

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT



Freedom of Information Act (FOIA) Report

**October 1, 2008
Through
September 30, 2009**

February 2010

A New Day for the Civil Service

OPM Annual Freedom of Information Act (FOIA) Report for Fiscal Year (FY) 2009

I. BASIC INFORMATION REGARDING REPORT

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2. The electronic address for this report on OPM's World Wide Web site:
www.opm.gov/efoia.
3. A paper copy of this report may be obtained from the address listed above.

II. MAKING A FOIA REQUEST

1. Our FOIA Reference Guide (located at www.opm.gov/efoia/foiaguide.asp) includes information on how to make a FOIA request to OPM.
2. OPM often withholds personally identifiable "third-party" information contained within personal files (SF50) and background investigations (SF86) under the exemption b(6).

III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

1. Agency-specific acronyms used in this report:
 - a. OPM – Office of Personnel Management
 - b. CIS – Center for Information Services
 - c. FISD – Federal Investigative Services Division
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 the access provisions of the FOIA and 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 that 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 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. **Multitrack 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 out in the statute and in agency regulations.
 - ii. **Simple Request** – a FOIA request that an agency using multitrack processing places in its fastest (nonexpedited) track based on the low volume or simplicity of the records requested.
 - iii. **Complex Request** – a FOIA request that an agency using multitrack processing places in a slower track based on the high volume 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. **Perfect Request** – a request for records that 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 20 working days from receipt of a perfected FOIA request).
3. 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** – interagency 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.

IV. EXEMPTION 3 STATUTES

A. Exemption 3 Statutes Relied Upon to Withhold Information

Statute	Type of Information Withheld	Case Citation	Number of Times Relied Upon per Component	Total Number of Times Relied Upon by Agency
50 United States Code (U.S.C.) 403g	CIA functions	Minier v. CIA, 88 F.3d 796 (9 th Cir. 1996)	3	3
National Security Act of 1974 or CIA Act of 1949	Intelligence sources and methods/CIA functions and information	CIA v. Sims, 471 U.S. 159, 167 (1985)	1	1
50 United States Code Annotated (U.S.C.A.) 403-1(i)(1), 403(g)	CIA information	Berman v. CIA, 501 F.3d 1136 (9 th Cir. 2007)	2	2

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
Agency Overall	99	3,273	3,317	55

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 Component or Agency	Request Withdrawn	Fee-Related Reason	Records Not Reasonably Described	Improper FOIA Request for Other Reason	Not Agency Record	Duplicate Request	Other *Explain in chart below	
Agency Overall	3,021	62	37	22	13	64	8	5	15	25	16	29	3,317

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) and Number of Times Those Reasons Were Relied Upon	TOTAL
Agency Overall	Items were administratively closed when requestors no longer expressed an interest in seeking items under the FOIA.	29

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	4	6	1	11	5	30	1	1	0	0	0	0	0	0

VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS

A. Received, Processed, and Pending Administrative Appeals

Number of Appeals Pending as of Start of Fiscal Year	Number of Appeals Received in Fiscal Year	Number of Appeals Processed in Fiscal Year	Number of Appeals Pending as of End of Fiscal Year
3	30	31	2

B. Disposition of Administrative Appeals – All Processed Appeals

Number Affirmed on Appeal	Number Partially Affirmed and Partially Reversed/Remanded on Appeal	Number Completely Reversed/Remanded on Appeal	Number of Appeals Closed for Other Reasons	TOTAL
22	3	5	1	31

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
2	1	6	0	6	10	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 Withdrawn	Fee-Related Reason	Records Not Reasonably Described	Improper Request for Other Reasons	Not Agency Record	Duplicate Request or Appeal	Request in Litigation	Appeal Based Solely on Denial of Request for Expedited Processing	Other *Explain in chart below
0	0	0	0	1	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) and Number of Times Those Reasons Were Relied Upon	TOTAL
Description #	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	43	7	100

C. (5) Ten Oldest Pending Administrative Appeals

	10th Oldest Appeal	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Appeal
Date of Receipt of 10 Oldest Appeals	8/26/09									
Number of Days Pending	35									

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

A. Processed Requests – Response Time for All Processed Perfected Requests**

	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
Agency Overall	N/A	N/A	N/A	N/A	64	37	1	2,666	60	51	24	60

** Due to the nature of OPM’s FOIA tracking process, all perfected requests are captured as complex requests. OPM is working to correct the process.

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

	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
Agency Overall	N/A	N/A	N/A	N/A	64	37	1	2,666	60	60	60	60

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

Complex Requests

	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
Agency Overall	523	765	1851	65	32	9	8	10	3	1	1	4	45	3,317

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	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
Agency Overall	0	1	3	0	0	0	0	0	0	0	0	0	0	4

D. Pending Requests – All Pending Perfected Requests

	SIMPLE			COMPLEX			EXPEDITED PROCESSING		
	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days
Agency Overall	N/A	N/A	N/A	48	297	155	1	13	13

E. Pending Requests – Ten Oldest Pending Perfected Requests

	10 th Oldest Request and Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Request and Number of Days Pending
Agency Overall	8/26/08 401	8/4/08 423	3/5/08 575	1/29/08 611	1/14/08 626	9/18/07 744	4/23/07 892	3/15/07 931	2/2/07 972	11/30/05 1,401

VIII. REQUESTS FOR EXPEDITED PROCESSING AND 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 10 Calendar Days
Agency Overall	4	0	3	7	4

B. Requests for Fee Waiver

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
Agency Overall	11	3	5	7

IX. FOIA PERSONNEL AND COSTS

	PERSONNEL			COSTS		
	Number of “Full-Time FOIA Employees”	Number of “Equivalent Full-Time FOIA Employees”	Total Number of “Full-Time FOIA Staff” (The sum of columns 1 and 2)	Processing Costs (At initial request and appeal levels)	Litigation- Related Costs	Total Costs
Agency Overall	20	5.5	25.5	\$1,984,575	\$4,930	\$1,989,505

X. FEES COLLECTED FOR PROCESSING REQUESTS

	Total Amount of Fees Collected	Percentage of Total Costs
Agency Overall	\$20,845	>1%

XI. FOIA REGULATIONS

OPM's regulations (5 CFR 294) are available at www.gpoaccess.gov/cfr/index.html.

Our fee schedule is explained in our FOIA Reference Guide at www.opm.gov/efoia.

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
Agency Overall	39	2

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

	Number of Consultations Received From Other Agencies That Were <u>Pending</u> at Our Agency as of <u>Start</u> of Fiscal Year	Number of Consultations <u>Received From Other Agencies</u> During Fiscal Year	Number of Consultations Received From Other Agencies That Were <u>Processed</u> by Our Agency During Fiscal Year	Number of Consultations Received From Other Agencies That Were <u>Pending</u> at Our Agency as of <u>End</u> of Fiscal Year
Agency Overall	1	1	2	0

C. Consultations on FOIA Requests – Ten Oldest Consultations Received From Other Agencies and Pending at Our Agency

	10 th Oldest Consultation and Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Consultation and Number of Days Pending
Agency Overall	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 <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
Agency Overall	7,132	3,273	6,137	3,317

	Number of Backlogged Requests as of End of Fiscal Year From Previous Annual Report	Number of Backlogged Requests as of End of Fiscal Year From Current Annual Report
Agency Overall	93	39

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

	NUMBER OF APPEALS <u>RECEIVED</u>		NUMBER OF APPEALS <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
Agency Overall	35	30	3	28

	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
Agency Overall	3	2



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