

DEPARTMENT OF THE INTERIOR

Freedom of Information Act 2005 Annual Report (October 1, 2004 - September 30, 2005)

I. Basic Information Regarding Report

A. Questions about the report should be directed to:

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Office of the Chief Information
Officer (OCIO)
Department of the Interior (DOI)
1849 C Street, NW
MS-5312-MIB
Washington, D.C. 20240
Telephone No.: (202) 208-5342

B. The electronic address for this report on DOI's World Wide Web site is:

<http://www.doi.gov/foia/05anrep.pdf>.

C. A copy of the report in paper form may be obtained by contacting the Departmental FOIA Officer (see A, above).

II. How to Make a FOIA Request (see DOI's **Guide for Obtaining Information** which is located at the following Internet address: <http://www.doi.gov/foia/foitabl.htm>).

A. FOIA requests should be submitted to the FOIA contact at the bureau/office where the records are maintained. A list of the Department's bureaus/offices is provided below. If it is unclear where to send the request, contact the Departmental FOIA Officer. A list of DOI's FOIA contacts may be found at the following Internet address:

<http://www.doi.gov/foia/contacts.html>.

Bureaus/Offices

Office of the Secretary (OS)	Minerals Management Service (MMS)
Office of Hearings & Appeals (OHA)	Bureau of Land Management (BLM)
Office of Aircraft Services (OAS)	Fish & Wildlife Service (FWS)
Office of Inspector General (OIG)	National Park Service (NPS)
Office of the Solicitor (SOL)	Bureau of Reclamation (BOR)
Office of Surface Mining (OSM)	U.S. Geological Survey (USGS)
Bureau of Indian Affairs (BIA)	

- B. While the median number of days for DOI's bureaus and offices to process requests ranges from 7 - 43 days (see VII.A., Normal Requests), the timeframes in a large, highly decentralized organization, such as DOI, are often longer than they would be in a small, centralized agency. In DOI, the response time varies considerably depending on the existing workload, the complexity of the request, the volume of responsive records, and the need to consult and coordinate with other bureaus/offices and agencies.
- C. In accordance with its FOIA regulations, DOI makes records available to the public unless the information is protected from disclosure by one or more of the nine specific FOIA exemptions (see 43 CFR § 2.21(b)(2)). Some requests are not granted due to one of the reasons cited in V.B.4., below (see DOI's FOIA regulations, 43 CFR § 2.21(e)).

III. Definitions of Terms and Acronyms Used in the Report

- A. Agency-specific acronyms or other terms (see II.A., above).
- 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 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 Freedom of Information Act.
 - 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 Freedom of Information Act, 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 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 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 (see below).

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 requests that were made earlier.
7. Simple request - a FOIA request that an agency using multi-track processing places in its fastest (nonexpedited) track based on the volume and/or simplicity of records requested.

Complex request - a FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.
8. Grant - an agency decision to disclose all records in full in response to a FOIA request.
9. Partial grant - an agency decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entireties, but to withhold others in whole or in part.
10. 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's exemptions, or for some procedural reason (such as because no record is located in response to a FOIA request).
11. Time limits - the time period in the Freedom of Information Act for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a "perfected" FOIA request).
12. "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 is no remaining question about the payment of applicable fees.
13. 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).
14. Median number - the middle, not average number. For example, of 3, 7, and 14, the median number is 7.
15. 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

A1. and 2. List of Exemption 3 statutes relied on by DOI during current fiscal year with a brief description of the type of information withheld under each statute, and a statement of whether a court has upheld the use of each statute.

a. Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470hh(a).

1) Used to withhold information regarding historical, cultural, and archaeological resources and their specific locations; documents include maps and narrative descriptions of objects and their locations.

2) Pertinent litigation:

Starkey v. United States Department of the Interior, et al., Civil No. 01CV1458 (S.D. Calif. Dec. 15, 2002) (finding that the agency properly withheld, pursuant to exemption (3), narrative descriptions of archaeological resources, descriptions of objects, and commentary on their condition).

b. National Defense Authorization Act For Fiscal Year 1997 (contains a provision which amends the Federal Property and Administrative Services Act of 1949 (41 U.S.C. § 253b)).

1) Used to withhold the proposals of unsuccessful bidders and related information, and certain contract proposal information.

2) Pertinent litigation:

Hornbostel v. Department of the Interior, 305 F. Supp. 2d 21 (D.D.C. 2003) (finding that the agency properly withheld, pursuant to exemption 3 (subsection 821(b)(m) of the National Defense Authorization Act For Fiscal Year 1997, 41 U.S.C. § 253b), contractor proposals, as defined by the Act, because they are not set forth or incorporated by reference in a contract between the agency and the contractor that submitted the proposal.

- c. National Historic Preservation Act Amendments of 1980, 16 U.S.C. § 470w-3.
 - 1) Used to withhold information describing historical, cultural, and archaeological resources and their specific locations; documents include maps, and narrative descriptions of objects and their locations.
 - 2) DOI is not aware of any court cases upholding the use of this statute.
- d. Federal Cave Resources Protection Act of 1988, 16 U.S.C. § 4301.
 - 1) Used to withhold the geographic positioning system location of caves.
 - 2) DOI is not aware of any court cases upholding the use of this statute.
- e. Outer Continental Shelf Lands Act Amendments of 1978, 43 U.S.C. §1350 through §1352
 - 1) Used to withhold proprietary information pertaining to well logs.
 - 2) DOI is not aware of any court cases upholding the use of this statute.
- f. Indian Self Determination and Education Assistance Act, 25 U.S.C. 450 et seq., cited in error, to protect sensitive information regarding the tribe's economic development plans and the natural geophysical characteristics of their aboriginal base.
- g. Endangered Species Act, 16 U.S.C. 35, cited in error, to protect a survey relating to spotted owls.

V. Initial FOIA/PA Access Requests

A. Numbers of initial requests

- 1. Number of requests pending as of end of preceding fiscal year 1,581*
- 2. Number of requests received during current fiscal year 6,749

*Although DOI indicated in its FY 2004 Annual Report that there were 1,798 requests pending at the end of the fiscal year, the figure denoted in V.A.1. is correct. The difference is attributed to the fact that 1) although many requests were completed in FY 2004, the bureaus did not show them as being completed until after the FY 2004 report was finalized; 2) there were a few discrepancies in accounting; and 3) some of the bureau offices are still transitioning to DOI's centralized electronic FOIA tracking system (EFTS). The EFTS ultimately will provide for greater accuracy and accountability.

- 3. Number of requests processed during current fiscal year 6,420
- 4. Number of requests pending as of end of current fiscal year 1,910

B. Disposition of initial requests

- 1. Number of total grants 2,145
- 2. Number of partial grants 2,873
- 3. Number of denials 84

a. Number of times each FOIA exemption used (counting each exemption once per request)

- (1) Exemption 1 2
- (2) Exemption 2 120
- (3) Exemption 3 45
- (4) Exemption 4 153
- (5) Exemption 5 341
- (6) Exemption 6 1,967
- (7) Exemption 7 (A) 73
- (8) Exemption 7 (B) 1
- (9) Exemption 7 (C) 594
- (10) Exemption 7 (D) 11
- (11) Exemption 7 (E) 19
- (12) Exemption 7 (F) 10
- (13) Exemption 8 0
- (14) Exemption 9 5

4.	Other reasons for nondisclosure (total)	<u>1,318</u>
	a. no records	<u>475</u>
	b. referrals	<u>214</u>
	c. request withdrawn	<u>125</u>
	d. fee-related reason	<u>115</u>
	e. records not reasonably described	<u>186</u>
	f. not a proper FOIA request for some other reason	<u>59</u>
	g. not an agency record	<u>47</u>
	h. duplicate request	<u>78</u>
	i. other (specify)	<u>19</u>
	- Requester failed to provide additional clarification requested	<u>5</u>
	- Information provided verbally	<u>1</u>
	- Glomar response provided	<u>13</u>

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Numbers of appeals.

1.	Number of appeals received during fiscal year	<u>189</u>
2.	Number of appeals processed during fiscal year	<u>157</u>

B. Disposition of appeals.

1.	Number completely upheld	<u>14</u>
2.	Number partially reversed	<u>11</u>
3.	Number completely reversed	<u>52</u>

a. Number of times each FOIA exemption used
(counting each exemption once per appeal)

(1) Exemption 1	<u>0</u>
(2) Exemption 2	<u>0</u>
(3) Exemption 3	<u>0</u>
(4) Exemption 4	<u>2</u>
(5) Exemption 5	<u>7</u>
(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>9</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>0</u>
(14) Exemption 9	<u>1</u>

4. Other reasons for nondisclosure (total) 80

a. no records	<u>10</u>
b. referrals	<u>1</u>
c. request withdrawn	<u>4</u>
d. fee-related reason	<u>13</u>
e. records not reasonably described	<u>0</u>
f. not a proper FOIA request for some other reason	<u>2</u>
g. not an agency record	<u>0</u>

h. duplicate request	<u>3</u>
i. other (specify)	<u>47</u>
- Appeals closed due to litigation	<u>21*</u>
- Premature appeals	<u>2</u>
- No requirement to allow appellant to review records in bureau office	<u>1</u>
- Bureau failed to respond to FOIA requests within time limits, but exercising due diligence in responding to requests	<u>6</u>
- Complete response issued	<u>1</u>
- Remand due to procedural deficiencies (fee waiver, search, segregation)	<u>2</u>
- Remand (7A issue moot)	<u>2</u>
- Vaughn index not required at administrative level	<u>2</u>
- Bureaus resolved issues in appeals before appeal decisions issued	<u>3</u>

* DOI closed 11 appeals because they were the subject of lawsuits that were filed in FY 2005. DOI closed 10 other appeals because the matters were the subject of or resolved by litigation filed in previous fiscal years.

VII. Compliance with Time Limits/Status of Pending Requests

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

1. Simple requests

a. number of requests processed 198

b. median number of days to process (by bureau/office)

OS 2 (includes OHA/OAS)

MMS 8

2. Normal requests

a. number of requests processed 6,008

b. median number of days to process (by bureau/office)

OS	<u>12</u> (includes OHA/OAS)
OIG	<u>7</u>
SOL	<u>18</u>
OSM	<u>13</u>
MMS	<u>20</u>
BLM	<u>23</u>
FWS	<u>29</u>
NPS	<u>19</u>
BOR	<u>18</u>
USGS	<u>14</u>
BIA	<u>43</u>

NOTE: In January 2004, DOI began using multitrack processing. The following bureaus/offices are currently using 2 - 3 tracks to process their requests: BLM, OS, MMS, and OSM.

3. Complex requests

a. number of requests processed 189

b. median number of days to process (by bureau/office)

OS	<u>89</u> (includes OHA/OAS)
OSM	<u>55</u>
BLM	<u>57</u>
MMS	<u>28</u>

4. Requests accorded expedited processing

a. number of requests processed 25

b. median number of days to process (by bureau/office)

OS	<u>2</u> (includes OHA/OAS)
OIG	<u>1</u>
SOL	<u>0</u>
OSM	<u>0</u>
MMS	<u>0</u>
BLM	<u>6</u>
FWS	<u>15</u>
NPS	<u>0</u>
BOR	<u>1</u>
USGS	<u>0</u>
BIA	<u>0</u>

B. Status of pending requests.

1. Number of requests pending as of end of current fiscal year 1,910

2. Median number of days that such requests were pending as of that date (by bureau/office)

OS	<u>73</u> (includes OHA/OAS)
OIG	<u>927</u>
SOL	<u>45</u>
OSM	<u>10</u>
MMS	<u>81</u>
BLM	<u>675</u>
FWS	<u>106</u>
NPS	<u>72</u>
BOR	<u>14</u>
USGS	<u>0</u>
BIA	<u>421</u>

VIII. Comparisons with Previous Year(s) (Optional)

- A. Comparison of numbers of requests received
- 47% increase from FY 2004
- B. Comparison of numbers of requests processed
- 52% increase from FY 2004
- C. Comparison of median numbers of days requests were pending as of end of fiscal year - N/A
- D. Other statistics significant to agency - Not available
- E. Other narrative statements describing agency efforts to improve timeliness of FOIA performance and to make records available to the public (e.g., backlog - reduction efforts; specification of average number of hours per processed request; training activities; public availability of new categories of records):

- In FY 2003, the Department initiated a web-based electronic tracking and processing methodology for FOIA requests. The Electronic FOIA Tracking System (EFTS) currently provides the means to track and manage FOIA requests through FY 2008. In FY 2005, all bureaus/offices with Internet access, both in headquarters and the field, used the EFTS to track and manage their requests. Ongoing training allowed new FOIA staff to access the EFTS and improved the quality of system use by all DOI FOIA staff. This included a few field offices that were unable to access the system previously. The system allows FOIA Officers/Coordinators to share valuable information and identify duplicate requests; it also assists in ensuring consistency in responses, reducing processing time, facilitating reporting and reviews, and improving customer service, thereby improving the overall efficiency of the FOIA process. The Department will continue to implement enhancements to the system, pending the availability of funding, and consider cost efficient options of electronic processing and tracking to meet the additional needs of the bureaus and improve customer service.

- In January 2004, the Department authorized implementation of multitrack processing. Each bureau/office administering its own FOIA program is responsible for determining whether to use a single track or multi-tracks to process the FOIA requests it receives. To date, the following DOI components are using multitrack processing: BLM, OS, MMS, and OSM.

- DOI continues to be concerned about the fluctuation of staff dedicated to the FOIA program, particularly in light of the objectives of FOIA Executive Order (EO) 13392. The learning curve for new FOIA staff has contributed to processing delays and DOI's FOIA backlog.

- Although the FOIA backlog in BIA continued to increase in FY 2005 (by 26%), this rate of increase is not as significant as a result of various measures taken in FY 2004 (the rate of increase in FY 2004 was 31%). The increase was primarily due to the number of requests for routine accident reports as well as a prior existing backlog consisting of such requests. In FY 2005, as a result of recommendations that the Department made to senior management, BIA Privacy Act system of records notice BIA-18 was amended to make routine law enforcement reports available to certain parties through a new Privacy Act routine use. The Department continues to consult with BIA and SOL to develop a methodology to streamline the business process for handling these requests. The change in procedures should assist in reducing the FOIA backlog in FY 2006. The Department's Plan in response to EO 13392 will be addressing reduction and/or elimination of its FOIA backlog and considering other measures including a workaround which may allow BIA to track and manage the bureau's FOIA requests through possible other effective alternatives including the electronic FOIA tracking system.

- In March 2005, the Department conducted specialized FOIA/Privacy Act training for employees attending the American Society of Access Professionals Western Symposium.

- The Department also provided three FOIA/Privacy Act training sessions to employees through the DOI University, both in headquarters and the field.

- In FY 2005, BLM increased its employee awareness and training efforts. The BLM FOIA Officer conducted FOIA training for its state leads in Denver in August; and training for the Interagency Fire Center and the Idaho State Office in September. Specialized training was also conducted for the Human Resources staff in the Washington Office and for various State offices. The BLM National Training Center in Phoenix also provided training for the BLM FOIA Field Coordinators in June. Additionally, BLM conducted four management control reviews of its FOIA offices in Montana, Idaho, New Mexico, and the Office of Fire and Aviation.

- In FY 2005, the BIA conducted FOIA and Privacy Act training at its Navajo and Western and Eastern Oklahoma Regions.

- The BOR FOIA Officer provided FOIA training to the bureau's regional FOIA coordinators and new FOIA staff on an ongoing basis.

- The NPS had a substantial increase in the number of FOIA requests received due to the fact that it amended Privacy Act System of Records Notice NPS-19, Case Incident Reporting System, to include motor vehicle accident reports (i.e., motor vehicle accidents that occur on NPS lands). After the Notice was amended, these reports had to be requested under the FOIA. The NPS expended a considerable amount of effort to process these requests and keep its backlog at a minimum (3,137 requests were received in FY 2005 and 3,117 processed).

- The FWS provided updated fee waiver guidance to its FOIA program and regional contacts.

- The significant increase in the median number of days that MMS requests were pending at the end of FY 2005 was due to the number of requests pending in the New Orleans Office, as well as an unusual rate of FOIA personnel turnover throughout MMS.

- The Department and the bureaus continue to enhance their FOIA websites, making more information available on-line. This has contributed to a decrease in the number of FOIA requests received by some bureaus.

F.	Number of requests for expedited processing received	<u>54</u>
	Number of requests for expedited processing granted	<u>25</u>

IX. Costs/FOIA Staffing

A. Staffing levels

1.	Number of full-time FOIA personnel	<u>29</u>
2.	Number of personnel with part-time or occasional FOIA duties (in total work-years)	<u>92</u>
3.	Total number of personnel (in work-years)	<u>121</u>

B. Total Costs (including staff and all resources)

1.	FOIA processing (including appeals)	<u>\$7,666,403</u>
2.	Litigation-related activities (estimated)	<u>\$362,111</u>
3.	Total costs	<u>\$8,028,514</u>
4.	Comparison with previous year(s)	
	• 5% increase from FY 2004	

C. Statement of additional resources needed for FOIA compliance

As part of the review we are conducting to comply with Executive Order 13392, we are considering issues such as any additional resources that may be needed throughout the Department to ensure total compliance with the FOIA. A major concern centers on those bureaus and offices where FOIA is handled as a “collateral duty” and/or offices where the FOIA Officers are tasked with other duties outside their primary function, e.g., the OIG.

In FY 2005, the number of FOIA requests the Department received increased by 47%, primarily due to the fact that requests for NPS motor vehicle accident reports are now required to be processed under the FOIA due to a change in a NPS Privacy Act system of records notice (NPS-19), which was effective February 2005. Although we are exploring methods to streamline and address the causes of specific “peaks” such as this, the continuous increase overall does place demands on limited resources.

Also, the requests the Department receives are becoming more complex and voluminous. Many of these requests require coordination with other components in DOI and other Federal agencies. Such requests take longer to process—this adds to the Department’s FOIA backlog which has increased by 21% this year (based on adjusted figures).

Further, many of these requests are exceedingly costly to process without DOI ever recouping the fees. In addition, the number of appeals received and the increased focus on E-FOIA, E-Records Management, E-GOV Act, HSPD-12, and Privacy Act requirements have added to the existing workload burden. Additional staffing is needed for the FOIA program both at the Department level and the bureau level. Resources are needed to train FOIA Coordinators in order to bring them up to the appropriate level of expertise.

Finally, additional funding is required for operation and maintenance of the electronic FOIA tracking system, training on the system, and for any future upgrades, including the appeals, litigation, and the document management modules.

DOI is currently in the process of conducting its review of FOIA operations as required by FOIA Executive Order 13392, and as part of its review will be assessing the level of resources required to ensure Departmentwide compliance.

X. Fees

A. Total amount of fees collected by agency for processing requests \$134,114

B. Percentage of total costs 2%

XI. FOIA Regulations (Including the Fee Schedule)

A copy of DOI’s FOIA regulations, including the fee schedule (43 CFR Part 2, Subparts A thru E) may be found at the following Internet address: <http://www.doi.gov/foia/FOIARegulations.pdf>. A copy of the regulations in paper form may be obtained by contacting the Departmental FOIA Officer (see I..A., above).