

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

# Freedom of Information Act Annual Report

Fiscal Year 2019



## **I. Basic Information Regarding Report**

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2. The electronic address for this report on OPM's World Wide Web site:  
[opm.gov/efoia](http://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 [opm.gov/efoia/foiaguide.asp](http://opm.gov/efoia/foiaguide.asp)) includes information regarding how to make a FOIA request to OPM.
2. The Office of Personnel Management 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. Provide any agency-specific acronyms or terms used in this Report.
  - a. OPM – Office of Personnel Management
  - b. FIS – Federal Investigative Services
  - c. NBIB – National Background Investigations Bureau
2. Include the following 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.

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. **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. **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.
  - 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. Include the following 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:** 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
4. Agency Component Abbreviations

<b>Component Abbreviation</b>	<b>Component Name</b>
OPM CO	OPM Central Office
NBIB	National Background Investigations Bureau

**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
41 U.S.C. § 4702 (formerly at 41 U.S.C. § 253b(m)(1))	Contractor proposals that are in the possession or control of an executive agency and that have not been set forth or incorporated by reference into contracts	Sinkfield v. HUD, No. 10-885, 2012 U.S. Dist. LEXIS 35233, at *13-15 (S.D. Ohio Mar. 15, 2012); Margolin v. NASA, No. 09-CV-00421, 2011 WL 1303221, at *6 (D. Nev. Mar. 31, 2011); Hornbostel v. U.S. Dep't of the Interior, 305 F. Supp. 2d 21, 30 (D.D.C. 2003), summary affirmance granted, No. 03-5257, 2004 WL 1900562 (D.C. Cir. Aug. 25, 2004).	OPM CO	26	26
50 U.S.C. § 3507 (formerly at 50 U.S.C. § 403g) (Central Intelligence Agency Act of 1949)	Intelligence sources and methods; certain information pertaining to Agency employees, specifically: "the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency"	ACLU v. DOJ, 681 F.3d 61, 72-75 (2d Cir. 2012); Larson v. Dep't of State, 565 F.3d 857, 865 n.2 (D.C. Cir. 2009); Berman v. CIA, 501 F.3d 1136, 1137-38, 1140 (9th Cir. 2007); Makky v. Chertoff, 489 F. Supp. 2d 421, 442 (D.N.J. 2007), aff'd on other grounds, 541 F. 3d 205 (3d Cir. 2008).	NBIB	391	391
31 U.S.C. § 5319 (Bank Secrecy Act)	Reports pertaining to monetary instruments transactions filed under subchapter II of chapter 53 of title 31 and records of those reports	Turner v. Dep't of Treasury, No. 15-00007, 2017 WL 1106030 at *7 (E.D. Cal. Mar. 23, 2017); Yunes v. DOJ, 263 F. Supp. 3d 82, 87 (D.D.C. 2017); Council on Am.-Islamic Relations, Cal. v. FBI, 749 F. Supp. 2d 1104, 1117 (S.D. Cal. 2010); Berger v. IRS, 487 F. Supp. 2d 482, 496-97 (D.N.J. 2007), aff'd on other grounds, 288 F. App'x 829 (3d Cir. 2008).	NBIB	1,806	1,806

**V. A. FOIA Requests – Received, Processed and Pending FOIA Requests**

Agency / Component	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
OPM CO	259	7,789	7,794	254
NBIB	0	2,706	2,699	7
Agency Overall	259	10,495	10,493	254

\*After reviewing its database, OPM adjusted the number of requests pending from the previous Fiscal Year from 306 to 259.

**V. B.(1). Disposition of FOIA Requests – All Processed Requests**

Agency / Component	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	
OPM CO	7,470	80	31	67	18	25	15	25	21	36	6	0	7,794
NBIB	24	2,624	12	27	2	2	4	2	1	0	0	1	2,699
Agency Overall	7,494	2,704	43	94	20	27	19	27	22	36	6	0	10,493

**V. B.(2). Disposition of FOIA Requests – “Other” Reasons for “Full Denial Based on Reasons Other than Exemptions”**

Agency / Component	Description of “Other” Reasons for Denial from Chart B(1)	Number of Times “Other” Reason Was Relied Upon	Total
OPM CO		0	0
NBIB	Records Beyond Retention	1	1
Agency Overall			1



**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	Ex. 8	Ex. 9
OPM CO	0	14	26	11	8	91	0	0	15
NBIB	0	0	2,197	1	2	2,139	0	0	2,133
Agency Overall	0	14	2.223	12	10	2,230	0	0	2,148

**VI. A. Administrative Appeals of Initial Determinations of FOIA Requests – Received, Processed, and Pending Administrative Appeals**

Agency / Component	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
OPM CO	45	61	97	9
NBIB	0	0	0	0
Agency Overall	45	61	97	9

**VI. B. Disposition of Administrative Appeals – All Processed Appeals**

Agency / Component	Number Affirmed on Appeal	Number Partially Affirmed & Partially Reversed/Remanded on Appeal	Number Completely Reversed/Remanded on Appeal	Number of Appeals Closed for Other Reasons	Total
OPM CO	33	9	11	44	97
NBIB	0	0	0	0	0
Agency Overall	33	9	11	44	97

**VI. C.(1). Reasons for Denial on Appeal – 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
OPM CO	0	2	0	0	0	12	0	0	6	6	7	0	0	0
NBIB	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Agency Overall	0	2	0	0	0	12	0	0	6	6	7	0	0	0

**VI. C.(2). Reasons for Denial on Appeal – Reasons Other than Exemptions**

Agency / Component	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
OPM CO	13	2	3	0	1	0	2	0	0	0	0
NBIB	0	0	0	0	0	0	0	0	0	0	0
Agency Overall	13	2	3	0	1	0	2	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
OPM CO	N/A	0	0
NBIB	N/A	0	0
Agency Overall	N/A	0	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
OPM CO	99.00	114.00	28.00	300.00
NBIB	0.00	0.00	0.00	0.00
Agency Overall	99.00	114.00	28.00	300.00

**VI. C.(5). Ten Oldest Pending Administrative Appeals**

Agency / Component	Date of Appeal / Number of Days Pending	10th Oldest Appeal	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Appeal
OPM CO	Date of Appeal										
	Number of Days Pending		1	94	108	130	141	198	217	231	233
NBIB	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										
	Number of Days Pending		1	94	108	130	141	198	217	231	233

**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
OPM CO	1	3.5	1	1549	30	104.7	1	1133	N/A	N/A	N/A	N/A
NBIB	N/A	N/A	N/A	N/A	27	33.8	1	3550	N/A	N/A	N/A	N/A
Agency Overall	1	3.5	1	1549	27	40.6	1	3550	N/A	N/A	N/A	N/A

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

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
OPM CO	1	2.4	1	1549	31	82.4	2	975	N/A	N/A	N/A	N/A
NBIB	N/A	N/A	N/A	N/A	23	34.2	1	3550	N/A	N/A	N/A	N/A
Agency Overall	1	2.4	1	1549	28	36.6	1	3550	N/A	N/A	N/A	N/A

**VII. C. Processed Simple Requests – Response Time in Day Increments**

Agency / Component	<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
OPM CO	7386	27	6	4	3	1	2	0	0	3	5	4	20	7461
NBIB	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Agency Overall	7386	27	6	4	3	1	2	0	0	3	5	4	20	7461

**VII. D. Processed Complex Requests – Response Time in Day Increments**

Agency / Component	<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
OPM CO	99	72	42	12	12	8	0	3	3	1	6	5	24	287
NBIB	566	1879	159	14	12	23	12	7	8	3	10	1	5	2699
Agency Overall	665	1951	201	26	24	31	12	10	11	4	16	6	29	2986

**VII. E. Processed Requests Granted Expedited Processing – Response Time in Day Increments**

Agency / Component	<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
OPM CO	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NBIB	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Agency Overall	0	0	0	0	0	0	0	0	0	0	0	0	0	0

**VII. F. Pending Requests – All Pending Perfected Requests**

Agency / Component	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
OPM CO	18	515	500.2	236	135	254.3	0	N/A	N/A
NBIB	0	N/A	N/A	7	8	7.7	0	N/A	N/A
Agency Overall	18	515	500.2	243	148	247.2	0	N/A	N/A

**VII. G. Pending Requests – Ten Oldest Pending Perfected Requests**

Agency / Component	Date of Receipt / Number of Days Pending	10th Oldest Request	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Request
	OPM CO	Date of Receipt									
Number of Days Pending		772	773	816	852	864	872	883	979	992	1020
NBIB	Date of Receipt	N/A	N/A	N/A							
	Number of Days Pending	0	0	0	1	1	5	8	10	14	15
Agency Overall	Date of Receipt										
	Number of Days Pending	772	773	816	852	864	872	883	979	992	1020

**VIII. A. Requests for Expediting 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
OPM CO	0	0	N/A	N/A	N/A
NBIB	0	77	1	1	77
Agency Overall	0	0	N/A	N/A	N/A

**VIII. B. Request for Fee Waiver**

Agency / Component	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
OPM CO	12	5	1	1
NBIB	1	1	1	1
Agency Overall	13	6	1	1

**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
OPM CO	6	8.14	14.14	\$1,543,967.48	\$44,550.00	\$1,426,879.24
NBIB	0	6.35	6.35	\$689,874.00	\$0.00	\$689,874.00
Agency Overall	6	14.49	20.49	\$2,233,841.48	\$44,550.00	\$2,278,391.48

**X. Fees Collected for Processing Requests**

<b>Agency / Component</b>	<b>Total Amount of Fees Collected</b>	<b>Percentage of Total Costs</b>
OPM CO	\$15,000.00	0.96%
NBIB	\$0.00	0.00%
Agency Overall	\$15,000.00	0.66%

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

<b>Agency / Component</b>	<b>Number of Times Subsection Used</b>
OPM CO	0
NBIB	0
Agency Overall	0

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

<b>Agency / Component</b>	<b>Number of Records Posted by the FOIA Office</b>	<b>Number of Records Posted by Program Offices</b>
OPM CO	0	968
NBIB	0	0
Agency Overall	0	968

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

<b>Agency / Component</b>	<b>Number of Backlogged Requests as of End of Fiscal Year</b>	<b>Number of Backlogged Appeals as of End of Fiscal Year</b>
OPM CO	229	0
NBIB	0	0
Agency Overall	229	0

**XII. B. Consultations on FOIA Request – Received, Processed, and Pending Consultations**

<b>Agency / Component</b>	<b>Number of Consultations Received from Other Agencies that were <i>Pending</i> at the Agency as of <i>Start</i> of the Fiscal Year</b>	<b>Number of Consultations Received from Other Agencies During the Fiscal Year</b>	<b>Number of Consultations Received from Other Agencies that were <i>Processed</i> by the Agency During the Fiscal Year</b>	<b>Number of Consultations Received from Other Agencies that were <i>Pending</i> at the Agency as of <i>End</i> of the Fiscal Year</b>
OPM CO	0	6	5	1
NBIB	0	5	5	0
Agency Overall	0	11	10	1

**XII. C. Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at the Agency**

<b>Agency / Component</b>	<b>Date / Number of Days</b>	<b>10th Oldest Consultation</b>	<b>9th</b>	<b>8th</b>	<b>7th</b>	<b>6th</b>	<b>5th</b>	<b>4th</b>	<b>3rd</b>	<b>2nd</b>	<b>Oldest Consultation</b>
OPM CO	Date	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	May 24, 2019
	Number of Days	0	0	0	0	0	0	0	0	0	89
NBIB	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	May 24, 2019
	Number of Days	0	0	0	0	0	0	0	0	0	89

**XII. D.(1). Comparison of Numbers of Requests from Previous and Current Annual Report – Requests Received and Processed**

Agency/Component	Number of Requests <i>Received</i>		Number of Requests <i>Processed</i>	
	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
OPM CO	8,342	7,789	8,243	7,794
NBIB	2,326	2,706	2,332	2,699
Agency Overall	10,668	10,495	10,575	10,493

**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
OPM CO	215	229
NBIB	0	0
Agency Overall	215	229

**XII. E.(1). Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report – Appeals Received and Processed**

Agency/Component	Number of Appeals <i>Received</i>		Number of Appeals <i>Processed</i>	
	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
OPM CO	47	61	62	97
NBIB	0	0	0	0
Agency Overall	47	61	62	97



**XII. E.(2). Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report – Backlogged Appeals**

<b>Agency / Component</b>	<b>Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report</b>	<b>Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report</b>
OPM CO	45	0
NBIB	0	0
Agency Overall	45	0



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