

**U.S. Small Business Administration
Freedom of Information Act Annual Report
Fiscal Year 2005**

I. Basic Information

- A. For questions concerning this Report, contact:

Kitty Higgins, Paralegal Specialist (catherine.higgins@sba.gov)
U.S. Small Business Administration
FOI/PA Office, Mail Code: 2441
409 Third St., S.W.
Washington, D. C. 20416
202-401-8203

- B. Report may be obtained online at: www.sba.gov/foia/.
- C. Report may also be obtained by making a request to the address listed in A of this section or through the SBA Online FOIA Mailbox at foia@sba.gov.

II. How to Make a FOIA Request

- A. Our *Guide to Public Information*, located on SBA's FOIA Home Page at www.sba.gov/foia/handbook.html details the different methods (postal mail, electronic mail, fax, in person) and requirements for submitting a FOIA request to the SBA.

- B. Agency response-time ranges:

The median response time for processing **initial requests** in FY '05 was seven working days. For **appeals**, the median processing time was 20 working days.

SBA FOIA Annual Report FY'05 – page 2

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

The nature of the information created and/or maintained at the SBA commonly involves businesses requesting or receiving assistance. Therefore, the most frequently cited exemptions at the SBA are Exemptions 4, 5, and 6, when requests are made by third parties. Information withheld includes: commercial financial information; trade secrets; business plans; information on pending, declined, withdrawn, or canceled applications; information on defaults, delinquencies, losses; business owner's personal history, home address, birth date, social security number, and medical information; internal documents not incorporated into final Agency actions; and attorney work-product on pending litigation. In FY '05, there were a large number of first party requests for disaster loan records that were granted in full.

III. Definitions of Terms and Acronyms Used in this Report

A. SBA – U.S. Small Business Administration

B. Basic Terms:

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 are also treated as FOIA requests. (All requests for access to records, regardless of which law is cited by the requester, are included in this report.)
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 or partial denial of access to records under the FOIA, or any other FOIA determination such as a fee waiver or assessment.

SBA FOIA Annual Report FY '05 – page 3

4. Processed Request or Appeal -- a request or appeal for which an agency has taken a final action in all respects on the request or the appeal.
5. Multi-track processing -- a system in which simple requests requiring relatively minimal review are processed on one track, and more voluminous and complex requests are processed on one or more other tracks. Requests in each track are processed on a first-in/first out basis. A requester who has an urgent need for records may request expedited processing.
6. Expedited processing -- an agency will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records, which warrants prioritization of his or her request over other prior requests.
7. Simple request -- a FOIA request that an agency using multi-track processing assigns to its fastest (non-expedited) track based on the volume and/or simplicity of records requested.
8. Complex request -- a FOIA request that an agency using multi-track processing assigns to a slower track based on the volume and/or complexity of records requested.
9. Grant -- an agency decision to disclose in full all records in response to a FOIA request.
10. Partial grant -- an agency decision to disclose a record in part in response to a FOIA request, deleting information it determines is exempt under one or more exemptions; or a decision to disclose some records in full, 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 the agency determines all the information in the requested records is exempt under one or more exemptions, or for some procedural reason (such as because no record is located in response to a FOIA request).

SBA FOIA Annual Report FY '05 – page 4

12. Time limits -- the time period for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a "perfected" FOIA request).
13. "Perfected" request -- a FOIA request for records which adequately describes the records sought; which has been received by the FOIA office of the agency or agency component in possession of the records; and for which there remains no 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 subsection (b)(3).
15. Median number -- the middle, not average, number. For example, among 3, 7, and 14, the median number is 7.
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 the SBA in FY '05.
 1. Brief description of type(s) of information withheld under each statute.
 - a. 26 U.S.C. § 6103 – tax returns and tax return information.
 2. Example when a court has upheld the use of each statute.
 - a. Lehrfield v. Richardson, 132 F.3d 1463 (D.C. Cir. 1998).

SBA FOIA Annual Report FY '05 – page 5

V. Initial FOIA/PA Access Requests

A. Numbers of initial requests

1. # of requests pending as of end of FY '04 30
2. # of requests received during FY '05 3739
3. # of requests processed during FY '05 3737
4. # of requests pending as of end of FY '05 32

B. Disposition of initial requests

1. # of total grants 3172
2. # of partial grants 178
3. # of denials 58

a. number of times each exemption used

(1) Exemption 1	<u>0</u>
(2) Exemption 2	<u>11</u>
(3) Exemption 3	<u>2</u>
(4) Exemption 4	<u>116</u>
(5) Exemption 5	<u>74</u>
(6) Exemption 6	<u>94</u>
(7) Exemption 7(A)	<u>3</u>
(8) Exemption 7(B)	<u>0</u>
(9) Exemption 7(C)	<u>13</u>
(10) Exemption 7(D)	<u>2</u>
(11) Exemption 7(E)	<u>1</u>
(12) Exemption 7(F)	<u>0</u>
(13) Exemption 8	<u>0</u>
(14) Exemption 9	<u>0</u>

SBA FOIA Annual Report FY '05 – page 6

4. Other reasons for nondisclosure: total 329
 - a. no records 121
 - b. referral 47
 - c. request withdrawn 24
 - d. fee-related reason 11
 - e. records not reasonably described 6
 - f. not a proper FOIA request for some other reason 5
 - g. not an agency record 112
 - h. duplicate request 2
 - i. other 1 (not perfected)

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Numbers of appeals

1. # of appeals received during FY '05 20
2. # of appeals processed during FY '05 16

B. Disposition of appeals

1. # completely upheld 3
2. # partially reversed 8
3. # completely reversed 1

a. number of times each exemption used

- | | |
|-----------------|----------|
| (1) Exemption 1 | <u>0</u> |
| (2) Exemption 2 | <u>0</u> |
| (3) Exemption 3 | <u>0</u> |
| (4) Exemption 4 | <u>6</u> |
| (5) Exemption 5 | <u>4</u> |

SBA FOIA Annual Report FY '05 – page 7

(6) Exemption 6	<u> 6</u>
(7) Exemption 7(A)	<u> 0</u>
(8) Exemption 7(B)	<u> 0</u>
(9) Exemption 7(C)	<u> 1</u>
(10) Exemption 7(D)	<u> 0</u>
(11) Exemption 7(E)	<u> 0</u>
(12) Exemption 7(F)	<u> 0</u>
(13) Exemption 8	<u> 1</u>
(14) Exemption 9	<u> 0</u>

4. Other reasons for nondisclosure: total 4
- a. no records 2
 - b. referrals 0
 - c. request withdrawn 1
 - d. fee-related reason 1
 - e. records not reasonably described 0
 - f. not a proper FOIA request for some other reason 0
 - g. not an agency record 0
 - h. duplicate request 0
 - i. other 0

VII. Compliance with Time Limits/Status of Pending Requests

- A. Median processing time for requests processed during the year
- 1. Simple requests (Tracks not used)
 - a. # of requests processed 3737
 - b. median # of days to process 7
 - 2. Complex requests (No response as tracks not used)
 - 3. Requests accorded expedited processing (No expedited processing requests received)
 - a. # of requests processed 0
 - b. median # of days to process 0

SBA FOIA Annual Report FY '05 – page 8

B. Status of pending requests

1. # of requests pending at end of FY '05 32
2. Median # of days those requests were pending as of 9/30/05 16 days.

VIII. Comparisons (Optional)

A. Comparison of numbers of requests received:

There was a significant increase in requests received from 1901 in FY '04 to 3739 in FY '05. This increase is attributed to the major disasters in '05 (Hurricanes Katrina and Rita), resulting in requests for records related to business and home disaster loan applicants, mainly first party requests.

B. Comparison of numbers of requests processed:

See A.

C. Comparison of median numbers of days requests were pending as of end of fiscal year:

There was an increase from 10 to 16 days, not a significant increase, considering the number of requests processed.

D. The SBA received 0 requests for expedited processing as defined in 5 U.S.C. § 552(b)(6)(E) and granted 0 requests for expedited processing.

E. The SBA's internal FOIA Tracking System is fully deployed and is used by SBA FOIA Contacts in program and field offices, along with the FOI/PA Office. The mandatory system was created to facilitate the Agency's decentralized tracking of access requests and includes data on the requester and the subject of the request, key dates, actions until final disposition, and which program or field office processed the request.

SBA FOIA Annual Report FY '05 – page 9

IX. Costs/FOIA Staffing

A. Staffing levels

1. # of full-time FOIA personnel 2
2. # of personnel with part-time or occasional FOIA duties (in total work-years) 10.7
3. Total # of personnel (in work-years) 12.7
(The totals for #2 and #3 are estimated and based on percentages of time that individuals work on FOIA.)

B. Total costs

1. FOIA processing - approximately \$812,729.00
(This total includes the average basic salary for employees in field and program offices plus the salary percentages of those working in the FOI/PA Office.)
2. Litigation-related activities (estimated) – \$16,000.00
3. Total costs – approximately \$828,729.00

X. Fees

- A. Total fees collected by agency for processing requests \$16,250.40
- B. Percentage of total costs – approximately 2%

XI. FOIA Regulations

A copy of the current SBA Regulations on *Record Disclosure and Privacy*, 13 CFR § 102, are accessible electronically at www.sba.gov/library/cfrs/13cfr102.pdf.