

**U.S. DEPARTMENT OF TRANSPORTATION  
FREEDOM OF INFORMATION ACT (FOIA) REPORT  
FISCAL YEAR 2004**

**I. Basic Information Regarding Report**

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**II. How to Make a FOIA Request**

**A.** Names, addresses, telephone numbers, fax numbers, and information to submit a request electronically (if appropriate) for all individual agency components and offices that receive FOIA requests.

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**B.** Brief description of the Agency's response times.

Some components of the Department of Transportation were able to respond to their FOIA requests within the statutory time frames.

For a detailed breakdown of each component's response times, see Section VII of this report, Compliance With Time Limits.

**C.** Brief description of why some requests are not granted.

Some requested records, or portions of records, were withheld pursuant to the FOIA's exemptions. The most frequently used exemption in DOT was Exemption 6, which protects against a clearly unwarranted invasion of personal privacy. Other reasons for not granting requests included:

DOT did not have the records sought.

The requester did not seek records; rather, he or she was seeking answers to questions.

The information from the records sought was publicly available.

### III. Definitions of Terms and Acronyms Used in the Report

#### A. Agency-specific acronyms or other terms.

<b>DOT</b>	Department of Transportation
<b>OST</b>	Office of the Secretary
<b>OIG</b>	Office of Inspector General
<b>Administrator</b>	The head of each component of DOT (including the Inspector General and the Director, Bureau of Transportation Statistics).
<b>Concurrence</b>	That the approval of the person being consulted is required in order for the subject action to be taken.
<b>Consultation</b>	That the approval of the person being consulted is not required in order for the subject action to be taken.
<b>Department</b>	The Department of Transportation, including the Office of the Secretary, the Office of Inspector General, and the following DOT components, all of which may be referred to as DOT components. Means of contacting each of these DOT components appear in 49 C.F.R. § 7.15. This definition specifically excludes the Surface Transportation Board, which has its own FOIA regulations (49 CFR Part 1001)
<b>BTS</b>	Bureau of Transportation Statistics
<b>FAA</b>	Federal Aviation Administration
<b>FHWA</b>	Federal Highway Administration
<b>FMCSA</b>	Federal Motor Carrier Safety Administration
<b>FRA</b>	Federal Railroad Administration
<b>FTA</b>	Federal Transit Administration
<b>MARAD</b>	Maritime Administration
<b>NHTSA</b>	National Highway Traffic Safety Administration
<b>RSPA</b>	Research and Special Programs Administration
<b>SLSDC</b>	Saint Lawrence Seaway Development Corporation

**SSI** Sensitive Security Information. (49 U.S.C. § 40119 and 49 C.F.R. Parts 15 and 1520.)

**Remanded Appeal** An appeal request, particularly a “no records” appeal, sent back to the original action office or forwarded to another office when the requester provides additional information either clarifying the documents sought or providing additional search parameters. The action office considers the request as if it were a new request, responding directly to the requester. Remanded appeal responses may again be appealed; appeal rights are provided if the remanded appeal response is a denial, partial denial or “no records” determination.

**B.** Basic terms expressed in common terminology.

1. **FOIA / PA Request**—Freedom of Information Act / Privacy Act request. A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records concerning oneself; such requests may also be treated as FOIA requests.
2. **Initial Request**—a request to a federal agency for access to records under the FOIA.
3. **Appeal**—a request to a federal agency asking that it review at a higher administrative level a full denial or partial denial of access to records under the FOIA, or any other FOIA determination such as a matter pertaining to fees.
4. **Processed Request or Appeal**—a request or appeal for which an agency has taken a final action on the request or the appeal in all respects.
5. **Multi-track Processing**—a system in which requests requiring relatively minimal review are classified as simple requests and are placed in one processing track and requests that are more voluminous and that require more review are classified as complex requests. Complex requests are placed in one or more other tracks. Requests within each track are processed on a first in, first out basis. A requester who has an urgent need for records may request expedited processing (see below).
6. **Expedited Processing**—When a requestor can show there is an exceptional need or urgency for a record or records (see 49 CFR 7.31(c)), an agency will process a FOIA request before those FOIA requests that have been submitted at an earlier date.
7. **Simple Request**—An agency using multi-track processing will classify a low volume request that requires relatively minimal review as a simple request and will place it in its fastest, non-expedited track.
8. **Complex Request**— An agency using multi-track processing will classify a voluminous request that requires more review as a complex request and will place it in its slower track.

9. **Grant**—an agency decision to disclose all records in full in response to a FOIA request.
10. **Partial Grant**—an agency decision to disclose a record in part in response to a FOIA request, withholding information determined to be exempt under one or more of the FOIA exemptions; or a decision to disclose some records in their entirety, but to withhold others in whole or in part.
11. **Denial**—an agency decision not to release any part of a record or records in response to a FOIA request because all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA exemptions, or for some procedural reason, such as no record is located in response to a FOIA request.
12. **Time Limits**—Under FOIA, the period of time within which an agency must respond to a FOIA request. Ordinarily, this period is 20 working days from proper receipt of a “perfected” FOIA request.
13. **Perfected Request**—a FOIA request for records that has been received by the FOIA office of the agency or agency component in possession of the records, which adequately describes the records sought, and for which there is no remaining question about the payment of applicable fees.
14. **Exemption 3 Statute**—a separate federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA exemption (b)(3).
15. **Median Number**—the median number is the middle number on the list in a set of numbers listed from the least number to the greatest number. For example, of 3, 7, and 14, the median number is 7. If a set of numbers has two middle numbers, the median is the number halfway between the two numbers. For example, 3, 4, 8, 12, the median number equals  $4+8 = 12/2 = 6$ .
16. **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.

#### IV. Exemption 3 Statutes

##### A. List of Exemption 3 statutes relied on by agency during current fiscal year.

<b>Statute</b>	<b>Type of Information Withheld</b>	<b>Case Citation</b>
5 U.S.C. App. 4, § 107(a)(2)	Confidential financial disclosure reports.	<i>Meyerhoff v. EPA</i> , 958 F.2d 1498 (9 <sup>th</sup> Cir. 1992)
23 U.S.C. § 403, note	The identity of individuals in highway traffic accident or research reports.	N/A
41 U.S.C. § 253b(m)	Contract proposals not incorporated in contracts.	<i>Hornbostel v. DOI</i> , 305 F.Supp.2d 21 (D.D.C. 2003)
49 U.S.C. § 30305(c)(1)	Certain information received pursuant to the National Driver Register Act of 1982.	N/A
49 U.S.C. § 31143(b)	IDs of motor carrier safety complainants.	N/A
49 U.S.C. § 40115	Information harmful to U.S. position in international aviation negotiations, or harmful to any U.S. international air carrier.	N/A
49 U.S.C. § 40119	Information that would be an unwarranted invasion of personal privacy, would reveal a trade secret or privileged or confidential information, or would be detrimental to the safety of passengers in transportation.	N/A
49 U.S.C. § 70114	Restricted commercial space launch activities information	N/A



**V. Initial FOIA/PA Access Requests**

**A. Numbers of Initial Requests**

	1. Number of requests pending end of FY 2003	2. Number of requests received during FY 2004	3. Number of requests processed during FY 2004	4. Number of requests pending as of end of FY 2004
<b>OST</b>	276	512	714	74
<b>OIG</b>	12	116	109	19
<b>FAA</b>	* 1,813	7,139	7,438	1,514
<b>FHWA</b>	57	391	361	87
<b>FRA</b>	94	496	524	66
<b>NHTSA</b>	40	335	367	8
<b>FTA</b>	19	199	192	26
<b>SLSDC</b>	3	35	36	2
<b>MARAD</b>	44	175	155	64
<b>RSPA</b>	38	167	185	20
<b>BTS</b>	0	46	46	0
<b>FMCSA</b>	105	764	778	91
<b>Totals</b>	<b>* 2,501</b>	<b>10,375</b>	<b>10,905</b>	<b>1,971</b>

\* This number is 41 fewer than the number reported as pending at the end of the year on the FY 2003 report; these 41 were either double FY 2003 entries discovered during FY 2004, or FY 2003 closures that were not entered until FY 2004.

**B. Disposition of Initial Requests**

	1. Number of Total Grants	2. Number of Partial Grants (where we invoked a FOIA exemption)	3. Number of Denials (where we invoked a FOIA exemption)
<b>OST</b>	94	58	48
<b>OIG</b>	18	43	19
<b>FAA</b>	2,990	1,369	136
<b>FHWA</b>	202	59	40
<b>FRA</b>	266	72	31
<b>NHTSA</b>	264	56	2
<b>FTA</b>	104	52	1
<b>SLSDC</b>	18	2	0
<b>MARAD</b>	82	19	0
<b>RSPA</b>	114	19	8
<b>BTS</b>	23	3	0
<b>FMCSA</b>	170	418	7
<b>Totals</b>	<b>4,345</b>	<b>2,170</b>	<b>292</b>

**Number of times each FOIA exemption was used**

	FOIA Exemptions													
	1	2	3	4	5	6	7(A)	7(B)	7(C)	7(D)	7(E)	7(F)	8	9
<b>OST</b>	0	2	2	24	18	45	0	0	15	0	0	0	0	0
<b>OIG</b>	0	18	2	4	22	37	13	0	39	6	5	0	0	0
<b>FAA</b>	3	62	10	97	405	778	127	8	31	1	3	1	0	0
<b>FHWA</b>	0	0	7	38	10	3	0	0	0	0	0	0	0	0
<b>FRA</b>	0	0	0	1	11	86	11	0	82	0	0	0	0	0
<b>NHTSA</b>	0	0	1	21	10	19	0	0	0	0	0	0	0	0
<b>FTA</b>	0	0	0	10	13	23	7	0	0	0	0	0	0	0
<b>SLSDC</b>	0	1	0	0	1	1	0	0	0	0	0	0	0	0
<b>MARAD</b>	0	1	1	15	5	6	1	0	0	0	0	0	0	0
<b>RSPA</b>	0	1	0	17	6	2	0	2	0	0	0	0	0	0
<b>BTS</b>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>FMCSA</b>	0	0	51	3	3	407	11	1	314	83	0	0	0	0
<b>Totals</b>	<b>3</b>	<b>85</b>	<b>74</b>	<b>230</b>	<b>504</b>	<b>1,407</b>	<b>170</b>	<b>11</b>	<b>481</b>	<b>90</b>	<b>8</b>	<b>1</b>	<b>0</b>	<b>0</b>

**(B) 4. Other Reasons for Non-Disclosure**

	No records	Ref	Req W/D	Fee-rel	Not reas described	Not a prop req	Not a record	Dup req	Avail. another source	Ref agency website	Total
<b>OST</b>	73	320	90	1	1	0	0	4	8	17	514
<b>OIG</b>	20	2	3	1	0	3	0	0	0	0	29
<b>FAA</b>	* 2,222	48	** 451	102	17	82	21	0	0	0	2,943
<b>FHWA</b>	6	10	15	2	2	2	10	6	7	0	60
<b>FRA</b>	122	9	14	0	0	0	0	8	0	2	155
<b>NHTSA</b>	19	2	2	3	1	0	0	10	8	0	45
<b>FTA</b>	26	2	3	1	1	2	0	0	0	0	35
<b>SLSDC</b>	14	1	0	0	1	0	0	0	0	0	16
<b>MARAD</b>	30	14	9	1	0	0	0	0	0	0	54
<b>RSPA</b>	15	12	9	4	0	3	0	0	1	0	44
<b>BTS</b>	11	8	1	0	0	0	0	0	0	0	20
<b>FMCSA</b>	10	4	87	1	5	1	48	13	0	14	183
<b>Totals</b>	<b>2,568</b>	<b>432</b>	<b>684</b>	<b>116</b>	<b>28</b>	<b>93</b>	<b>79</b>	<b>41</b>	<b>24</b>	<b>33</b>	<b>4,098</b>

\* Many of the "no records" determinations result from FOIA requests from airlines for accident/incident histories of prospective airline pilots.

\*\* Many requests are withdrawn when requesters learn that they can readily obtain the same information outside the FOIA program.

**VI. Appeals of Initial Denials of FOIA/PA Requests**

**A. Number of appeals**

<b>1.</b>	Number of appeals received during the fiscal year:	<b>118</b>
<b>2.</b>	Number of appeals processed during fiscal year	<b>101</b>

**B. Disposition of appeals.**

<b>1.</b>	Number completely upheld (where we invoked a FOIA exemption):	<b>40</b>
<b>2.</b>	Number of appeals partially upheld/partially reversed (where we invoked a FOIA exemption):	<b>12</b>
<b>3.</b>	Number completely reversed:	<b>9</b>

Number of times each FOIA exemption used:

<b>(1)</b>	Exemption 1	<b>0</b>
<b>(2)</b>	Exemption 2	<b>5</b>
<b>(3)</b>	Exemption 3	<b>1</b>
<b>(4)</b>	Exemption 4	<b>8</b>
<b>(5)</b>	Exemption 5	<b>12</b>
<b>(6)</b>	Exemption 6	<b>20</b>
<b>(7)</b>	Exemption 7(A)	<b>8</b>

<b>(8)</b>	Exemption 7(B)	<b>0</b>
<b>(9)</b>	Exemption 7(C)	<b>12</b>
<b>(10)</b>	Exemption 7(D)	<b>2</b>
<b>(11)</b>	Exemption 7(E)	<b>2</b>
<b>(12)</b>	Exemption 7(F)	<b>0</b>
<b>(13)</b>	Exemption 8	<b>0</b>
<b>(14)</b>	Exemption 9	<b>0</b>

<b>4.</b>	Other reasons for nondisclosure (total):	<b>40</b>
<b>a.</b>	No records	<b>13</b>
<b>b.</b>	Referrals	<b>0</b>
<b>c.</b>	Request withdrawn	<b>11</b>
<b>d.</b>	Fee-related reason	<b>3</b>
<b>e.</b>	Records not reasonably described	<b>0</b>
<b>f.</b>	Not a proper FOIA request for some other reason	<b>2</b>
<b>g.</b>	Not an agency record	<b>2</b>
<b>h.</b>	Duplicate Request	<b>0</b>
<b>i.</b>	Available from other sources	<b>0</b>
<b>j.</b>	Other (remanded)	<b>9</b>

**VII. Compliance with Time Limits**

**A. Median processing time for requests processed during the fiscal year.**

	<b>1. Simple Requests</b>		<b>2. Complex Requests</b>		<b>3. Expedited Processing</b>	
	Number Processed	Median # of days	Number Processed	Median # of days	Number Processed	Median # of days
<b>OST</b>	320	1	394	82	0	N/A
<b>OIG</b>	60	6	46	51	3	57
<b>FAA</b>	5,162	4	2,231	31	45	8
<b>FHWA</b>	331	9	30	30	0	N/A
<b>FRA</b>	0	N/A	524	95	0	N/A
<b>NHTSA</b>	0	N/A	367	23	0	N/A
<b>FTA</b>	192	68	0	N/A	0	N/A
<b>SLSDC</b>	36	18	0	N/A	0	N/A
<b>MARAD</b>	0	N/A	155	30	0	N/A
<b>RSPA</b>	85	19	89	135	11	5
<b>BTS</b>	46	5	0	N/A	0	N/A
<b>FMCSA</b>	0	N/A	778	58	0	N/A
<b>Totals</b>	<b>6,232</b>		<b>4,614</b>		<b>59</b>	

**B. Status of pending requests**

	Number of requests pending	Median # of days pending
<b>OST</b>	74	95
<b>OIG</b>	19	171
<b>FAA</b>	1,514	127
<b>FHWA</b>	87	317
<b>FRA</b>	66	45
<b>NHTSA</b>	8	7
<b>FTA</b>	26	55
<b>SLSDC</b>	2	4
<b>MARAD</b>	64	60
<b>RSPA</b>	20	125
<b>BTS</b>	0	0
<b>FMCSA</b>	91	16
<b>Total</b>	<b>1,971</b>	

### VIII. Comparisons with Previous Year

		<b>FY 2003</b>	<b>FY 2004</b>
<b>A.</b>	Requests received	10,649	10,375
<b>B.</b>	Requests processed	10,527	10,905
<b>C.</b>	Comparison of median number of days requests were pending as of end of fiscal year	Varied by component	

**D.** Other narrative statements describing agency efforts to improve timeliness of FOIA performance and to make records available to the public.

The DOT received approximately 180 requests for expedited processing. Of those requests, 59 were afforded expedited processing.

The FAA continues to increase the types and volume of non-sensitive information available to the public on the Internet.

The OIG continues to improve its website by providing high profile products on their website as promptly as possible. They also continue to provide all of their public audit reports, Congressional testimonies, and correspondences on the website. The OIG communicates with the requesters to effectively scope out their requests to better target more efficient searches. The OIG provides monthly status reports to senior management which helps to keep the timely processing of FOIA requests a priority of the agency. The OIG has also instituted weekly meetings with the FOIA Officer and management where weekly FOIA status updates are provided to keep the agency informed of pressing FOIA issues and high profile requests. In addition, the OIG has started using student and law interns to help with the processing of requests.

The NHTSA experienced no backlog problem during this fiscal year. The agency continues to update and provide a significant amount of information on its website. One NHTSA FOIA Specialist attended DOJ's 3-day training class.

The FMCSA FOIA staff has reduced the backlog from approximately 2 months down to approximately 3 weeks. The staff also uses e-mail responses and electronic documentation to further optimize its efficiency, which benefits the public.

**IX. FOIA Costs / Staffing**

**A. Staffing Levels**

	Number of full-time Personnel	Number of Personnel with Part-time or occasional FOIA duties (in total work-years)	Total Number of Personnel (In work-years)
OST	3.0	1.81	4.81
OIG	1.0	.36	1.36
FAA	16.0	13.25	29.25
FHWA	2.0	1.50	3.50
FRA	1.0	1.40	2.40
NHTSA	2.0	1.01	3.01
FTA	0	1.00	1.00
SLSDC	0	.25	.25
MARAD	1.0	1.10	2.10
RSPA	1.0	1.75	2.75
BTS	0	.10	.10
FMCSA	5.5	.50	6.00
<b>Totals</b>	<b>32.5</b>	<b>24.03</b>	<b>56.53</b>

**B. Total costs (including staff and all resources)**

	FOIA Processing (including appeals)	Litigation-related costs	Total
OST	\$482,183	\$44,864	\$527,047
OIG	\$201,266	0	\$201,266
FAA	\$4,523,170	\$20,000	\$4,543,170
FHWA	\$413,000	\$2,822	\$415,822
FRA	\$168,565	0	\$168,565
NHTSA	\$281,756	\$22,695	\$304,451
FTA	\$168,545	0	\$168,545
SLSDC	\$15,421	0	\$15,421
MARAD	\$429,643	0	\$429,643
RSPA	\$353,651	0	\$353,651
BTS	\$6,300	0	\$6,300
FMCSA	\$585,810	0	\$585,810
<b>Totals</b>	<b>\$7,629,310</b>	<b>\$90,381</b>	<b>\$7,719,691</b>

**X. Fees**

<b>A.</b>	Total Fees Collected	<b>\$214,496</b>
<b>B.</b>	Percentage of total FOIA costs	<b>.028</b>

**XI. DOT FOIA Regulations (including fee schedule) – 49 CFR Part 7**

( [http://www.dot.gov/foia/regulation\\_foia.html](http://www.dot.gov/foia/regulation_foia.html) )