- j. **Full Denial** — An agency decision not to release any records in response to a FOIA request because the records are exempt in their entirety under one or more of the FOIA exemptions, or for some procedural reason, such as when no records could be located.
- k. **Median Number** — The middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
- l. **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. **Standard Request** — All other FOIA requests which do not meet the requirements of Expedited Processing above, for an agency which does not further distinguish between requests based on request complexity.
 - iii. **Simple Request, Complex Request** — Categories which an agency that uses multi-track processing might place FOIA requests into, based on the volume and/or complexity of the records requested. PBGC does not differentiate between requests based on their

complexity; therefore, all non-Expedited requests covered in this report are processed in the Standard track.

- m. **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.
 - n. **Pending Request or Pending Administrative Appeal** — A request or administrative appeal for which an agency has **not** taken final action in all respects.
 - o. **Perfect Request** — A request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed.
 - p. **Processed Request or Processed Administrative Appeal** — A request or administrative appeal for which an agency has taken final action in all respects.
 - q. **Range in Number of Days** — The lowest and highest number of days to process requests or administrative appeals.
 - r. **Time Limits** — The time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).
3. Concise description of FOIA exemptions:

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

- a. **Exemption 1: Classified national defense and foreign relations information** — PBGC does not maintain any records which would fall within the scope of this exemption.
- b. **Exemption 2: Internal agency rules and practices** — Seldom relied on by PBGC, but sometimes used to protect sensitive details of internal manuals and/or procedures.
- c. **Exemption 3: Information that is prohibited from disclosure by another federal law** — See Section IV below for specific uses of Exemption 3 in fiscal year 2009; PBGC generally relies on ERISA § 4042 and/or § 4010.

- d. **Exemption 4: Trade secrets and other confidential business information** — Used to protect submissions by contractors seeking to do business with PBGC; also protects some material obtained from plan sponsors during plan terminations.
- e. **Exemption 5: Inter-agency or intra-agency communications that are protected by legal privileges** — Used occasionally by PBGC to protect internal memoranda.
- f. **Exemption 6: Information involving matters of personal privacy** — The exemption most commonly cited by PBGC; used routinely to remove information about other participants from material intended for the subject of the record, or to remove all personally identifiable information about participants from material intended for a third party. *Typically 80% or more of the exemptions used by PBGC in a given year.*
- 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 any individual law enforcement officer— Occasionally used to protect investigative material compiled by PBGC.
- h. **Exemption 8: Information relating to the supervision of financial institutions** — PBGC does not maintain records which would fall within the scope of this exemption.
- i. **Exemption 9: Geological information on wells** — PBGC does not maintain records which would fall within the scope of this exemption.

IV. EXEMPTION 3 STATUTES

Exemption 3 Statutes Relied Upon to Withhold Information

Statute	Type of Information Withheld	Case Citation	Total Number of Times Relied Upon by Agency
29 U.S.C. § 1343(f)	Information submitted to PBGC as part of a notice of a reportable event.	n/a	1

V. FOIA/PA REQUESTS

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

A. Received, Processed and Pending FOIA Requests

	Number of Requests Pending as of Start of Fiscal Year	Number of Requests Received in Fiscal Year	Number of Requests Processed in Fiscal Year	Number of Requests Pending as of End of Fiscal Year
Agency Overall	138	4,526	4,512	152

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

	Number of Full Grants	Number of Partial Grants/ Partial Denials	Number of Full Denials Based on Exemptions	Number of Full Denials Based on Reasons Other than Exemptions									Total
				No Records	All Records Referred to Another Agency	Request Withdrawn	Fee-Related Reason	Records Not Reasonably Described	Improper FOIA Request for Other Reason	Not Agency Record	Duplicate Request	Other (see B(2))	
Agency Overall	3,626	192	1	13	2	7	0	0	25	0	234	412	4,512

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

	Description of “Other” Reasons for Full Denials	Total
Agency Overall	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.	412

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
Agency Overall	0	3	1	19	12	168	0	0	2	0	0	0	0	0

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

PBGC processes all non-Expedited requests received under a single track, which for the purpose of the tables below has been designated **Standard**.

PBGC received **5** requests for expedited processing during FY 2009, but chose to grant **1** other request expedited status based on the nature of the information requested, for a total of **6** requests processed in the Expedited track.

A. Processed Requests — Response Time for All Processed Perfected Requests

	Standard Processing				Expedited Processing			
	Median	Average	Lowest	Highest	Median	Average	Lowest	Highest
Agency Overall	5	5	<1	24	10	14	2	18

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

	Standard Processing				Expedited Processing			
	Median	Average	Lowest	Highest	Median	Average	Lowest	Highest
Agency Overall	5	5	<1	24	10	14	2	18

C. Processed Requests — Response Time in Day Increments

	1 - 20 Days	21 - 40 Days	41 - 60 Days	61 - 80 Days	81 - 100 Days	101 - 120 Days	121 - 140 Days	141 - 160 Days	161 - 180 Days	181 - 200 Days	201 - 300 Days	301 - 400 Days	401+ Days	Total
Standard Requests														
Agency Overall	4,504	2	0	0	0	0	0	0	0	0	0	0	0	4,506
Requests Granted Expedited Processing														
Agency Overall	6	0	0	0	0	0	0	0	0	0	0	0	0	6
													Total	4,512

D. Pending Requests — All Pending Perfected Requests

	Standard Processing			Expedited Processing		
	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days
Agency Overall	143	4	8	0	0	0

E. Pending Requests — Ten Oldest Pending Perfected Requests

	10 th Oldest	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest
Date of Receipt*	09/08/2009	09/21/2009	09/21/2009	09/21/2009	09/21/2009	09/21/2009	09/17/2009	09/15/2009	09/09/2009	06/12/2009
Number of Days Pending	7	7	7	7	7	7	9	11	15	19

* Date of Receipt does not always indicate date processing started. Requests can be tolled in order to perfect request prior to processing.

VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER

The majority of FOIA requests which PBGC receives are submitted by members of the pension plans which PBGC has trusteeed (also known as participants). It is the PBGC Disclosure Officer’s policy to routinely waive search and review fees and duplication fees on all FOIA requests from participants.

A. Requests for Expedited Processing

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
Agency Overall	6	0	1	1	6

B. Requests for Fee Waiver*

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
Agency Overall	7	0	1	1

*In FY 2008, the report treated *all* requests which fit the situation described in VIII above as if they included explicit requests for a fee waiver; in this FY 2009 report, only the 7 explicit fee waiver requests are counted.

IX. COSTS/FOIA STAFFING

A. Personnel

(See combined table under IX.B below)

B. Costs

	Personnel			Costs		
	Number of "Full-Time FOIA Employees"	Number of "Equivalent Full-Time FOIA Employees"	Total Number of "Full-Time FOIA Staff"	Processing Costs	Litigation-Related Costs	Total Costs
Agency Overall	8	2	10	\$994,868.00	n/a	\$994,868.00

X. FEES COLLECTED FOR PROCESSING REQUESTS

	Total Amount of Fees Collected	Percentage of Total Costs
Agency Overall	\$4,429.91	0.44%

XI. FOIA REGULATIONS (INCLUDING FEE SCHEDULE)

PBGC FOIA regulations are available online at:

<http://www.pbgc.gov/practitioners/law-regulations-informal-guidance/content/page14789.html>

XII. BACKLOGS, CONSULTATIONS AND COMPARISONS

A. Backlogs of FOIA Requests and Administrative Appeals

Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
0	0

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

Number of Consultations Received From Other Agencies that were Pending as of Start of the Fiscal Year	Number of Consultations Received From Other Agencies During the Fiscal Year	Number of Consultations Received From Other Agencies that were Processed During the Fiscal Year	Number of Consultations Received From Other Agencies that were Pending as of End of the Fiscal Year
0	2	2	0

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

	10th Oldest	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest
Date of Receipt	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Number of Days Pending	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 from Previous and Current Annual Report – Requests Received, Processed, and 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
7,354	4,526	7,444	4,512

Number of Backlogged Requests as of End of the Fiscal Year from Last Year's Annual Report	Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report
0	0

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

Number of Appeals Received		Number of Appeals Processed	
Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
2	2	2	2

Number of Backlogged Appeals as of End of the Fiscal Year from Last Year's Annual Report	Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report
2	0

F. Discussion of Other FOIA Activities

We continued our efforts to improve customer service. In fiscal year 2009, PBGC received 4,526 FOIA requests and processed 4,512 requests. The average time to process a standard request was 5 working days. Our electronic software, used to process requests since 1999, was able to meet new reporting requirements with only minor modifications. PBGC received only two appeals of denials during the fiscal year. Since the majority of our requests are received from pension plan participants who are in trustee plans we insure, we directly enable those participants to access and examine critical documents that are relied on to calculate their individual pension benefits.