

August 1, 2008

**DEPARTMENT OF JUSTICE UPDATED STATUS REPORT
PURSUANT TO EXECUTIVE ORDER 13,392**

As part of the May 30, 2008 report to the President on agency progress under Executive Order 13,392, "Improving Agency Disclosure of Information," the Attorney General recommended that any agency with a deficiency in implementing its FOIA Improvement Plan, as reported by the agency in its Fiscal Year 2007 Annual FOIA Report, submit to the President's Management Council an Updated Status Report concerning that deficiency. Each such agency is required to identify the improvement area to which its deficient milestone relates, identify the specific deficient milestone, report the specific steps already taken to remedy the deficiency, and describe any future steps that may be necessary to remedy the deficiency. These Updated Status Reports need not address any deficiencies remedied as of the Fiscal Year 2007 Annual FOIA Report.

Pursuant to the Attorney General's recommendation, the Department of Justice hereby submits its Updated Status Report. In 2007, the Department timely met hundreds of milestones, but reported some deficiencies for milestones not timely met. The necessary status information for each of the eleven components required to provide updates for this reporting requirement is set out below.

CRIMINAL DIVISION

1. FOIA Improvement Plan area to which this deficient milestone relates.

Backlog reduction.

2. Deficient milestone and the original target date from the FOIA Improvement Plan.

Achieve backlog reduction in proportionate amounts (approximately eighty requests), by January 15, 2008, with the overall goal of reducing its backlog from 875 pending requests to 525 by December 31, 2008.

3. Steps taken to correct the deficiency and the dates by which the steps were completed.

Deficiency remedied. On July 2, 2007, an attorney was assigned on detail to work specifically on backlog reduction focusing on the Criminal Division's oldest cases. The Criminal Division has exceeded its overall goal in this improvement area by twenty-one percent, six months in advance of the target completion date. As of June 30, 2008, the Criminal Division had 410 cases pending, and had closed its ten oldest cases. This is 115 fewer open cases than its December 31, 2008 projected figure of 525.

4. Future remedial steps and the dates by which the steps will be completed.

No additional steps are necessary.

1. FOIA Improvement Plan area to which this deficient milestone relates.

Website.

2. Deficient milestone and the original target date from the FOIA Improvement Plan.

Develop a better system to obtain subsection (a)(2) material from the Criminal Division sections in a timely manner so that it can be posted on the Website, originally by December 31, 2006, and modified to December 31, 2007.

3. Steps taken to correct the deficiency and the dates by which the steps were completed.

Deficiency remedied. On April 2, 2008, the Criminal Division FOIA Office assigned an attorney with IT skills to work on the Website. The Criminal Division FOIA Office is currently working with the Criminal Division's sections that post a large volume of information on their own Websites, and has created links on the Criminal Division's FOIA Website to these sections' Websites. In addition, the Criminal Division FOIA Office has also obtained additional (a)(2) materials not already posted by the sections and posted that material on the Criminal Division's FOIA Website on July 1, 2008. The FOIA Office will continue to receive and post new material on the Criminal Division's Website.

4. Future remedial steps and the dates by which the steps will be completed.

No additional steps are necessary.

DRUG ENFORCEMENT ADMINISTRATION (DEA)

1. FOIA Improvement Plan area to which this deficient milestone relates.

Backlog reduction.

2. Deficient milestone and the original target date from the FOIA Improvement Plan.

To reduce the existing backlog of pending FOIA requests by a proportional ratio of a percentage each year to include a quarterly reduction of two percent of existing pending

cases more than twenty days old, by December 2006. This will be completed by periodically and consistently focusing on the existing backlog.

3. Steps taken to correct the deficiency and the dates by which the steps were completed.

As of June 2007, DEA had implemented all the steps indicated in the initial plan, however DEA had not achieved the reduction goal. DEA achieved a two percent reduction per quarter in overall pending cases and was within twenty-four cases (nine percent) of achieving the goal to reduce the backlog by two percent. Since the backlog reduction goal was not achieved, this effort was reported as a deficiency. At the time, DEA FOI staffing was at seventy-six percent with seven vacancies.

DEA also notes that its FOIA office was selected to participate in an OMB Circular A-76 “Streamlined Competition Process.” DEA prevailed and won the bid to keep the FOIA operation governmental. A considerable amount of DEA FOIA team time was devoted to this process, which impacted the time devoted to processing FOIA requests.

During the A-76 process, DEA evaluated the entire process of handling all FOI/PA requests. This re-evaluation was done to reduce the “touch points” when handling a request and to communicate with requesters regarding their requests in order to process the documents at a faster pace. This streamlining process includes the identification of documents already in the public domain, communicating the deficiencies that may be involved in a request to allow a requester to perfect it quickly, and communicating the status of requests received by DEA. On April 2, 2008, these processes were implemented within DEA.

4. Future remedial steps and the dates by which the steps will be completed.

Revised processes and procedures have been implemented, with the exception of an updated electronic FOIA system (see next deficiency).

Step 1. Add needed staff. DEA anticipates issuing vacancy announcements by the end of Fiscal Year 2008.

Step 2. Train staff. The arrival and training of staff will depend on the applicant pool including time needed to obtain suitable security clearances. DEA anticipates completion of this step by September 2009.

Step 3. By Fiscal Year 2010 DEA anticipates reducing its backlog at a rate of five percent per quarter. DEA anticipates being in a better position to aggressively reduce the backlog at an increased percentage rate as previously reported.

1. FOIA Improvement Plan area to which this deficient milestone relates.

Automated tracking capabilities; Electronic FOIA; multi-tracking processing.

2. Deficient milestone and the original target date from the FOIA Improvement Plan.

Analysis of data/feedback. Review data collected to rank alternative tools; seek price quotes and funding by March 31, 2007.

Proceed with acquisition phase by June 30, 2007.

Proceed with spiral development and testing by September 30, 2007 and December 31, 2007.

3. Steps taken to correct the deficiency and the dates by which the steps were completed.

DEA has completed a study of commercial off the shelf (COTS) packages and ranked them against their abilities to meet requirements defined in a statement of work. Efforts are underway to identify funding and proceed with the formal acquisition process. Potential COTS packages seem viable enough that spiral development may be minimal, if needed.

4. Future remedial steps and the dates by which the steps will be completed.

Step 1. DEA will identify and secure funding to obtain a suitable COTS package. Target completion date: March 2009.

Step 2. Proceed with the formal acquisition process. Target completion date: September 2009.

Step 3. Potential COTS packages seem viable enough that spiral development may be minimal, if needed. Target completion date: September 2009.

EXECUTIVE OFFICE OF IMMIGRATION REVIEW (EOIR)

1. FOIA Improvement Plan area to which this deficient milestone relates.

Increase efficiency and reduce backlogs.

2. Deficient milestone and the original target date from the FOIA Improvement Plan.

Evaluate the feasibility of expanding bar coding to manage files, by June 30, 2006.

3. Steps taken to correct the deficiency and the dates by which the steps were completed.

The Information Resources Management (IRM) unit continues to work on the major system implementation project described in EOIR's section of the Department's Annual FOIA Report and therefore it remains unavailable to assist EOIR's FOIA Office with a feasibility study.

4. Future remedial steps and the dates by which the steps will be completed.

As noted in its August 2007 Updated Status Report, EOIR will meet with IRM to pursue this study within one quarter after IRM actually completes the phase-in of the major database system.

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS (EOUSA)

1. FOIA Improvement Plan area to which this deficient milestone relates.

Backlog reduction.

2. Deficient milestone and the original target date from the FOIA Improvement Plan.

Reduce backlog by thirty-three percent, by September 30, 2006; by fifty percent, by February 28, 2007; and by seventy-five percent, by September 1, 2007.

3. Steps taken to correct the deficiency and the dates by which the steps were completed.

EOUSA's backlog was 1709 in February 2006 and as of May 2008 its backlog is 1091. This is a thirty-six percent backlog reduction.

EOUSA has taken a series of actions to improve processing and help decrease its backlog.

Specifically, EOUSA: Continues to have monthly meetings with paralegals to monitor the progression of their processing.

Continues to review internal procedures in order to identify any necessary changes that would help reduce the backlog.

Continues to be proactive and contact requesters to clarify their requests to ensure that EOUSA's search is more precise, thus shortening the time taken to conduct the search, allowing it to respond in a shorter time frame.

Conducts senior staff meetings to discuss strategies to improve the overall efficiency of office performance. EOUSA conducted the first meeting on May 12, 2008. The senior staff meeting has proven to be quite effective and senior staff will continue to meet regularly. The next meeting is scheduled for August 12, 2008.

EOUSA has also revised closing letters for non-perfected requests to include fee information and an opportunity for requesters to narrow their requests to reduce fees. This was completed on March 30, 2008.

EOUSA also made a request to convert contract positions to government positions for FOIA processors. This request was completed on June 1, 2008.

4. Future remedial steps and the dates by which the steps will be completed.

EOUSA will continue to work closely with its Case Management personnel to get its database implemented by October 31, 2008 in order to notify each district of its backlog of requests regularly.

A program for training (including video on demand, training manuals, and possible seminar programs) will be in place by February 28, 2009.

EOUSA is working towards purchasing an automated case management and redaction system to improve the timing of the release of information under the FOIA. EOUSA will receive vendor demonstrations by October 31, 2008.

EXECUTIVE OFFICE FOR UNITED STATES TRUSTEES (EOUST)

1. FOIA Improvement Plan area to which this deficient milestone relates.

Disclosure/FOIA Reading Room Website.

2. Deficient milestone and the original target date from the FOIA Improvement Plan.

Under the goal relating to the "Disclosure/FOIA Reading Room Website," EOUST was to make affirmative disclosures through the FOIA Reading Room Website, and make additional improvements to the Website as needed by September 30, 2006, and quarterly thereafter. EOUST successfully met all of its deadlines for calendar year 2006 and the first and last quarterly deadlines for calendar year 2007 (steps due during the months of February, March, November, and December 2007). EOUST was unable to confirm the completion of required actions with deadlines between May 1 and September 30, 2007 (see specific deficient milestone steps and original target dates below). During that time, the existing FOIA/Privacy Act (PA) Counsel left and her replacement started in August

2007. The replacement FOIA/PA Counsel stayed only a brief time and was replaced by EOUST's current FOIA/PA Counsel in December 2007.

The deficient milestones are:

Conduct a quarterly review of the FOIA Reading Room Website and check for accuracy, by May 1, 2007 and August 1, 2007.

Ensure that FOIA Reading Room links are working properly, by May 1, 2007 and August 1, 2007.

Review additional information to disclose/post to reduce FOIA requests, by May 1, 2007 and August 1, 2007.

Determine further improvement(s) that can be made to the FOIA Website, by May 15, 2007 and August 15, 2007.

Make recommendations to senior management for any necessary changes to the FOIA Website, by June 1, 2007 and September 30, 2007.

If approval is granted by senior management, coordinate with IT staff to make appropriate changes to the FOIA Website, by June 30, 2007 and September 30, 2007.

3. Steps taken to correct the deficiency and the date by which the steps were completed.

To assure timely review in the future, on January 11, 2008, the new FOIA/PA Counsel re-emphasized to the entire FOIA staff all the goals to be completed on a quarterly or annual basis for calendar year 2008, and conducted a meeting on January 17, 2008, to discuss deadlines, a tracking mechanism, assignments, and other related details.

Furthermore, EOUST streamlined the steps for this specific goal so that the target completion dates for each of the six milestones fell on the same date (the last date of the quarterly period for a total of four quarters) as follows: March 31, 2008 (milestones accomplished), June 30, 2008 (milestones accomplished), September 30, 2008, December 31, 2008, and quarterly thereafter. All improvement deadlines were logged on a master FOIA calendar by January 31, 2008.

Pursuant to this new procedure each of the six deficient milestones identified above will be completed four times during 2008 on the four specified dates. The milestones were accomplished first on March 31, 2008, and again on June 30, 2008, as planned.

4. Future remedial steps and the dates by which the steps will be completed.

As a result of the above-referenced corrective action, EOUST intends to timely complete each of the above milestones by September 30 and December 31, 2008. This will complete all milestones remaining for this goal.

FEDERAL BUREAU OF INVESTIGATION (FBI)

1. FOIA Improvement Plan area to which this deficient milestone relates.

FOIA process policies and design.

2. Deficient milestone and the original target date from the FOIA Improvement Plan.

Complete all requests older than August 15, 2003. To be completed originally by April 15, 2007, and modified to May 1, 2008. Completed on May 23, 2008.

Complete all requests older than August 15, 2004. To be completed originally by April 15, 2007, and modified to May 1, 2008. Completed on May 23, 2008.

Complete all requests older than August 15, 2005. To be completed originally by August 15, 2007, and modified to May 1, 2008. New target date: October 1, 2008.

3. Steps taken to correct the deficiency and the dates by which the steps were completed.

With the significant loss of experienced employees during the relocation to Winchester, VA, the FBI sought to balance the elimination of voluminous older requests while working towards meeting backlog reduction goals. With respect to eliminating older requests, there has been a steady reduction of these older requests and a corresponding drop in the average pending time to the lowest time in the FBI's thirty year FOIA history. As a result, by May 23, 2008, the FBI had completed all requests older than August 15, 2004. Currently there are only two pending requests earlier than 2006.

4. Future remedial steps and the dates by which the steps will be completed.

There are two requests earlier than 2006 that remain to be completed. The first request relates to a major counterintelligence investigation from the 1980s. Through negotiations with the requester, the size of the request has been reduced to approximately 3000 pages. The FBI has completed its declassification review of the pages and is currently making processing determinations. The request is expected to be processed no later than August 1, 2008.

The second remaining request relates to a major counterterrorism investigation. There

are approximately 11,000 responsive pages. The FBI is making interim releases in the request. There is separate civil litigation related to the investigation and release of documents in the FOIA request must be coordinated with the civil litigation effort. Currently the FBI is conducting a declassification review and is making processing determinations, with the expectation of a final release no later than October 1, 2008.

1. FOIA Improvement Plan area to which this deficient milestone relates.

Improvements to the FBI's FOIA Website Reading Room.

2. Deficient milestone and the original target date from the FOIA Improvement Plan.

Delete seldom-visited items (if not required to be posted under subsection (a)(2)) and add more recent/topical requests, originally by December 31, 2006, and modified to May 1, 2008. Completed: May 15, 2008.

3. Steps taken to correct the deficiency and the dates by which the steps were completed.

Deficiency remedied. As previously reported, the FBI deleted seldom-visited items on December 31, 2007. The FBI also completed updating the site with more recent/topical requests on May 15, 2008. In addition, the Website contains a new "Hot Topics" site where recently released records of high public interest are posted.

4. Future remedial steps and the dates by which the steps will be completed.

No additional steps are necessary.

NATIONAL SECURITY DIVISION (NSD)

1. FOIA Improvement Plan area to which this deficient milestone relates.

Backlog reduction/elimination.

2. Deficient milestone and the original target date from the FOIA Improvement Plan.

Originally: reduce backlog of ten requests by two requests quarterly, September 30, 2006 (and quarterly thereafter).

As reported in the Fiscal Year 2007 Annual FOIA Report, NSD established a goal to either (1) reduce its backlog to thirty or (2) reduce the backlog by two requests quarterly by the end of Fiscal Year 2008. As of June 30, 2008, NSD reports a backlog of thirty-four requests.

3. Steps taken to correct the deficiency and the dates by which the steps were completed.

Deficiency remedied. The NSD has faced the challenge of an ever-increasing volume of incoming requests. The NSD reported a backlog of 20 requests at the end of Fiscal Year 2007. The last three quarters of that year included data for all of NSD; however, the first quarter included only data for the then-existing Office of Intelligence Policy and Review. NSD has received 164 requests in the first three quarters of Fiscal Year 2008 compared to 157 requests in all of Fiscal Year 2007. The creation of the National Security Division (which consolidated two former Criminal Division offices and the Office of Intelligence Policy and Review) has resulted in a significant increase in the volume of incoming FOIA requests, and Fiscal Year 2008 is the first full year of FOIA data for NSD.

FOIA requests must also now be forwarded to the four sections (including the Front Office) within NSD for queries. To monitor this activity, the FOIA staff is now transmitting weekly reports regarding outstanding requests to each section as appropriate. FOIA staff is also briefing senior management regarding the status of outstanding FOIA requests to encourage accountability within each section.

This activity has helped to manage the increased activity and on July 22, 2008, NSD achieved this milestone by dropping its number of backlogged requests to less than thirty.

4. Future remedial steps and the dates by which the steps will be completed.

No additional steps are necessary.

OFFICE OF THE FEDERAL DETENTION TRUSTEE (OFDT)

1. FOIA Improvement Plan area to which this deficient milestone relates.

OFDT has failed to meet milestones in its FOIA Improvement Plan relating to Automated Tracking Capabilities and Electronic FOIA - Automated Processing.

2. Deficient milestone and the original target date from the FOIA Improvement Plan.

Preparation of a request for purchase of FOIA software, by June 30, 2007.

FOIA software installed and implemented, including any customizations needed to fit OFDT specifications, by December 31, 2007.

3. Steps taken to correct the deficiency and the dates by which the steps were completed.

Throughout the first few months of 2008, OFDT continued actively to participate in

meetings with the Department's Office of Chief Information Officer (OCIO), Office of Information and Privacy, and other components to finalize requirements for a Request for Proposals for the acquisition of software to provide automated tracking capabilities and automated processing. However, in light of the revised cost estimate prepared by the OCIO and new budgetary constraints, by March 2008, OFDT determined that it would review possible alternatives, including an in-house solution, to the procurement of FOIA software. In particular, OFDT has begun investigating a technological solution for tracking and processing FOIA requests using OFDT's newly acquired Microsoft Office Sharepoint Solutions (MOSS) and Microsoft Office, which OFDT is piloting for the Department. Although piloting of this software began in late 2007, upgrades to the systems were deployed beginning in February 2008, and testing of both systems continues.

Once testing is completed, which is expected to occur within the next several months, OFDT will commence the preparation of a cost analysis to determine if the funding exists to support a FOIA module. It is anticipated that the utilization of OFDT's MOSS and Microsoft Office systems ultimately will result in a more fully integrated and expedient process for tracking and processing FOIA requests.

4. Future remedial steps and the dates by which the steps will be completed.

Once testing of OFDT's newly acquired software is completed, which is expected to occur within the next several months, OFDT will commence the preparation of a cost analysis to determine if the funding exists to support a FOIA module. Based on this, the following new steps are planned:

Preparation of a cost analysis for FOIA module supported by MOSS and Microsoft Office, by August 31, 2008.

Decision regarding whether to proceed with in-house technological solution utilizing MOSS and Microsoft Office, by August 31, 2008.

If an in-house technological solution is chosen, preparation of a task order for FOIA module will begin by October 1, 2008.

If an in-house technological solution is chosen, a FOIA module will be installed and implemented by January 15, 2009.

OFFICE OF JUSTICE PROGRAMS (OJP)

1. FOIA Improvement Plan area to which this deficient milestone relates.

Backlog reduction.

2. Deficient milestone and the original target date from the FOIA Improvement Plan.

To reduce the processing time for FOIA requests to twenty days, by December 31, 2006.

3. Steps taken to correct the deficiency and the dates by which the steps were completed.

As previously reported:

On January 8, 2007, access to retrieve requested documents from the OJP electronic database was granted.

On January 8, 2007, and continuing thereafter, OJP met with its bureaus' subject matter experts on highly technical documents that originated outside OJP to provide the FOIA Officer with all relevant contact information needed for external consultations.

On February 16, 2007, OJP extended the FOIA paralegal's contract through August 31, 2007 to assist with processing FOIA requests. With the additional assistance OJP has reduced its processing and closing time to 29.4 days.

On June 25, 2007, the General Counsel was informed that his request for additional funds to extend the contract FOIA paralegal from the two days a week to five days a week for the next fiscal year had been approved.

As reported now: deficiency remedied.

In August and September 2007, OGC staff met with staff from the OJP's procurement staff to discuss the prospects of changing contractors and upgrading the skill level of the clerical support position. OGC's request was approved.

On October 25, 2007, a new clerical support person began at OJP.

On December 14, 2007, the General Counsel sent out a memorandum to all of OJP's office and bureau heads reiterating the importance of complying with the FOIA Officer's request for documents.

On March 21, 2008, the OGC Senior Counsel reviewed the statistics and determined that maintaining the assistance of the contract paralegal and the steps taken above have decreased OJP's processing time to 19.79 days. Accordingly, OJP has achieved its goal and corrected the deficiency.

4. Future remedial steps and the dates by which the steps will be completed.

No additional steps are necessary.

OFFICE OF PROFESSIONAL RESPONSIBILITY (OPR)

1. FOIA Improvement Plan area to which this deficient milestone relates.

Conduct a review of expedited processing procedures.

2. Deficient milestone and the original target date from the FOIA Improvement Plan.

On an annual basis, conduct a review of the fiscal year's requests for expedited processing, by December 31, 2007.

3. Steps taken to correct the deficiency and the dates by which the steps were completed.

Deficiency remedied. A review of expedited processing procedures was conducted on June 18, 2008.

4. Future remedial steps and the dates by which the steps will be completed.

No additional steps are necessary.

UNITED STATES MARSHALS SERVICES (USMS)

1. FOIA Improvement Plan area to which this deficient milestone relates.

Reducing backlog and improving efficiency.

2. Deficient milestone and the original target date from the FOIA Improvement Plan.

Contact and arrange for vendor demonstrations of automated systems, originally by March 31, 2007, and modified to March 30, 2008.

Determine appropriations for budget, originally by September 30, 2007, and modified to September 30, 2008.

3. Steps taken to correct the deficiency and the dates by which the steps were completed.

The USMS FOIA staff had an on-site demonstration of automated FOIA processing technology by a leading vendor on March 13, 2008. The USMS FOIA staff continues to conduct reviews of technology by conference calls and online demonstrations.

4. Future remedial steps and the dates by which the steps will be completed.

Complete review and/or demonstrations of automated FOIA processing solutions

including contacting other Department of Justice components, by August 15, 2008.

FOIA Staff review to determine effect of transition on operation, by September 5, 2008.

Determine whether an automated system is cost effective and provide appropriations for budget, by September 30, 2008.

1. FOIA Improvement Plan area to which this deficient milestone relates.

Reducing backlog and improving efficiency.

2. Deficient milestone and the original target date from the FOIA Improvement Plan.

Establish and implement bi-weekly review of oldest pending requests, by September 30, 2006 (and bi-weekly thereafter).

3. Steps taken to correct the deficiency and the dates by which the steps were completed.

Deficiency remedied. The FOIA Office is now holding bi-weekly FOIA staff meetings during which the FOIA staff reviews the backlog of pending requests and other matters.

4. Future remedial steps and the dates by which the steps will be completed.

No additional steps are necessary.