

**ANNUAL REPORT
OF THE
U.S. OFFICE OF SPECIAL COUNSEL (OSC)
ON
FREEDOM OF INFORMATION ACT (FOIA) ACTIVITIES
FOR FISCAL YEAR (FY) 2004**

I. BASIC INFORMATION ABOUT THIS REPORT

- A. OSC contact person for questions about this report: FOIA Officer, Legal Counsel and Policy Division, U.S. Office of Special Counsel, 1730 M Street, N.W., Suite 218, Washington, DC 20036-4505, telephone (202) 253-3690.
- B. Electronic address for report on World Wide Web:
<http://www.osc.gov/library.htm#foia>.
- C. Requesting a paper copy of this report: Download or print from OSC website (see I.B. above) or request it from OSC's FOIA Office (see I.A. above).

II. HOW TO MAKE A FOIA REQUEST

- A. Names, addresses, and telephone numbers of all individual agency components and offices that receive FOIA requests: FOIA Officer, U.S. Office of Special Counsel, Legal Counsel and Policy Division, 1730 M Street, N.W., Suite 218, Washington, DC 20036-4505; telephone: (202) 254-3690; fax: (202) 653-5161.
- B. Brief description of agency's response-time ranges: Median processing time is 45 working days.
- C. Brief description of why some requests are not granted: OSC is an investigative and prosecutorial agency. Most requests are for records in agency case files, generally involving: (a) allegations from current or former Federal employees, or applicants for Federal employment, of prohibited personnel practices (including reprisal for whistleblowing); (b) whistleblower disclosures to OSC from current or former Federal employees, or applicants for Federal employment; and (c) allegations of prohibited political activity (*i.e.*, Hatch Act violations) involving covered Federal, state, or local government employees. Most of these records consist of investigatory material, compiled for law enforcement purposes by or under the supervision of attorneys, and kept in a system of records subject to the Privacy Act (5 U.S.C. § 552a). OSC has exempted the system of records from access under the Privacy Act pursuant to § 552a(k) of the act. For that reason, covered records in the system are exempt from disclosure under the Privacy Act to first parties (that is, complainants or others in whose name a record is kept and retrieved), although limited information may be releasable to them under FOIA. Requests from third parties (typically,

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persons other complainants and/or subjects) for case file information are usually denied under FOIA exemptions (b)(5) and/or (b)(7), because the information: (a) is privileged (either as attorney work product, or as pre-decisional material generated as part of a deliberative process); and/or (b) was compiled for a law enforcement purpose, and disclosure could reasonably be expected to interfere with enforcement proceedings, or result in an unwarranted invasion of the personal privacy of the individuals identified in the record sought.

III. DEFINITION OF TERMS AND ACRONYMS USED IN THIS REPORT

A. Agency-Specific Acronyms and Other Terms

1. OSC - Office of Special Counsel
2. FOIA - Freedom of Information Act
3. PA - Privacy Act
4. FY - Fiscal Year (October 1 through September 30)

B. Basic Terms

1. FOIA/PA Request. Freedom of Information Act/Privacy Act request. A FOIA request is generally a request for disclosure of records about a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records covered by that act about oneself; such requests are also treated as FOIA requests. (All requests for records, regardless of which access statute is cited by a requester, are covered by this report.)
2. Initial Request. A request to OSC for records under FOIA.
3. Appeal. A request to OSC asking for review at a higher administrative level of a full denial or partial denial of a FOIA request, or any other FOIA determination, such as a decision about fees.
4. Processed Request or Appeal. A request or appeal for which OSC has taken a full and final action on a request or appeal.
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

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records may request expedited processing (see III.B.6 below). OSC is currently using multi-track processing.

6. Expedited Processing. OSC will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records that warrant giving his or her request priority over other requests that were received earlier.
7. Simple Request. A FOIA request that a federal agency using multi-track processing places in its fastest track (though not on an expedited processing basis), based on the volume and/or simplicity of records requested.
8. Complex Request. A FOIA request that a federal agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.
9. Grant. An OSC decision to disclose all records in full in response to a FOIA request or FOIA appeal.
10. Partial Grant. An OSC decision to disclose a record in part in response to a FOIA request or FOIA appeal, redacting information determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entirety, but to withhold others in whole or in part.
11. Denial. An OSC decision not to release any part of a record in response to a FOIA request or FOIA appeal because all information in the record is exempt from disclosure under one or more FOIA exemptions, or for another authorized reason (e.g., because no record is located in response to a FOIA request, or because the requester sought answers to questions instead of actual records).
12. Time Limits. The time period in the FOIA 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 that adequately describes the records sought, which has been received by OSC's FOIA office, 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 exemption (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.

17. Working Days. Days excepting Saturdays, Sundays, and legal public holidays.

IV. EXEMPTION 3 STATUTES RELIED ON BY OSC DURING FISCAL YEAR 2004..... 0

V. INITIAL FOIA/PA ACCESS REQUESTS

A. Numbers of Initial Requests

- 1. Numbers of requests pending at the end of preceding fiscal year 41¹
- 2. Numbers of requests received during current fiscal year 125
- 3. Number of requests processed during current fiscal year 83
- 4. Number of requests pending at the end of current fiscal year 83

B. Disposition of Initial Requests

- 1. Number of total grants 13
- 2. Number of partial grants 14
- 3. Number of denials..... 31
- a. Number of times each FOIA exemption used (counting each exemption once per request):
 - (1) Exemption 1 0
 - (2) Exemption 2 18
 - (3) Exemption 3 0

¹ Due to a prior reporting error, this number differs from the number of requests shown as pending at the end of FY 2003 in OSC's FY 2003 Annual FOIA Report.

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(4) Exemption 4.....	0
(5) Exemption 5.....	23
(6) Exemption 6.....	5
(7) Exemption 7(A).....	3
(8) Exemption 7(B).....	0
(9) Exemption 7(C).....	35
(10) Exemption 7(D)	1
(11) Exemption 7(E)	0
(12) Exemption 7(F).....	0
(13) Exemption 8	0
(14) Exemption 9	0
4. Other reasons for nondisclosure in whole or in part (total)	25
a. No records	15
b. Referrals.....	4
c. Request withdrawn.....	2
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) Files destroyed prior to FOIA request in accordance with National Archives Records Administration guidelines	2
2) File lost or unable to be located	0
3) Request(s) misdirected.....	0
4) Questions posed as FOIA request(s) (not request for actual records)/no requirement to create records	1
5) Unable to contact requester	1

VI. APPEALS OF INITIAL DENIALS OF FOIA/PA REQUESTS

A. Number of Appeals

1. Number of appeals received during current fiscal year	13
2. Number of appeals processed during current fiscal year	6

B. Disposition of Appeals

1. Number completely upheld	0
2. Number partially reversed	2
3. Number completely reversed	1
a. Number of times each FOIA exemption used (counting each exemption once per appeal):	
(1) Exemption 1	0
(2) Exemption 2	1
(3) Exemption 3	0
(4) Exemption 4	0
(5) Exemption 5	2

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(6) Exemption 6.....	0
(7) Exemption 7(A).....	0
(8) Exemption 7(B).....	0
(9) Exemption 7(C).....	2
(10) Exemption 7(D).....	0
(11) Exemption 7(E).....	0
(12) Exemption 7(F).....	0
(13) Exemption 8.....	0
(14) Exemption 9.....	0
4. Other reasons for nondisclosure in whole or in part (total):	
a. No records.....	0
b. Referrals.....	0
c. Request withdrawn.....	1
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) Untimely.....	2

VII. COMPLIANCE WITH TIME LIMITS/STATUS OF PENDING REQUESTS

A. Median Processing Time For Requests Processed During FY 2004

1. Simple requests:

a. number of requests processed.....	30
b. median number of working days to process	46

2. Complex requests:

a. number of requests processed.....	51
b. median number of working days to process	45

3. Requests accorded expedited processing:

a. number of requests processed.....	2
b. median number of working days to process	11

B. Status of Pending Requests at the End of FY 2004

1. Number of requests pending at the end of FY 2004.....	83
2. Median number of working days such requests were pending at the end of FY 2004	154

VIII. COMPARISONS WITH PREVIOUS YEAR

A. Comparison of Numbers of Requests Received

1. Requests received in FY 2003.....	104
2. Requests received in FY 2004.....	125
3. Difference (increase) between FY 2003 and 2004.....	21 (20%)

B. Comparison of Numbers of Requests Processed

1. Requests processed in FY 2003.....	126
2. Requests processed in FY 2004.....	83
3. Difference (decrease) between FY 2003 and 2004	43 (34%)
C. <u>Comparison of Median Number of Days Requests Were Pending at End of Fiscal Year</u>	
1. Median Number of Days Requests Were Pending End of FY 2003.....	91
2. Median Number of Days Requests Were Pending End of FY 2004.....	154
3. Difference (increase) between FY 2003 and 2004.....	63 (69%)
D. <u>Expedited Requests</u>	
1. Number of Requests Received in FY 2004	2
2. Number of Such Requests Granted in FY 2004	2

IX. COSTS/FOIA STAFFING

A. Staffing Levels

1. Number of full-time FOIA personnel	0
2. Number of personnel with part-time or occasional FOIA duties (in total work-years)	1.94
3. Total number of personnel (in work-years).....	1.94

B. Total Costs (including staff and other resources)

1. FOIA processing (including requests and appeals	\$196,547.41
2. Litigation-related activities	\$6,769.88
3. Total costs	\$203,317.29

X. FEES

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- A. Total amount of fees collected by OSC for processing requests..... \$244.00
(total fees charged: \$500.00)

- B. Percentage of total costs0.12%

XI. REGULATIONS (INCLUDING FEE SCHEDULE)

OSC's FOIA regulation, including a fee schedule, is codified at 5 C.F.R. § 1820. OSC also provides information about making and processing of FOIA requests to OSC at its Web site (<http://www.osc.gov/foia.htm>), pursuant to the Electronic FOIA Amendments of 1996.