FEDERAL ENERGY REGULATORY COMMISSION

ANNUAL FREEDOM OF INFORMATION ACT REPORT
FY 2004

I.   Basic Information Regarding the Report

        A.   Contact with questions about the report.

                Gladys Crenshaw-Davis
                FOIA Liaison
                Federal Energy Regulatory Commission
                888 First Street, NE, Code EA-20
                Washington, DC 20426

                Telephone   : 202-502-8476
                FAX Number: 202-208-2106

        B.   Electronic address for report on the World Wide Web.

                http://www.ferc.gov/legal/ceii-foia/foia/ann-rep.asp

        C.   How to obtain a copy of the report in paper form.

                Write to the following address:

                Public Reference and Files Maintenance Branch
                Federal Energy Regulatory Commission
                888 First Street, NE, Room 2A
                Washington, DC 20426

                Telephone   : 202-502-8371
                FAX Number: 202-208-2320
                E-Mail   :   public.referenceroom@ferc.gov

II.   How to Make a FOIA Request

                Please refer to the FOIA Reference Guide on the Commission's Web Site
                (http://www.ferc.gov/legal/ceii-foia/foia/guide/basics.asp)

A.   Name, address, and telephone number of individual receiving FOIA requests at the Commission.

       J. McLane Layton
       Director, Office of External Affairs
       Federal Energy Regulatory Commission
       888 First Street, NE, Code EA-1
       Washington, DC 20426

       Telephone: 202-508-8328

B.   The Commission's most rapid response for FY 2004 equaled one day. The longest response time for FY 2004 equaled 255 days.

C.   Some FOIA requests are not granted because (a) the agency has no responsive documents, (b) the responsive documents fall within one or more FOIA exemptions and are not appropriate for discretionary release, or (c) a request has been rendered moot because the responsive documents were subsequently released through other means, such as a negotiated disclosure in the course of a Commission proceeding.

III.   Definitions of Terms and Acronyms Used in the Report

A.   Agency-specific acronyms or other terms.

       1.   Track One Requests -- the processing track for a FOIA request that is seeking records that are readily identifiable and were previously cleared for release.

       2.   Track Two Requests -- the processing track for a FOIA request that is seeking records that are readily identifiable and require limited review.

       3.   Track Three Requests -- the processing track for a FOIA request that is seeking records that are complex and/or voluminous and require a significant search and/or review.

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 the 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.

8.   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.

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 part of a record 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.

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 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).

12. 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).

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 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 subsection (b)(3).

15. Median Number -- the middle, not average, number. For example, of 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 Commission during FY 2003.

1. **Statute/Rule:**
   16 U.S.C. ▪ 470aa, *et seq.* (1994) [Specifically 16 U.S.C. ▪ 470hh(a)]

   Type of Information Withheld:
   Archaeological survey data

   Case Citation:
   None

2.   Statement of whether a court upheld the use of this statute.

Our use of the statute has not been challenged in the courts.

V.   Initial FOIA/PA Access Requests

    A.   Numbers of initial requests.

        1.   Number of requests pending
              as of end of preceding fiscal year   : 28

        2.   Number of requests received during
              current fiscal year   :192

        3.   Number of requests processed
              during fiscal year   :206

        4.   Number of requests pending as of
              end of current fiscal year   : 14

    B.   Disposition of initial requests.

        1.   Number of total grants   : 61

        2.   Number of partial grants   : 62

        3.   Number of denials   : 33

            a.   Number of times each FOIA
                  exemption used

                  (1) Exemption 1   : 4

                  (2) Exemption 2   : 5

                  (3) Exemption 3   : 1

                  (4) Exemption 4   : 10

                  (5) Exemption 5   : 20

                  (6) Exemption 6   : 11

(7) Exemption 7   : 67

(8) Exemption 7(A) : 10

(9) Exemption 7(B) : 11

(10) Exemption 7(C) :   4

(11) Exemption 7(D) :   0

(12) Exemption 7(E) :   4

(13) Exemption 7(F) : 54

(14) Exemption 8   :   0

(15) Exemption 9   :   0

4.　　Other reasons for nondisclosure　　　　: 50

a.　　No records　　　: 28

b.　　Referrals　　　　: 1

c.　　Request withdrawn : 21

d.　　Fee-related reason : 0

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

VI.　　Appeals in Initial Denials of FOIA/PA Requests

A.   Numbers of appeals.

    1.   Number of appeals received
          during fiscal year   :   12

    2.   Number of appeals processed
          during fiscal year   :   10

B.   Disposition of appeals.

    1.   Number completely upheld   :   3

    2.   Number partially reversed   :   3

    3.   Number completely reversed   :   0

          a.   Number of times each
          FOIA exemption used

                (1)   Exemption 1   : 0

                (2)   Exemption 2   : 0

                (3)   Exemption 3   : 0

                (4)   Exemption 4   : 1

                (5)   Exemption 5   : 3

                (6)   Exemption 6   : 0

                (7)   Exemption 7(A) : 0

                (8)   Exemption 7(B) : 0

                (9)   Exemption 7(C) : 0

                (10)   Exemption 7(D) : 0

                (11)   Exemption 7(E) : 0

                (12)   Exemption 7(F) : 3

(13) Exemption 8   : 0

(14) Exemption 9   : 0

4. Other reasons for nondisclosure: 4

a. No records   : 3

b. Referrals   : 0

c. Request withdrawn   : 0

d. Fee-related reason   : 0

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 (specify)   : 1 (adequacy of search)

VII. Compliance with Time Limits/Status of Pending
Requests

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

1. Track one requests

a. Number of requests processed   : 60

b. Median number of days to
process   : 22

2. Track two requests

a. Number of requests processed   : 140

      b.   Median number of days to
               process   : 28

3.   Track three requests

    a.   Number of requests processed : 6

    b.   Median number of days to
            process   : 87.5

4.   Requests accorded expedited
    processing   : 0

    a.   Number of requests processed : 0

    b.   Median number of days to : 0
            process

B.   Status of pending requests.

1.   Track one requests

    a.   Number of requests pending
            as of end of current fiscal
            year   : 3

    b.   Median number of days that
            such requests were pending as
            of that date   : 10

2.   Track two requests

    a.   Number of requests pending
            as of end of current fiscal
            year   : 10

    b.   Median number of days that
            such requests were pending as
            of that date   : 8

3.   Track three requests

     a.   Number of requests pending
          as of end of current fiscal
          year   : 1

     b.   Median number of days that
          such requests were pending as
          of that date   : 366

VIII.   Comparisons with Previous Year

A.   The number of requests received in FY 2003 was 202 and in FY 2004, 192, a 5% decrease in FY 2004.

B.   The number of requests processed in FY 2003 was 180 and in FY 2004, 206, a 14% increase in FY 2004.

C.   The median number of days requests were pending as of the end of FY 2003 was 13 and in FY 2004, 9, a 31% decrease in FY 2004.

D.   Other statistics significant to agency:
We received two requests for expedited treatment. We granted none.

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).

The Commission instituted the following new FOIA processing procedures to improve the timeliness of performance: (1) the search request to FERC offices for responsive documents is now sent by e-mail that includes the scanned incoming FOIA request; (2) the FOIA staff aggressively follows up with the Commission's offices on the progress of their search through e-mail; and (3) the search memorandum used by the FOIA administrative office to request a search has been updated.

IX.   Costs/FOIA Staffing

A.   Staffing levels.

1.   Number of full-time FOIA
                personnel   : 1

        2.   Number of personnel with
                part-time or occasional
                FOIA duties (in total
                work-years)   : 1

        3.   Total number of personnel
                (in work-years)   : 2

    B.   Total costs.

        1.   FOIA processing   : $809,316

        2.   Litigation-related activities   : N/A

        3.   Total costs   : $809,316

        4.   Comparison with
                previous year   : 62% Increase

X.   Fees

    A.   Total amount of fees collected
            processing requests   : $1918

    B.   Percentage of total costs   :   .24%

XI.   FOIA Regulations (Including Fee Schedule)

        The Commission's FOIA regulations, 18 C.F.R. ▪ 388.108, can be accessed through GPO
        (http://www.access.gpo.gov/nara/cfr/index.html)