

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF NATIONAL DRUG CONTROL POLICY

IMPROVING DISCLOSURE OF INFORMATION
SUMMARY

ONDCP reviewed its FOIA processes using a systems analysis. We reviewed the administrative system, technical system, communication system, and rewards system to identify strengths and weaknesses.

The analysis disclosed that rewards system should be improved to add FOIA duties to the Position Descriptions of the administrative assistants (Component Liaisons) that maintain agency records within each ONDCP component so that each affected individual must adequately perform FOIA duties to attain a fully successful performance rating.

The Chief of Staff approved the recommendation.

Implementation is set for completion by September 30, 2006.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF NATIONAL DRUG CONTROL POLICY

May 8, 2006

IMPROVING DISCLOSURE OF INFORMATION
A REVIEW OF THE ONDCP FREEDOM OF INFORMATION ACT OPERATIONS

I. Introduction

The President issued Executive Order 13392 entitled “Improving Agency Disclosure of Information.” The Executive Order requires that by June 14, 2006 each federal agency must conduct a review of its FOIA operations and prepare a plan for improvement. This document memorializes the review of the ONDCP FOIA operations and recommends improvements.

II. Plan for Review

ONDCP elected to review its FOIA operations using systems analysis. The following provides a short backdrop of the ONDCP. It next describes four systems within the ONDCP FOIA operation, *i.e.* administrative, technical, communication, and rewards systems. It analyzes each system to identify strengths and weaknesses. Finally, it recommends changes to improve those weaknesses.

III. Review

A. Backdrop

The ONDCP is a small federal agency of approximately 120 individuals, 20% of whom are political appointees.

The agency is housed within the Executive Office of the President, and headed by a Director, who is a cabinet-level officer. The agency is authorized four deputy directors appointed by the President and confirmed by the Senate.

Five components within the ONDCP report directly to the Director or a Deputy Director. These components are the Office of the Director, the Office of the Deputy Director, the Office of State and Local Affairs, the Office of Demand Reduction, and the Office of Supply Reduction.

The remaining components within the ONDCP report to the Director through the Chief of Staff. These components consist of the Office of Management and Administration, the Office of Legislative Affairs, the Office of Public Affairs, the Office of Planning and Budget, the National Youth Anti-drug Media Campaign, and the Office of General Counsel.

The Office of General Counsel manages the FOIA operation with the assistance of ONDCP “Component Liaisons.” The following provides a description of the FOIA operation through a review of its administrative, technical, communication, and rewards systems.

B. ONDCP FOIA Administrative System

The administrative system encompasses an organization's formal structure as well as the roles and responsibilities within the organization.

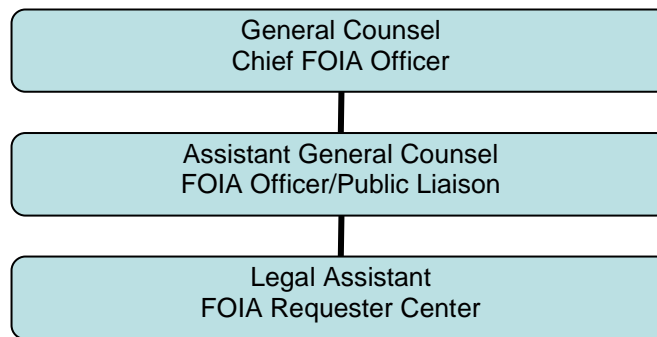
The organizational structure of the ONDCP FOIA operation consists of two distinct parts, the operation within the Office of General Counsel, and the operations of the liaisons within the various ONDCP components which maintain agency records, *i.e.* Component Liaisons.

1. Description of the Operation within the Office of General Counsel

The Office of General Counsel has three positions with responsibility for working FOIA requests. The positions are: the Chief FOIA Officer (General Counsel); the FOIA Officer/Public Liaison (Assistant General Counsel); and, the FOIA Requester Center staff (Legal Assistant).

The following organization chart illustrates the FOIA operation within the Office of General Counsel.

FOIA Operation Formal Organizational Chart



The Chief FOIA Officer/General Counsel is a senior executive position with ultimate responsibility for agency FOIA matters. The Chief FOIA Officer is not involved in the daily FOIA operations. However, the position receives weekly reports from the FOIA office concerning the number of requests received and/or completed. Additionally, the Chief FOIA Officer/General Counsel approves the final agency decisions on all agency FOIA appeals.

The FOIA Officer/Public Liaison is responsible for the daily management of the FOIA Office and for decision-making concerning the applicability of the FOIA, FOIA exemptions, redactions, and decisions on costs or waivers. The FOIA Officer/Public Liaison provides supervision and oversight of the FOIA Requester Center.

The FOIA Requester Center is the recipient of all FOIA requests and responsible for tracking the Request. The Requester Center forwards FOIA Requests to the FOIA Officer and to the ONDCP component most likely to have responsive records. The FOIA Requester Center is also responsible for completing annual reporting requirements.

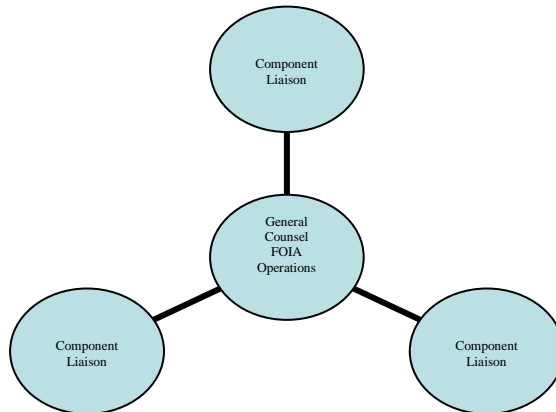
2. Description of Component Liaisons

The Component Liaison is an individual who receives an unofficial delegation by the FOIA Officer. The delegation is given to the individual who has records maintenance responsibility in each of the various ONDCP components.

Consistent with best practices, ONDCP is currently updating its system of records, and Component Liaisons are receiving records management training and assistance from the National Archive Records Administration (NARA). In addition, the ONDCP General Counsel's Office provides training to ONDCP personnel, including component heads, Component Liaisons, and any other ONDCP employee who desires FOIA training.

The following chart exemplifies the informal organization of the Component Liaisons in relation to the formal FOIA operation.

Component Liaison Informal Relation to the FOIA Operations



The Component Liaisons are responsible for: receiving FOIA requests from FOIA Requester Center; searching for responsive records; making an initial determination whether information should be disclosed; copying the records; keeping track of time and other costs; and returning the responsive records to the FOIA Requester Center.

3. Statistics

The number of FOIA requests ONDCP receives has steadily increased. However, the total number is small compared with most federal agencies. Over the previous five years, ONDCP received an average of 33 FOIA requests per year.

Recently, ONDCP provided a “no records response” or instructed the Requester to clarify or narrow their request in a high percentage of case. A review of these requests indicates that many requesters confuse ONDCP with the Drug Enforcement Agency (DEA), Food and Drug Administration (FDA), or the Department of Justice (DoJ).

C. ONDCP FOIA Technical System

The technical system encompasses the machinery, devices, and equipment used to administer and manage an operation. The following describes the technical systems used at four major procedural points in the ONDCP FOIA operation, *i.e.* advertising the FOIA process; receiving the FOIA request; processing the FOIA request; and, ONDCP final action.

It should be noted at the outset that computerized processes are rarely used during the ONDCP FOIA operation. The reason is threefold: ONDCP receives a relatively small number of FOIA requests; it has been ONDCP policy to maintain records only in hard copy form; and, the ONDCP email system is in the control and possession of the Office of Administration within the Executive Office of the President. ONDCP employees are expected to regularly delete email from the ONDCP system.

1. Advertising the Process

ONDCP uses two technologies to advertise its FOIA process, hard copy and internet. The ONDCP FOIA regulations are published in hard copy volumes of the Code of Federal Regulations and the Federal Register. The ONDCP FOIA regulations are also published via the internet from various governmental and non-governmental sources. In addition, ONDCP advertises its FOIA process on the ONDCP website. The website includes a prominent link to the ONDCP FOIA Requester Center.

2. Receiving the FOIA Request

ONDCP authorizes FOIA requesters to submit their request by U.S. Mail or by facsimile transmission. Mailed requests are processed at the Washington Naval Yard where mail for the Executive Office of the President is scanned. Mail often arrives late and in poor condition. ONDCP does not know what percentage of mail (if any) is lost or destroyed. Requests submitted by facsimile are received directly in the FOIA Requester Center. No other ONDCP component has access to or uses this facsimile machine.

3. Processing the Request

The FOIA Requester Center processes the FOIA Requests. Requests are dated and a hard-copy folder is prepared with the name of the Requester. The original request is placed in the folder, and the folder is placed in a FOIA cabinet which is designated by year. Because of the small number of requests received, the filing system is not computerized or cross-referenced.

The FOIA Requester Center forwards a copy of the request to the FOIA Officer. The FOIA Officer determines whether the request is sufficient and whether another federal agency has an interest in the record. The FOIA Officer speaks telephonically with the Requester or other interested parties to seek clarification or discuss any technical difficulties. If the FOIA Request is sufficient the FOIA Officer, through the FOIA Requester Center, forwards the request to the ONDCP Component Liaison most likely to have responsive records. Component Liaisons manually search their systems for any records that might be responsive to the request.

Where the Component Liaison locates a responsive record, she makes two copies. If the liaison believes a FOIA exemption applies, she makes the notations on one copy. Both copies are returned to the FOIA Requester Center. The FOIA Requester Center forwards the copies to the FOIA Officer.

The FOIA Officer determines whether any FOIA exemptions apply, noting the opinions of the Component Liaison. Discussions between the FOIA Officer and the Component Liaison occur to resolve any discrepancies. Additionally, the FOIA Officer may contact the Requester or interested federal agency to discuss the stance on a particular exemption.

4. ONDCP Final Action

The ONDCP FOIA Officer decides whether to release documents and whether the documents should be redacted before release. The FOIA Officer gives great deference to the opinions of the Component Liaison. The Component Liaison is generally better situated than the FOIA Officer to determine the sensitivity of the information being withheld.

The FOIA Officer's decision is placed in the file along with a non-redacted copy of the responsive records as well a redacted copy of the responsive record (if any).

If the requester appeals the FOIA Officer's decision, the FOIA Officer reconsiders the decision giving equal deference to position of the component and the Requester. The FOIA Officer prepares the final agency decision subject to the approval of the General Counsel. The final decision is placed in the file and stored. To date, no final decision of ONDCP has been appealed to the District Court.

D. ONDCP FOIA Communication System

The communication system consists of the formal and informal communications that occur in an organization including internal and external communications regardless of whether the communications are lateral, top-down, or bottom-up.

Communications in the ONDCP FOIA operation generally consist of formal external communications between Requesters, Submitters, and other government agencies, as well as formal and informal internal communications within the ONDCP. Internal inter-group communications (between the Requester Service Center and an ONDCP component) are generally lateral or bottom-up.

1. External Communications

The ONDCP FOIA operation has external communications with government and non-government sources. Government sources include the policies of the DoJ and OMB, Executive Orders, and judicial opinions. Most often, formal government communications are top-down. The communications inform of changes in law or policy, and generally provide for ONDCP participation in the decision-making process.

Communications with non-government sources consists ONDCP top-down publicizing of the FOIA program as well as formal lateral discussion resulting in ONDCP top-down decisions. Where practicable, the FOIA Officer communicates by telephone with a Requester before issuing a written denial (full or partial). It is determined that oral communications which explain the proposed agency action meet with better results than a simply mailing a non-personal written denial.

Discussions with requesters are particularly important in reverse FOIA actions. Many FOIA requesters are new to the process, and appreciate oral guidance. ONDCP finds that in addition to Requesters, Submitters in reverse FOIA actions also appreciate oral guidance. Consequently, the FOIA Officer attempts to laterally and informally resolve potential disputes by telephone before a final decision is handed-down. Normally, both parties are willing to participate in dispute resolution process to avoid an appeal to the District Court.

2. Internal Communications

The internal communications involving the ONDCP FOIA operations are discussed in two classifications, intra-group communications (within the Office of General Counsel) and inter-group communications (Office of General Counsel and another ONDCP component).

Intra-group communications consist of an active exchange between the FOIA Officer and the Requester Service Center. Although the FOIA Officer has oversight responsibility for the Requester Service Center, established procedure and good working relationships require little formal top-down communications. Most communication assimilates collegial exchange.

Inter-group communications consist of: lateral exchanges between the Requester Service Center and the Component Liaisons, and bottom-up communications between the Chief FOIA Officer and the Chief of Staff. Exchanges between the Requester Service Center and the Component Liaisons can be challenging. The Requester Service Center requires deliverables from the Component Liaison but has not oversight authority for production.

Exchanges between the Chief FOIA Officer and the Chief of Staff generally result in bottom-up reporting of statistics. Since the General Counsel has ultimate responsibility for the ONDCP FOIA operation, the Chief of Staff provides infrequent top-down instruction.

E. ONDCP FOIA Rewards System

The reward system is the method by which employees are recognized, rewarded, and punished.

The ONDCP FOIA rewards system is a part of the larger ONDCP rewards system. Essentially, employees in the Office of General Counsel have responsibility for FOIA operations. The duties are part of the job descriptions and employees receive recognition, reward, and punishment consistent with ONDCP procedures. However, FOIA responsibility is not part of the job description of the Component Liaisons. As such, the ONDCP rewards system does not recognize, reward, or punish Component Liaisons for their FOIA efforts.

IV. Analysis

Each system within the ONDCP FOIA operation is analyzed to identify its strengths and weaknesses.

A. Strengths

1. Administrative System

The FOIA operation has a strong formal organization which complies with the requirements of the latest Executive Order and policies of the OMB and DoJ. Roles and responsibilities are well defined and no required duties are left uncovered.

2. Communication System

There is strong external communication with governmental and non-governmental groups. Particularly good is the personal telephonic communications between the FOIA Officer and FOIA requesters. Internal intra-group communication is also strong.

B. Weaknesses

Weaknesses were most prevalent in the Administrative and Communication systems, particularly the communications between the Requester Service Center and the Component Liaisons. However, all weaknesses are noted to aid potential improvement.

1. Administrative System

The roles and responsibilities of the Component Liaisons are informally delegated by the FOIA Officer. The Component Liaisons' job description does not include FOIA duties.

2. Technical System

If the number of FOIA requests increases significantly, a manual system may not suffice. However, there is no indication that a significant increase will occur.

3. Communication System

Formal communication between the Requester Service Center and the Component Liaisons should be emphasized. There appears to be no incentive on the Component Liaisons to comply with the needs of the Requester Service Center.

4. Rewards System

The rewards system is ineffectual for the Component Liaisons because there is no formal requirement that the individuals perform necessary tasks. There is no provision for recognition, reward or punishment.

V. Recommendation

Recommend that ONDCP add FOIA duties into the Position Descriptions of the administrative assistants (Component Liaisons) that have record maintenance responsibility within each ONDCP component, and that reasonable FOIA efforts be a standard for fully successful performance.

Recommend that the Chief FOIA Officer have authority to affect the performance evaluation for Component Liaisons.

VI. Implementing Improvement

- A. Name: Improvement in Rewards System
- B. Statement: The ONDCP Chief of Staff approved the recommendations for improving the Rewards System. Implementation requires the rewriting of Position Description and revising the Performance Evaluation of several ONDCP employees.
- C. Steps: Revise position descriptions and revise Performance Evaluation
- D. Milestones: Implementation should be accomplished prior to the next evaluation period which begins October 1, 2006.
- E. Measurement: Improvement in response times.