

Revised
Executive Order 13392, “Improving Agency Disclosure of Information”

U.S. Department of Commerce
Freedom of Information Act Implementation Plan



October 2006

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A. Background

Executive Order (E.O.) 13392, signed by President Bush on December 14, 2005, provides that federal agencies should be citizen-centered in implementing the Freedom of Information Act (FOIA) and that the processes used to respond to FOIA inquiries should be results-oriented. Section 3 of E.O. 13392 requires that federal agencies review their FOIA operations, develop a plan for ensuring that their administration of FOIA adheres to the policies established in the E.O., and submit the results of these efforts to the Department of Justice (DOJ) and the Office of Management and Budget.

The Department of Commerce developed its plan in accordance with the E.O. and implementation guidance issued by DOJ. Additionally, the draft plan prepared by the Office of Information and Privacy (OIP) in the DOJ was used, at their recommendation, as a model for this plan.

B. Nature of Commerce FOIA Operations

Overall responsibility for implementing FOIA rests with the Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA) as the Department’s Chief FOIA Officer. The CFO/ASA is supported by the Departmental FOIA Officer in providing oversight, policy guidance, and technical assistance to fourteen bureau FOIA Officers, who manage day-to-day activities within their bureaus.

The Departmental FOIA Officer works in close collaboration with the Office of General Counsel (OGC). OGC’s role in connection with FOIA includes providing legal advice for processing FOIA inquiries, as needed; ruling on appeals; representing the Department in FOIA-related litigation; and providing FOIA training both in collaboration with the Departmental FOIA Officer and separately.

For FY 2001 through FY 2005, the Department received an average of 2,031 FOIA inquiries per year. The largest share was received by the National Oceanic and Atmospheric Administration (NOAA). During this five-year period, NOAA received an average of 579 requests per year or

28.5 percent of all FOIA inquiries coming into the Department. The U.S. Patent and Trademark Office and the Office of the Secretary received the next largest number of inquiries, averaging approximately 318 requests (or 15.7 percent) and 256 requests (or 12.6 percent) per year, respectively. Together, these three bureaus received and processed more than half of all inquiries received by the Department during the last five fiscal years.

C. Areas Selected for Review

The Department's FOIA Officers Roundtable plays a crucial role in coordinating FOIA activities across Commerce. It is made up of the Departmental FOIA Officer, bureau FOIA Officers, and FOIA staff; and is attended by a representative from OGC to answer legal questions. In developing this plan, the Roundtable collectively discussed the provisions of E.O. 13392 and, specifically, its requirement for reviewing existing processes in order to identify opportunities for enhancement. Nine areas were considered in order to determine whether opportunities for improvement exist:

- ! Additional Training
- ! FOIA Web Pages / Reading Room Records
- ! Improvement of FOIA Reference Guide
- ! Contracting Out / Hiring of Contract Employees
- ! Customer Relations / Communications
- ! Use of Information Technology
- ! Backlog Reduction
- ! Expedited Processing
- ! Multi-track Processing

D. Summary of Review Results

The Department's processing of FOIA requests is efficient. Through its review, the FOIA Officers Roundtable has, however, collaboratively identified options for enhancing Commerce's implementation of FOIA.

! Additional Training

Training was identified as the area with the most potential. Most employees, many of whom may have little, if any, knowledge of the FOIA process, will probably be required at some time in their career to search for and review documents responsive to a FOIA request. To meet this need, an in-house, web-based FOIA training course will be developed and made available to all employees.

! FOIA Web Pages / Reading Room Records

Our review found that FOIA web sites and electronic reading rooms are user friendly and easy to navigate. To ensure that the information that they contain is kept up-to-date, we currently review all FOIA web sites on a quarterly basis. No additional action is needed in

this area.

! *Improvement of FOIA Reference Guide*

The FOIA Reference Guide on the Department's web site warrants updating. The Guide will be enhanced with more comprehensive information, which will better assist potential requesters in understanding FOIA processes, and format changes.

! *Contracting Out / Hiring of Contract Employees*

Contracting out / hiring contract employees has been used in the past at the Department level in order to process voluminous FOIA requests. One of the Department's bureaus is currently considering use of contract personnel for its FOIA work. Specifically, they are establishing a blanket purchase agreement for contractor assistance. Contract workers will begin in June. After three months, the bureau will evaluate the effectiveness of using contract personnel and will decide whether to continue with contractor assistance permanently. The results of the evaluation and the metrics used to assess the outcome will be shared with all FOIA Officers and staff during a quarterly FOIA Officers Roundtable meeting.

! *Customer Relations / Communications*

The Department and its bureaus effectively use customer relations and communications to facilitate the FOIA process and, thereby, adhere to the intent of FOIA.

- " If a FOIA request is vague or not clearly formulated, every effort is made to streamline communications with the requester to obtain clarification. If possible, contact is made via telephone. Written correspondence is sent only when a requester cannot be contacted by telephone. Departmental and bureau FOIA staff routinely provide information concerning the mission and programs of the Department in order to better enable the requester to determine what records they wish to obtain.
- " When FOIA requests are received for records not maintained by the Department, every effort is made to identify and direct the requester to the appropriate, i.e., federal, state, or local, agency.
- " When requested information is already publicly available, a response is either provided without processing the request under FOIA procedures or the requester is promptly referred to the appropriate entity.
- " Many bureaus send acknowledgment letters to their requesters, which include the case number, and the name and telephone number of a contact person. Such letters provide requesters with assurance that their inquiry has been received and is being processed, as well as the identity of the individual to whom questions may be addressed if they arise. Because of the benefits inherent in this practice, a Department-wide requirement will be established for sending acknowledgment letters

in all cases.

" A FOIA Officers Roundtable is already in place and used as a means of ensuring communications between and among the FOIA Officers and staff. As a result of our review, however, it was determined that establishing a List Serv would provide a conduit for the easy exchange of ideas, a resource for solutions, and development of "best practices."

! *Use of Information Technology*

While evaluating information technology use, FOIA Officers expressed interest in obtaining electronic redacting capabilities. Several bureaus already have the capability to scan and electronically redact, but were interested in evaluating high speed/high volume scanners. Therefore, a decision was made to evaluate information technology available for scanning and redacting records, and to identify options for addressing bureau requirements.

! *Backlog Reduction*

Through this review process, we examined the historical and current backlog of FOIA requests. Over the last five years, the overall backlog represented between 9 and 13 percent of the workload in any given year. Several bureaus consistently had no backlog, while a few had one or two requests that exceeded the twenty-day processing time provided by statute. The FOIA Officers have pledged that, to the extent possible, the number of requests in Commerce's current backlog will serve as a ceiling and that they will work aggressively to reduce it throughout the year. Our goal is to reduce the existing backlog, per bureau, by a substantial percentage each year. Bureau FOIA Officers will also focus on the 10 oldest requests in the backlog, where applicable, and examine every option for resolving them. Bureau FOIA Officers will provide monthly status reports to the Department FOIA Officer. Quarterly, the FOIA Officers Roundtable will review progress in this area and assess any need to pursue alternatives, e.g., contract support, for achieving these goals.

! *Expedited Processing*

Commerce FOIA regulations allow expedited processing of requests that involve a compelling need. The term "compelling need" is defined as: (1) in the case of a requester that is primarily engaged in disseminating information, an urgency to inform the public concerning actual or alleged Federal Government activity, or (2) an imminent threat to the life or physical safety of an individual. Under this provision, a FOIA requester must certify that a compelling need exists. If a request meets the established criteria and is approved, it receives priority handling and the requested records are processed as soon as practicable.

All Commerce bureaus adhere to these procedures to the extent that such requests are received. In FY 2005, the Department received two requests for expedited processing; both were granted.

! *Multi-track Processing*

Multi-track processing allows Departments and agencies to establish separate paths for processing FOIA requests based on their complexity and the projected level of effort that will be needed to respond. This system provides the flexibility to address relatively simple requests more quickly than through a single track process.

Multi-track processing is used by Commerce bureaus depending on their particular circumstances relative to workload, backlog, and operations. Four bureaus currently use multi-track processing.

E. Areas Chosen for Improvement

Six aspects of FOIA implementation at the Department of Commerce were identified for enhancement:

- ! Additional Training
- ! Improvement of FOIA Reference Guide
- ! Contracting Out / Hiring of Contract Employees
- ! Customer Relations / Communications
- ! Use of Information Technology
- ! Backlog Reduction

F. Improvement Plan

Area	Goal	Milestones	Target Completion Date
Additional Training	Increase awareness of FOIA processing procedures and statutory requirements through web-based training	Consult with IT personnel in Department to discuss options	9/1/06
		Develop training materials in electronic format	4/30/07
		Test system	8/31/07
		Make training available online to all employees	1/31/08
Improvement of FOIA Reference Guide	Enhance assistance provided to potential FOIA requesters by improving the online reference guide	Draft updated FOIA reference guide	9/30/06
		Post updated FOIA reference guide to FOIA web site	11/30/06

Area	Goal	Milestones	Target Completion Date
Contracting Out / Hiring Contract Employees	Determine suitability of contractors to facilitate FOIA processing	<p>One bureau begins using contract personnel</p> <p>Effectiveness of using contract personnel evaluated</p> <p>Evaluation shared at FOIA Officers Roundtable</p> <p>Bureau will determine desirability of continuing its use of contract personnel</p>	<p>6/30/06</p> <p>11/30/06</p> <p>1/31/07</p> <p>3/31/07</p>
Customer Relations / Communications	Enhance customer satisfaction by adopting use of acknowledgment letters Department-wide	<p>Departmental FOIA Officer drafts guidance</p> <p>Guidance finalized and issued Department-wide</p> <p>Guidance implemented</p>	<p>9/30/06</p> <p>10/31/06</p> <p>11/30/06</p>
Customer Relations / Communications (continued)	Enhance communication among FOIA personnel by establishing a List Serv	<p>Departmental FOIA Officer to consult with IT personnel to discuss requirement</p> <p>Training provided to bureau FOIA Officers on use of List Serv</p> <p>Make List Serv available to bureau FOIA Officers</p>	<p>8/1/06</p> <p>11/30/06</p> <p>12/4/06</p>
Use of Information Technology	Facilitate FOIA processing through enhanced electronic scanning and redacting capabilities	<p>Departmental FOIA Officer to survey bureau FOIA Officers to determine technology currently used</p> <p>Site visits arranged with bureau FOIA Officers to demonstrate technological capabilities to counterparts</p> <p>Results discussed at FOIA Officers Roundtable meeting</p> <p>Best practices identified and adopted</p>	<p>1/31/07</p> <p>6/30/07</p> <p>8/31/07</p> <p>1/31/08</p>
Backlog Reduction	Close 10 oldest FOIA requests pending each year, per bureau ,for FY07 and FY08	<p>Identify 10 oldest FOIA requests in those bureaus where applicable.</p> <p>Implement the sets to complete the processing of the identified FOIA requests.</p> <p>Monitor progress through bureau FOIA Officers' monthly status reports to Departmental FOIA Officer.</p> <p>Monitor progress at quarterly FOIA Officers' meetings.</p> <p>Close out 10 oldest FOIA requests.</p> <p>Continue process prospectively through FY08.</p>	<p>9/30/06</p> <p>10/31/06</p> <p>on-going</p> <p>on-going</p> <p>9/30/07</p> <p>9/30/08</p>

Area	Goal	Milestones	Target Completion Date
Backlog Reduction (continued)	Decrease existing backlog of pending FOIA requests by a percentage each year 10% - FY06 (per bureau) 30% - FY07 (per bureau) 50% - FY08 (per bureau)	Conduct reviews to identify existing backlog.	5/5/06
		FOIA Officers' meeting to discuss reduction plan.	5/5/06
		Monitor progress through bureau FOIA Officers' monthly status reports to Departmental FOIA Officer.	on-going
		Monitor progress at quarterly FOIA Officers' meetings.	on-going
		Reduce existing backlog of pending FOIA requests by 10% in those bureaus where applicable.	12/31/06
		Reduce existing backlog of pending FOIA requests by 30% in those bureaus where applicable.	9/30/07
		Reduce existing backlog of pending FOIA requests by 50% in those bureaus where applicable.	9/30/08

G. Summary

While the processes currently employed by the Department and its bureaus to implement FOIA are efficient, we recognize that opportunities exist for enhancing services provided to the American public. Through the FOIA Officers Roundtable, the Departmental FOIA Officer and bureau FOIA Officers will enhance its processes with respect to training, guidance provided to potential requesters, using contract employees, customer relations and communications, information technology, and reducing backlogs. As a result of these efforts, the Department will be equipped to better ensure that the quality of service it provides under FOIA is as effective as possible and, thereby, maximize customer satisfaction.