

# Federal Maritime Commission

## Freedom of Information Act Annual Report

### October 1, 2019 to September 30, 2020

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#### **I. BASIC INFORMATION REGARDING REPORT**

1. Name, Title, Address, and telephone number of person(s) to be contacted with questions about the report:

Linda Hale, FOIA Specialist  
Ian Lane, Government Information Specialist  
Federal Maritime Commission  
800 N. Capitol St NW  
Washington DC 20573  
Telephone (202) 523-5725

2. Electronic link for access to the Report on the Agency website:

<https://www.fmc.gov/about-the-fmc/foia-annual-reports-and-chief-foia-officer-reports/>

To obtain a copy of the Report in paper form:

Send requests to the Office of the Secretary, Federal Maritime Commission at the address listed above, or email FOIA@fmc.gov, or fax request to (202) 523-0014.

#### **II. MAKING A FOIA REQUEST**

1. The Federal Maritime Commission has only one agency component that receives FOIA requests, shown below:

Rachel Dickon, Secretary  
Federal Maritime Commission  
800 North Capitol Street, NW  
Washington, DC 20573-0001  
Telephone (202) 523-5725  
[FOIA@fmc.gov](mailto:FOIA@fmc.gov)

2. The reason the majority of the FOIA requests processed by the Federal Maritime Commission (Commission) in Fiscal Year 2020 were not granted is that there were no records responsive to the request. For the FOIA requests that were partially granted, generally, documents were withheld

by the Commission pursuant FOIA exemption 5, 5 U.S.C. §552(b)(5) and to information protected by statute pursuant to FOIA exemption 3, 5 U.S.C. §552(b)(3). The statute relied on the most for withholding by the Commission is 46 U.S.C. §40306, regarding nondisclosure of information from parties to agreements among ocean carriers or marine terminal operators (other than the agreement itself) submitted to the Commission by the filing party.

3. Below is an electronic link to FMC FOIA regulations (including the fee schedule at Subpart - F): [FMC FOIA regulations – 46 CFR §§ 503.31-34](#)

### III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

1. Commission or FMC means Federal Maritime Commission.
2. Definitions of terms 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.
  - 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 “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.

h. **Full Grant** – an agency decision to disclose all records in full in response to a FOIA request.

i. **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 because of a procedural reason, such as when no records could be located.

j. **Median Number** – the middle, not average, number. For example, of 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. 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 any individual

h. **Exemption 8:** information relating to the supervision of financial institutions

i. **Exemption 9:** geological information on wells

### 3. Agency Component Abbreviations

Component Abbreviation	Component Name
FMC	Federal Maritime Commission

### IV. Exemption 3 Statutes

Statute	Type of Information Withheld	Case Citation	Agency / Component	Number of Times Relied upon by Agency / Component	Total Number of Times Relied upon by Agency Overall
5 U.S.C. § 574(j)	Dispute resolution communications	N/A	FMC	1	1
26 U.S.C. §§ 6103, 6105	Certain tax return information, to include Taxpayer Identification Numbers of third parties, and certain tax convention information	Church of Scientology v. IRS, 484 U.S. 9, 15 (1987) (26 U.S.C. § 6103); Elec. Priv. Info. Ctr. v. IRS, 910 F.3d 1232 (D.C. Cir. 2018); Leonard v. U.S. Dep't of	FMC	1	1



FMC	1	6	1	12	0	0	0	1	0	0	0	0	21
AGENCY OVERALL	1	6	1	12	0	0	0	1	0	0	0	0	21

**V.B.(2). DISPOSITION OF FOIA REQUESTS -- "OTHER" REASONS FOR "FULL DENIALS BASED ON REASONS OTHER THAN EXEMPTIONS"**

Agency / Component	Description of "Other" Reasons for Denials from Chart B(1)	Number of Times "Other" Reason Was Relied Upon	TOTAL
FMC	N/A	0	0
AGENCY OVERALL			0

**V.B.(3). DISPOSITION OF FOIA REQUESTS -- NUMBER OF TIMES EXEMPTIONS APPLIED**

Agency / Component	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
FMC	0	0	5	4	5	2	0	0	2	0	0	0	0	0
AGENCY OVERALL	0	0	5	4	5	2	0	0	2	0	0	0	0	0

**VI.A. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS -- RECEIVED, PROCESSED, AND PENDING ADMINISTRATIVE APPEALS**

Agency / Component	Number of Appeals Pending as of	Number of Appeals	Number of Appeals	Number of Appeals Pending as of





		I Requ est Level			Descri bed	r Reas ons		Appe al		of Reque st for Exped ited Proce ssing	t belo w
FMC	0	0	0	0	0	0	0	0	0	0	0
AGENCY OVERALL	0	0	0	0	0	0	0	0	0	0	0

**VI.C.(3). REASONS FOR DENIAL ON APPEAL -- "OTHER" REASONS**

Agency / Component	Description of "Other" Reasons for Denial on Appeal from Chart C(2)	Number of Times "Other" Reason Was Relied Upon	TOTAL
FMC	N/A	0	0
AGENCY OVERALL			0

**VI.C.(4). RESPONSE TIME FOR ADMINISTRATIVE APPEALS**

Agency / Component	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
FMC	17	17	17	17
AGENCY OVERALL	17	17	17	17

**VI.C.(5). TEN OLDEST PENDING ADMINISTRATIVE APPEALS**

Agency / Component		10th Oldest Appeal	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Appeal
FMC	Date of Appeal	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
AGENCY OVERALL	Date of Appeal	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.A. FOIA REQUESTS -- RESPONSE TIME FOR ALL PROCESSED PERFECTED REQUESTS**

Agency / Component	SIMPLE				COMPLEX				EXPEDITED PROCESSING			
	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	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
FMC	3	3.7	1	7	21	30.3	7	99	N/A	N/A	N/A	N/A
AGENCY OVERALL	3	3.7	1	7	21	30.3	7	99	N/A	N/A	N/A	N/A

**VII.B. PROCESSED REQUESTS -- RESPONSE TIME FOR PERFECTED REQUESTS IN WHICH INFORMATION WAS GRANTED**

Agency /	SIMPLE				COMPLEX				EXPEDITED PROCESSING			
	Median	Average	Lowest	Highest	Median	Average	Lowest	Highest	Median	Average	Lowest	Highest





FMC	Date of Receipt	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	2020-09-29	2020-09-16
	Number of Days Pending	0	0	0	0	0	0	0	0	0	1	10
AGENCY OVERALL	Date of Receipt	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	2020-09-29	2020-09-16
	Number of Days Pending	0	0	0	0	0	0	0	0	0	1	10

**VIII.A. REQUESTS FOR EXPEDITED PROCESSING**

Agency / Component	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
FMC	0	0	0	0	0
AGENCY OVERALL	0	0	0	0	0

**VIII.B. Requests for Fee Waiver**

Agency / Component	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
FMC	0	0	N/A	N/A
AGENCY OVERALL	0	0	N/A	N/A

**IX. FOIA Personnel and Costs**

Agency / Component	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
FMC	1	0.17	1.17	250400.10	0.00	250400.10
AGENCY OVERALL	1	0.17	1.17	250400.10	0.00	250400.10

**X. Fees Collected for Processing Requests**

Agency / Component	Total Amount of Fees Collected	Percentage of Total Costs
FMC	0.00	0.0000
AGENCY OVERALL	0.00	0.0000

**XI.A. Number of Times Subsection (C) Used**

Agency / Component	Number of Times Subsection Used
FMC	0
AGENCY OVERALL	0

**XI.B. Number of Subsection (A)(2) Postings**

Agency / Component	Number of Records Posted by the FOIA Office	Number of Records Posted by Program Offices
FMC	0	15
AGENCY OVERALL	0	15

**XII.A. Backlogs of FOIA Requests and Administrative Appeals**

Agency / Component	Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
FMC	0	0
AGENCY OVERALL	0	0

**XII.B. CONSULTATIONS ON FOIA REQUESTS -- RECEIVED, PROCESSED, AND PENDING CONSULTATIONS**

Agency / Component	Number of Consultations Received from Other Agencies that were <u>Pending</u> at the Agency as of <u>Start</u>	Number of Consultations <u>Received</u> from Other Agencies During the Fiscal Year	Number of Consultations Received from Other Agencies that were <u>Processed</u> by the Agency	Number of Consultations Received from Other Agencies that were <u>Pending</u> at the Agency as of <u>End</u>

	of the Fiscal Year		During the Fiscal Year	of the Fiscal Year
FMC	0	0	0	0
AGENCY OVERALL	0	0	0	0

**XII.C. CONSULTATIONS ON FOIA REQUESTS -- TEN OLDEST CONSULTATIONS RECEIVED FROM OTHER AGENCIES AND PENDING AT THE AGENCY**

Agency / Component		10th Oldest Consultation	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Consultation
FMC	Date	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Number of Days	0	0	0	0	0	0	0	0	0	0
AGENCY OVERALL	Date	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Number of Days	0	0	0	0	0	0	0	0	0	0

**XII.D.(1). COMPARISON OF NUMBERS OF REQUESTS FROM PREVIOUS AND CURRENT ANNUAL REPORT -- REQUESTS RECEIVED AND PROCESSED**

Agency / Component	NUMBER OF REQUESTS <u>RECEIVED</u>		NUMBER OF REQUESTS <u>PROCESSED</u>	
	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
FMC	22	21	23	21



AGENCY OVERALL	22	21	23	21
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**XII.D.(2). COMPARISON OF NUMBERS OF REQUESTS FROM PREVIOUS AND CURRENT ANNUAL REPORT -- BACKLOGGED REQUESTS**

Agency / Component	Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report
FMC	1	0
AGENCY OVERALL	1	0

**XII.E.(1). COMPARISON OF NUMBERS OF ADMINISTRATIVE APPEALS FROM PREVIOUS AND CURRENT ANNUAL REPORT -- APPEALS RECEIVED AND PROCESSED**

Agency / Component	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
FMC	0	1	0	1
AGENCY OVERALL	0	1	0	1

**XII.E.(2). COMPARISON OF NUMBERS OF ADMINISTRATIVE APPEALS FROM PREVIOUS AND CURRENT ANNUAL REPORT -- BACKLOGGED APPEALS**

Agency / Component	Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report
FMC	0	0
AGENCY OVERALL	0	0