

REPORT ON EXECUTIVE ORDER 13,392 IMPLEMENTATION

This section of the annual FOIA report contains the Office of the U.S. Trade Representative's description of its progress in implementing the milestones and goals of the Office's FOIA Improvement Plan.

The reporting period for this section is different from that used for the rest of this report, which is based on data compiled for Fiscal Year 2006. The reporting period for this section concerning Executive Order implementation activities includes progress made by the Office through January 2007.

A. Description of supplementation/modification of agency improvement plan (if applicable)

Not applicable

B. Report on agency implementation of its plan, including its performance in meeting milestones, with respect to each improvement area

USTR has met all of the goals and milestones established in the report it submitted in June 2006, in response to Executive Order 13,392 that were to be completed for this reporting period. In particular, USTR accomplished all of its goals in the area of consultation and all of its goals in the area of customer relations that were outlined in the plan. USTR made great strides in accomplishing goals in the area of communications including the implementation of goals a year in advance. In the area of tracking FOIAs, USTR examined the pros and cons of an outside vendor and consulted with vendors on tracking systems. In the end, we decided on an internal tracking system and implemented that system. The system is cost-effective for the size of the Agency, its budget and the number of FOIAs we receive. The FOIA web page received close attention and the three goals for 2006 were adopted. In the area of training staff, USTR staff was sent to computer training for our in-house tracking system and we contacted the Department of Justice to design a USTR-specific training program for our Agency. Backlog reduction received close attention in bi-weekly meetings resulting in the closure of the three oldest FOIAs and fifteen additional FOIAs that were the next oldest.

Specific 2006 accomplishments on milestones include the following:

To encourage timely attention to consultations in-house, USTR completed three steps:

- 1) Establishment of a system to identify within two days the person responsible for replying to a FOIA;
- 2) Insertion of the contact person into the tickler system and assignment of a case file to be maintained by the FOIA office; and
- 3) Addition of compliance with FOIA to the Performance Appraisals of each manager.

To ensure that requesters who call the FOIA Requester Service Center receive the information they seek in a timely and efficient manner, USTR completed two steps:

- 1) Creation of a log to record all calls. The log contained notations on the date, the name of the requester, the information requested and the action taken by the FOIA staff. The logs are reviewed regularly for trends that may require correction in our FOIA process.
- 2) Creation of a log for faxes.

To improve communications with requesters, USTR did the following:

- 1) Committed to returning all calls within 48 hours of receipt.
- 2) Reviewed and simplified all letters that are sent to requesters, including initial acknowledgement letters, completion of FOIA cover letters and FOIA appeals letters.

The Office worked with appropriate IT personnel in USTR to complete a FOIA integrated processing tracking system using existing technology. USTR discussed the budgetary requirements of purchasing an electronic FOIA processing system with appropriate officials and concluded that given the number of FOIAS received, the automated system was sufficient for the time being.

USTR reviewed the FOIA web pages to ensure that information is current and relevant. We created a "Frequently Asked FOIA Section" and a "Frequently Asked Question Section".

To improve the performance of the FOIA staff and the FOIA attorney, we designated a new FOIA lawyer to act when USTR's FOIA lawyer is absent.

C. Identification and discussion of any deficiency in meeting plan milestones (if applicable)

Not applicable

D. Additional narrative statements regarding other executive order-related activities (optional)

E. Concise descriptions of FOIA exemptions

The nine exemptions to the FOIA authorize federal agencies to withhold information covering: (1) classified national defense and foreign relations information; (2) internal agency rules and practices; (3) information that is prohibited from disclosure by another federal law; (4) trade secrets and other confidential business information; (5) inter-agency or intra-agency communications that are protected by legal privileges; (6) information involving matters of personal privacy; (7) records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably

be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual; (8) information relating to the supervision of financial institutions; and (9) geological information on wells.

F. Additional Statistics:

1. Time range of requests pending, by date of request

August 10, 2005 to January 24, 2007

2. Time range of consultations pending with other agencies at this time

None

G. Attachment: Agency improvement plan

**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE FOIA PLAN
UNDER EXECUTIVE ORDER 13,392**

A. NATURE OF THE USTR FOIA OPERATIONS

The FOIA Office at the Office of the United States Trade Representative (USTR) processes Freedom of Information Act/Privacy Act (FOIA/PA) requests for records maintained by the whole agency. In Fiscal Year 2005, USTR received 26 requests and completed processing of 55 requests. In Fiscal Year 2004, USTR received 73 FOIAs and completed processing of 54 requests. These requests are processed by two employees: USTR's FOIA assistant and USTR's FOIA Officer. The requests are reviewed by the Attorney-Advisor for Administration. The Chief FOIA Officer, also the Assistant USTR for Policy Coordination, is the official denial authority and oversees the FOIA staff. Many of the FOIA requests processed by the FOIA staff are for classified or highly sensitive records that require multiple consultations across the geographic and functional units of the agency, as well as with the attorney-advisors in the General Counsel's office. The majority of FOIA requests require special handling.

B. AREAS SELECTED FOR REVIEW

USTR reviewed the following potential improvement areas:

- Records search process
- Consultation process
- Customer Relations/Communications
- Use of Information Technology/ Use of Tracking Systems
- FOIA Web pages
- Additional Training of FOIA and USTR Staff

-Backlog Reduction

C. NARRATIVE STATEMENT SUMMARIZING RESULTS OF REVIEW

After an extensive review of the areas identified in Part B above, USTR determined that although the processing of FOIA requests is working well, the operation can be improved. One of the first areas that we reviewed was the amount of time taken to search for responsive records. Responsive records are located in one of two buildings or in Archives. Documents are often held in at least three offices: geographic, functional and the General Counsel. For any request of documents that date back more than three years, the negotiator/ office director often must search USTR's Archival files, a time-consuming exercise. We met with the White House Office of Administration Archivists to determine how the process could be centralized, streamlined and computerized. We arranged for a tour and briefing by the Council of Environmental Quality (CEQ) staff, a similar-sized office within the Executive Office of the President. We will continue to work with the archivists to improve our records management system.

Another issue in the area of document retrieval is referrals from other agencies. USTR often receives requests from other agencies that have discovered USTR documents in their FOIA searches. To streamline our response to these agencies and assure timeliness, USTR will establish a tickler system that keeps track of the status of our referrals. Our review also showed that consultations with the multiple offices at USTR added considerably to the processing time. USTR tasks FOIAs to multiple offices, as mentioned earlier and the tasking takes place concurrently. The task facing the FOIA Office is to develop procedures designed to encourage timely attention to these requests on the part of the various offices at USTR. These offices are engaged in multiple negotiations, requiring international travel. We decided to initiate a system to quickly identify the individual or individuals who are personally responsible for handling each FOIA, and then to systematically and continuously monitor the processing of those FOIAs. In the area of customer relations/communications with requesters, we believe that USTR does an excellent job. We regularly acknowledge our requests within twenty working days, and these letters always include the name and phone number of a contact person that the requester can call with questions. Furthermore, our FOIA Office sometimes receives requests that are not proper FOIA requests. We respond to these letters and explain to the requester why the request is not proper. We refer the requester to the right source of information. In many cases, we call the requester if their request is not clear. We use this opportunity to also refer the requester to our website for additional documents. Although we believe that our service is excellent, we have reviewed our procedures to make sure that all phone calls are answered promptly and courteously. We have also reviewed our format for response letters to simplify the document and make it more readily understandable. In addition, we scheduled a listening session with the Office of Management and Budget and contacted our most frequent requesters by phone to invite them. We put an invitation to that meeting on our FOIA website in a timely fashion to attract other FOIA users. Out of the suggestions in that meeting, we are adopting a new electronic system for tracking. We are also taking steps to add the handling of FOIAs to the performance standards of office heads. We also have set up a series of time-sensitive

deadlines for action in our plan, as suggested by the audience. We plan to schedule such listening sessions every two years.

Next we evaluated USTR's information technology capabilities and readily determined that our system as applied to FOIA should be updated. Our current system does not provide us with the tools we need to process FOIA requests quickly, to index and track the documents reviewed, or to accurately report on our progress. We decided that we need an updated system that will allow us to receive and process requests electronically, including indexing and organizing documents electronically. This proposed system will provide us with the tools we need to track the status of our requests, including referrals, and compile our annual report. This area holds great promise for improving FOIA processing overall.

USTR also reviewed its FOIA Web page and its Website. We found that the FOIA Web page could be improved in several ways. First, the page should have a clear link from the USTR home page. Second, a Frequently Asked FOIAs folder should be established. Third, a Frequently Asked Questions section should be established that would include tips to requestors

on the types of documents that are not disclosed and how to formulate a request so that it is more easily addressed. Fourth, we will revise and post the revised FOIA Reference Guide to the FOIA Web page.

One area that proved fruitful for review was the area of training. We plan to factor in two types of training. The first type will be a mandatory session on FOIA search and preparation for the entire professional staff. We will contact the Department of Justice to design a USTR- specific training session. The second type of training will be a refresher course in FOIA for our two FOIA professionals. We also intend to designate an alternate FOIA lawyer to act in place of our FOIA attorney when he is absent from USTR.

Finally, we reviewed the number of cases that have been pending for more than the twenty days provided by the statute. All of these cases have been assigned. We resolved to review these cases every month until the backlog of pending initial requests is resolved. We believe that this scheduled review will result in pending requests being resolved more expeditiously. We commit to closing the five oldest cases prior to the end of each year. This initiative is in addition to our regular processing and closing of cases and our specific overall goal of reducing the backlog by a specific percentage each year.

D. AREAS CHOSEN AS IMPROVEMENT AREAS FOR THE PLAN

- Records search process
- Consultation process
- Customer Relations/Communications
- Use of Information Technology/ Use of Tracking Systems
- FOIA Web pages
- Additional Training of FOIA and USTR Staff
- Backlog Reduction

E. IMPROVEMENT AREA PLANS

1. Records search process

Goal: To decrease the amount of time it takes to retrieve records from covered offices: Target completion: 6/07

Steps

- Work with USTR's Records Management Officer to finalize a recommendation from the Archivists on how USTR offices should archive their documents. **To be completed by 2/2/07.**

- Work with USTR's Records Management Officer to centralize records schedules for the entire agency for the last five years and computerize them. Officers will be able to search

the indices electronically, which is much quicker and more accurate than manually reviewing paper indices. **To be completed by 4/30/07.**

- Through the tickler system (see Use of Information Technology/Use of Tracking Systems), provide periodic reports to FOIA contacts in individual offices detailing the number of pending searches to encourage them to monitor their progress toward reducing outstanding searches. The report will include the name of each requester, the subject of each request and the length of time the request has been pending. **To be completed by 10/31/06 (and continuing thereafter).**

- Amplify the tickler system to USTR's referrals from other agencies so that our obligations to other government offices are satisfied in a timely fashion. Insure that the referred documents are reviewed by the responsible office within 20 business days of receiving the documents. **To be completed by 3/31/2007.**

2. Consultation process

Goal: To encourage timely attention to consultations in-house. Target completion 6/30/07

Steps

- Within two days of sending the FOIA request, the FOIA office will establish the employee responsible in each office for replying to the FOIA. This system will facilitate follow-up on the status of a consultation by the FOIA staff. **To be completed by 9/1/06.**

- The contact person will be inserted in the tickler system to allow for follow-up calls by the FOIA office. A log of all outstanding FOIA cases and the person responsible for each case will be maintained by the FOIA office and will be provided to all Office heads and the Deputy Chief of Staff on a weekly basis for action. **To be completed by 10/31/06.**

- Compliance with FOIA will be added to the Performance appraisals of each manager in the next rating period. **To be completed by 6/30/07.**

3. Customer relations/ Communications

Goal: To ensure that requesters who call the FOIA Requester Service Center receive the information they seek in a timely and efficient manner. **Target completion 9/29/2006**

Steps

- Create a log to be used by the FOIA Requester Service Center personnel; each time such personnel speak with a requester, a note is made in the log which will include the date, the name of the requester, the information requested, and the result of the conversation. This log will be reviewed by the FOIA Public Liaison to determine whether improvements in handling telephone calls can be made and to determine whether there

are trends which may show other changes in the FOIA process that need to be made. **To be completed by 7/13/06.**

- Create an identical log for faxes. With mail irregularities growing, the fax is increasingly the mode of filing a FOIA. **To be completed by 7/13/06.**

Goal: To improve communications with requesters as emphasized in Executive Order 13,392.

Target completion: 6/30/2008.

Steps

- Commit to returning all FOIA calls within 48 hours of receipt. **To be completed by 6/19/06 and thereafter.**
- Review and simplify all letters that are sent to requesters including initial notification letter, completion of FOIA cover letter, and FOIA appeal letters. **To be completed by 8/1/2006.**
- Schedule another listening session with our frequent FOIA users and the general public. **To be completed by 6/30/2008**

4. Use of information technology/Use of Tracking Systems

Goal: To create a FOIA tracking system using existing IT systems or by purchasing an electronic FOIA processing system that includes updated tracking and redacting functions, as well as the ability to receive requests electronically. **Target completion: 10/1/07**

Steps

- Continue to discuss needs with appropriate IT personnel in USTR to see if a complete FOIA integrated processing system can be created from existing agency IT systems. **To be completed by 8/1/06**
- Discuss budgetary requirements with appropriate officials. **To be completed by 9-1-06.**
- At a minimum create a FOIA tracking system using existing technology. **To be completed by 10/31/06.**

- If unable to construct a full processing system internally, draft formal requirements for a new processing system to be purchased from outside **To be completed by 9/15/06.**
- Contact vendor concerning possible pilot test program and to request proposal for pilot test program. **To be completed by 9-15-06.**
- Obtain formal proposal for pilot from vendor. **To be completed by 11/1/06**
- If given budgetary approval, begin procurement process according to appropriate acquisition rules and regulations. **To be completed by 1/1/07.**
- Install and test tracking system. **To be completed by 9/1/07**
- Full scale implementation. **To be completed by 10/1/07.**

5. FOIA Web pages

Goal: To improve USTR's FOIA Web pages in order to provide more information to the public

Target completion 6/29/07 (and thereafter)

Steps

- Review USTR's FOIA Web pages quarterly to ensure that information is current and relevant documents are posted. **To be completed by 9/30/06; 12/31/06;3/31/07; 6/30/07;9/30/07;12/31/07;3/31/08;6/30/08;9/30/08;12/31/08.**
- Create a Frequently Asked FOIA section so that requestors can see if their question has already been answered. **To be completed by 9/30/06.**
- Create Frequently Asked Questions section of FOIA Website which will include tips on filing a FOIA. This section will also explain the most frequently applicable exemptions at USTR. This information may decrease the number of FOIAS. **To be completed by 11/30/06.**
- Post revised FOIA Reference Guide to FOIA Website. **To be completed by 6/29/07.**
- Post revised FOIA Regulations to the FOIA Website. **To be completed by 3/30/07 (first draft); Proposed regulations publishes 11/30/07; Final Regulations published 3/30/08.**

6. Additional Training of FOIA and USTR Staff

Goal: To improve USTR staff's knowledge about the FOIA statute and regulations in order to improve their search capabilities. **Target Completion by 12/31/07.**

Steps

- Contact the Department of Justice to design a USTR-specific training program. **To be completed by 12/31/06.**

- Establish a training outline that is agreed by USTR and approved. **To be completed by 3/31/07.**
- Complete mandatory training program for entire USTR staff. **To be completed by 12/31/07.**

Goal: To improve the performance of the FOIA staff and the FOIA attorneys. **Target Completion by 6/30/08**

- Designate a new FOIA lawyer to act when USTR's FOIA lawyer is absent. **To be completed by 8/1/06.**
- Obtain funding for 2 FOIA specialists to attend refresher courses. **To be completed by 6/30/08.**

7. Backlog reduction

Goal: To reduce the existing backlog of pending initial FOIA requests by a substantial percentage each year (i.e., 10% by 1-15-07, 15% by 1/15/08, and 20% by 12/31/08; as measured by the number of requests pending), by periodically and consistently focusing on the existing backlog. **Target completion: 1/15/07; 1/15/08;12/31/08.**

Steps

- FOIA Staff will meet on a quarterly basis with other USTR offices to review existing backlog in order to determine the number of cases pending for more than the twenty days provided by statute. **To be completed by 8/15/06, 10/15/06, 1/15/07, 4/15/07, 7/15/07, 10/15/07, 1/15/08,4/15/08, 7/15/08/ 10/15/08.**

Goal: To close the three oldest FOIA requests pending each year. **Target Completion: 12/31/06, 12/31/07,12/31/08, 12/31/09.**

Steps

- Review the three oldest FOIA requests and determine what steps need to be taken to complete the processing of these requests. **To be completed 7/1/06.**
- Implement the steps we have determined need to be taken to complete the processing of these requests. **To be completed by 7/15/06.**
- Close these requests. **To be completed by 12/31/06.**
- Review the three oldest FOIA requests that are pending as of January 1, 2007 and determine what steps need to be taken to complete the processing of these requests. **To be completed by 2/1/07.**
- Implement the steps we have determined need to be taken to complete the processing of these requests. **To be completed by 2/15/07.**

- Close these requests. **To be completed by 12-31-07.**
- During calendar years 2008 and 2009, continue the process described in the preceding steps. **To be completed by 12/31/08, 12/31/09.**