



September 26, 2011

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1801 L Street, NW
Washington, DC 20036

Re: Docket No. CFPB-2011-0003
Disclosure of Records and Information, 76 FR 45372

Dear Ms. Jackson:

OMB Watch welcomes the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB) proposed Freedom of Information Act (FOIA) regulations. As a nonprofit organization dedicated to open government, accountability, and citizen participation since 1983, OMB Watch has long worked for improvements to the FOIA process.

Ensuring that agencies have up-to-date FOIA regulations that support transparency is a crucial element for the effective functioning of the FOIA system, and we appreciate CFPB's timely steps to draft FOIA regulations. As a new agency, CFPB has an opportunity to learn from the FOIA implementation lessons of other agencies and start off with the full benefit of modern technology and forward looking policies.

To contribute to the successful development of an effective and efficient FOIA program at CFPB, and to build upon CFPB's stated commitment to open government, OMB Watch offers the following recommendations:

- Strengthen the proposed regulations to expand online disclosures;
- Allow requesters to submit FOIA requests via email and website; and
- Expand the role of the Chief FOIA Officer.

Strengthen the proposed regulations to expand online disclosures

OMB Watch is concerned that the proposed regulations do not seem to fully embrace the use of online disclosure for records released under FOIA. Expanding the online disclosure of these records is an important method to efficiently maximize the CFPB's transparency.

We recommend that CFPB revise its proposed regulations to state that it will post online responses to all FOIA requests that were not jointly made under the Privacy Act, in a searchable format wherever possible. Posting information online maximizes the impact of the agency's FOIA efforts by allowing others to access and use the information disclosed. Additionally, it could save CFPB resources by avoiding the need to process additional requests for the same information. The Department of Defense has successfully begun to implement this practice. In addition, this practice was recommended in *Moving Toward a 21st Century Right-to-Know Agenda*¹, a 2008 report by OMB Watch and other open government advocates.

In addition to online disclosures in response to a request, CFPB should revise its regulations to recognize its responsibility to post information online *in advance* of receiving a FOIA request. President Obama, in his Jan. 21, 2009 FOIA memo², and Attorney General Holder, in his March 19, 2009 FOIA memo³, make clear agencies' responsibility to do so. For instance, the FOIA regulations proposed by the Department of Justice on March 21, 2011⁴ affirm the department's responsibility for "determining which of its records are required to be made publicly available, *as well as identifying additional records of interest to the public that are appropriate for public disclosure*, and for posting such records" (emphasis added); CFPB should adopt similar language.

In addition to proactively posting individual records of interest to the public, CFPB should adopt the best practices recommended by the Office of Government Information Services (OGIS) to "establish categories of records that can be disclosed regularly."⁵ CFPB should work with stakeholders to identify such categories of records.

Allow requesters to submit FOIA requests via email and website

OMB Watch is also concerned that the proposed FOIA regulations do not allow for the online submission of requests. The proposed regulations in § 1070.14(b) refer to the CFPB website for submitting requests electronically. However, the website currently directs the public to submit requests only via mail or fax. This limitation is disappointing in a time so clearly dominated by email communication. CFPB should adopt the OGIS best practice to "develop an online or e-mail system for filing FOIA requests." In particular, CFPB should establish an email address to receive FOIA requests and should publish this address in its regulations as well as on the FOIA section of its website; CFPB should also establish a web form to receive requests. These additional options will improve customer service to requesters and may facilitate processing more quickly than requests received on paper.

¹ <http://www.ombwatch.org/files/21strtkreecs.pdf>

² http://www.whitehouse.gov/the_press_office/FreedomofInformationAct/

³ <http://www.justice.gov/ag/foia-memo-march2009.pdf>

⁴ RIN 1105-AB27, 76 FR 15236.

⁵ <http://www.archives.gov/ogis/resources/bestpractices.pdf>

In addition to submitting requests online, CFPB should allow requesters to track their case status online. CFPB should adopt the OGIS best practice to "post a case log on [the] agency FOIA web page allowing requesters to search by tracking number."

Additionally, CFPB should ensure that requesters can communicate electronically with the agency throughout the FOIA process. To reduce printing and postage costs and to increase timeliness, CFPB should establish that it will communicate with requesters via email unless the requester specifies otherwise.

Expand the role of the Chief FOIA Officer

We appreciate § 1070.23(a)(5) of the proposed regulations, which assigns the Chief FOIA Officer the responsibility to facilitate public understanding of the FOIA system at CFPB. We recommend that CFPB revise its regulations to expand this responsibility to include oversight of the FOIA section of the CFPB website. Because the CFPB website is perhaps the most important source of information for CFPB FOIA requesters, it is important that CFPB assign its Chief FOIA Officer the responsibility to ensure that its site facilitates customer service and public understanding of FOIA.

We also appreciate that the current site already includes user-friendly explanations of the FOIA process to the public. This could be further improved by adding information about the requester services offered by OGIS and by linking to FOIA.gov.

Conclusion

OMB Watch appreciates the opportunity to comment on CFPB's proposed FOIA regulations. We hope you take our recommendations into consideration. If you have questions about our comments or want to discuss the issues further, please feel free to contact us.

Sincerely,



Sean Moulton
Director, Federal Information Policy
OMB Watch



Gavin Baker
Federal Information Policy Analyst
OMB Watch